

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF TRANSPORTATION
FILE ID NO.: 2008-332
DATE OF REPORT: DECEMBER 18, 2012

The Office of the Ohio Inspector General The State Watchdog

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OFFICE OF THE INSPECTOR GENERAL

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REPORT OF INVESTIGATION

FILE ID NUMBER: 2008-332

SUBJECT NAME: Direct Purchasing Authority

AGENCY: Ohio Department of Transportation (ODOT)

BASIS FOR INVESTIGATION: Inspector General Initiative

ALLEGATIONS: Failure to comply with ODOT's purchasing protocols for direct authority purchases.
Failure to comply with Ohio Antitrust laws.

INITIATED: November 24, 2008

DATE OF REPORT: December 18, 2012

EXECUTIVE SUMMARY

On November 24, 2008, the Office of the Ohio Inspector General initiated an investigation of competitive bidding practices using direct purchasing authority to determine whether such violations occurred in other ODOT districts. From January 27, 2009, through January 7, 2011, the United States Department of Justice reviewed the case. Beginning January 2011, The Office of the Ohio Inspector General resumed this investigation with the Ohio State Highway Patrol, and the Ohio Attorney General's Office Antitrust Section. On June 2, 2011, the United States Department of Justice Antitrust Division deferred further action to the Office of the Ohio Inspector General.

Per the Ohio Revised Code, ODOT adopted policies, procedures, and manuals to provide guidelines and requirements to the department's personnel who have purchasing authority. This investigation reviewed transactions and actions taken by ODOT employees and vendors to determine whether the transactions were in compliance with ODOT policies and procedures. The vendors and affiliated companies reviewed included the following: Ace Truck Equipment, A&A Safety, Southeastern Equipment, Rath Builders Supply, and Pengwyn. As part of this investigation, transactions involving Bain Industries, Bain Enterprises, Horner Construction, and Ebony Construction were also reviewed.

Quotes submitted by vendors, the quotes' support documentation, invoices, and the expenses of vendor sales representatives were reviewed to determine whether the vendors and ODOT employees complied with applicable ODOT policies, procedures, and the Ohio Revised Code. This investigation revealed numerous instances in which ODOT employees failed to follow policies and procedures established by ODOT and the Ohio Revised Code related to:

- Soliciting, accepting, and awarding of quotes;
- Maintaining hard copy and electronic transaction records;
- Charging expenses using payment cards;
- Permitting employees to approve their spouses' purchases and to determine whether these purchases complied with applicable ODOT policies and procedures;

- Exceeding the \$50,000 annual purchasing limit per fiscal year for vendors not under contract to provide goods or services;
- Failing to disseminate violations of ODOT districts policy and procedures identified during Quality Assurance Reviews and internal investigations;
- Permitting certain vendors to provide input on specifications prior to submitting a quote; and
- Accepting meals and other gratuities from vendors.

This investigation determined ODOT employees had knowledge of the department's policies and procedures based on a review of documentation for selected transactions, training activities, and interviews conducted with certain purchasers in ODOT districts 3, 5, 7, 10, and 11. However, the purchasers chose to ignore ODOT's policies and procedures regarding the correct bid process for soliciting vendors out of convenience and it made their job easier. As such, purchasers chose to accept vendors' offers and also requested vendors provide multiple quotes to address district needs.

As a result of the actions of ODOT purchasers, vendors' sales representatives would submit multiple quotes for the vendors they represented and their affiliated companies, ensuring the sales representative's targeted company would be awarded business. These vendors also engaged in one or more of the following activities to ensure they or their affiliated companies were awarded business:

- Entering into arrangements between vendor sales representatives agreeing to either not submit a quote in the opposing vendor's geographic sales territory or submitting a complementary quote ensuring the opposing vendor would be awarded the ODOT contract.
- Submitting fabricated vendor quotes to ODOT purchasers to provide ODOT the appearance that competition was occurring, when in reality it was not.
- Directing competing vendors to submit quotes and, in some instances, specifying to competing vendors the quote amount to be submitted to ODOT.

- Submitting quotes on behalf of an affiliated vendor to give the appearance of competition.
- Requesting manufacturers and competing out-of-state dealers submit quotes to ODOT to provide the appearance that competition was occurring.

As a result of the vendors' actions, coupled with the failure of ODOT employees to follow the department's policies and procedures, these vendors were awarded the majority of quotes they submitted to ODOT.

It is important to note ODOT expanded its Quality Assurance Review process to determine if employees were complying with ODOT policies and procedures during fiscal years 2005 and 2006. In fiscal year 2008, ODOT expanded this process to also require correction of noncompliance issues identified. As a result of this increased monitoring, this investigation noted a significant decrease in noncompliance.

To reduce the likelihood of future bid corruption, this investigation contains recommendations relating to the quoting of bids, training, compliance monitoring, policies and procedures, annual purchasing limits, vendor activities, and equipment. ODOT executive management and lower levels of management must establish that policy and procedural noncompliance and bid corruption is not considered acceptable.

This investigation found that a conspiracy between A & A Safety, Quattro Inc., and Bain Enterprises determined the amount of the quotes awarded by ODOT or the City of Hudson and the winner. The three methods used to control the award of quotes by governmental entities resulting in the competitive selection process being compromised are as follows:

- A & A Safety and Quattro Inc., its affiliated company, conspired to submit competing quotes to ODOT. Since no unaffiliated companies were involved in the bidding process, A & A Safety and Quattro Inc. controlled the outcome of the bid ODOT awarded. This conduct occurred 14 times totaling \$38,487.55 between August 30, 2002, and September 3, 2008.

- A & A Safety and Quattro Inc. conspired for the awarding of ODOT bids to Quattro, Inc. in 12 instances and with Bain Industries, a company established by a former A & A Safety employee, in two additional instances. In these instances, Quattro Inc. was the pre-determined winner of awarded ODOT bids for equipment it could not supply. Quattro Inc. was a land-holding company and not a supplier of traffic control systems and devices. In these instances, A & A Safety supplied ODOT the equipment. As the winning bidder, Quattro Inc. was paid by ODOT but ultimately transferred 100 percent of the monies received to A & A Safety, the equipment supplier. The effect of these agreements was to eliminate a competitive bidding process. This conducted occurred 14 times totaling \$81,409.33 between February 26, 2003, and July 30, 2008.
- A & A Safety faxed, emailed, or contacted Bain Industries/Bain Enterprises instructing them to submit a quote to ODOT or the City of Hudson for equipment. These instructions included quote amounts, mark-up amounts, or Bain's cost to purchase the equipment from A & A Safety. In these instances, A & A Safety supplied ODOT or the City of Hudson the equipment. As the winning bidder, Bain Industries/Bain enterprises was paid by ODOT or the City of Hudson but ultimately transferred the pre-agreed upon equipment price to A & A Safety, the equipment supplier. Therefore, both companies financially benefitted from these agreements to the detriment of other vendors not afforded the opportunity to compete in the bidding process. This conducted occurred 19 times totaling \$98,743.21 between March 24, 2004 and January 10, 2007.

On December 18, 2012, Quattro Inc. entered a guilty plea signed by Vice President Bill Luttmer to:

- One felony count of Prohibition Against Entering Into an Unlawful Combination, Contract, or Agreement in violation of ORC §1331.02; and
- One felony count of an attempt to Engage in a Pattern of Corrupt Activity in violation of ORC §2923.02/2923.32 based on incidents instances of Telecommunications Fraud in violation of ORC §2913.05(A).

As part of its plea, Quattro Inc., agreed to pay restitution of \$32,796 to the state of Ohio and to pay a forfeiture of \$10,000 for investigative and litigation costs pursuant to Ohio Rev. Code §1331.03 payable to the general revenue fund for the state of Ohio.

On the same date, A&A Safety sales manager Timothy O'Brien entered a guilty plea to three misdemeanor counts of Conspiracy Against Trade in violation of Ohio Revised Code §1331.04. O'Brien agreed as part of his plea agreement to pay \$4,372 in restitution to the state of Ohio and to pay a forfeiture of \$1,500 for investigative and litigation costs pursuant to Ohio Rev. Code §1331.03 payable to the general revenue fund for the state of Ohio.

Prosecutors are currently reviewing the investigation to determine whether additional charges are appropriate.

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BASIS FOR INVESTIGATION

On October 16, 2008, the Office of the Ohio Inspector General released an investigation of the Ohio Department of Transportation (ODOT) District 12 which identified violations of ODOT policies and procedures, and Ohio Revised Code sections governing bid practices. The violations occurred in multiple ODOT districts. On November 24, 2008, the Office of the Ohio Inspector General initiated an investigation of competitive bidding practices to determine the degree to which violations of ODOT policies and procedures, and applicable Ohio Revised Code sections occurred in other ODOT districts.

Based on a review of records by investigators and ODOT Office of Finance, the following vendors and their affiliated companies were identified for further investigation:

| Vendor | Affiliated Vendors |
|------------------------|---|
| Ace Truck Equipment | AceCo Inc.; Ace Truck Body; and Baker Truck Equipment. |
| A&A Safety | Quattro, Inc. |
| Southeastern Equipment | Equipment Salvage Inc.; Equipment Salvage LLC; and Lease Lift |
| Rath Builders Supply | Fort Defiance Construction & Building Supply |
| Pengwyn ¹ | Hydron Inc.; Ice Control Equipment; and Petro Pascal Inc. |

The investigation was expanded to determine whether ODOT employees received gratuities from these vendors to influence the bidding process or whether the identified ODOT employees complied with department purchasing policies and procedures, and applicable Ohio Revised Code (ORC) Sections.

On January 7, 2009, the Office of the Ohio Inspector General and the Ohio State Highway Patrol formed a joint task force to conduct this investigation. On January 27, 2009, the Office of the Ohio Inspector General referred the case to the United States Department of Justice Antitrust Division (DOJ Antitrust). On June 2, 2011, the investigation was resumed by the Office of the Ohio Inspector General and the Ohio State Highway Patrol, after the USDOJ Antitrust Division

¹ On January 21, 1987, HYO applied for and was granted authority to use Pengwyn as its trade name. For the remainder of the report, we will use the trade name Pengwyn when discussing HYO activities.

deferred further action. Shortly thereafter, the Ohio Attorney General’s Office Antitrust Section joined the task force to review whether improper bidding practices violated Ohio antitrust laws.

BACKGROUND

ODOT is organized into 12 geographic districts responsible for managing daily ODOT activities for the counties within each district. Each district also operates a county garage to maintain its assigned state highways. Purchases are initiated by either the county garage or district office employees using direct purchasing authority granted by policy and procedures manuals adopted by ODOT in accordance with ORC §5513.03. These manuals include guidance to ensure ODOT employees comply with, at a minimum, ORC §5513.01, §127.16, and §125.05.

Agency Purchasing Authority

As required by ORC §5513.01, ODOT’s adopted and revised Purchasing and Contract Administration manual [\(Exhibit 1\)](#) [\(Exhibit 2\)](#) [\(Exhibit 3\)](#) and Quote Guidelines manual [\(Exhibit 4\)](#) establish the number of quotes or sealed bids required based on the estimated cost of the item to be purchased. Before soliciting or making a purchase, ODOT employees making the purchase are required to determine whether the vendor had reached the \$50,000 annual purchasing limit as described in ORC §127.16. If so, the purchaser was not permitted to contact the identified vendor to solicit a quote or purchase the item without controlling board² approval.

Direct Purchasing Authority

Each district and central office division determined which employees were assigned as purchasers. The purchasers could use their direct purchasing authority to procure supplies and equipment when the requested items cost less than \$50,000, provided the items could not be purchased from Ohio Penal Industries, Community Rehabilitation Program, State Printing Office, or from previously awarded Ohio Department of Administrative Services or ODOT contracts. When procuring supplies and equipment, each purchaser was required to solicit quotes from vendors based on the estimated cost of the item purchased. The following table summarizes the required number of quotes based on the estimated total purchase cost:

² The controlling board is a seven-member board made up of House and Senate members, which oversees and approves certain capital and operating expenditures made by state agencies. Additionally, this board is responsible for approving waivers for competitive selection for purchases made by state agencies.

| Direct Purchasing Quote Requirements* | |
|--|------------------------|
| Total Purchase Price | Quotes Required |
| \$0 to \$1,000.00 | 1 |
| \$1,000.01 to \$2,500.00 | 2 |
| \$2,500.01 to \$335,000.00 | 3 |

* As of December 9, 2011, ODOT revised the dollar amounts requiring a specified number of quotes.

Source: ODOT May 2008 Purchasing Contract Administration Training Manual.

Purchasing Methods

Purchasers have the option of using voucher or payment cards to purchase goods or services using direct purchasing authority. Vouchers are used when vendor payments are to be made using a warrant, electronic funds transfer, or an electronic data interchange.³ Payment cards can be used if the purchase does not exceed \$2,500 and the vendor is included on the Ohio Office of Budget and Management vendor service list.⁴

Bid Arrangements and Antitrust Violations

As indicated above, to purchase equipment or supplies exceeding \$1,000, ODOT policy requires the purchaser to solicit and obtain at least two quotes before making the purchase. If all solicited vendors do not receive the solicitation with the same terms and conditions at the same time, there is a significant increase in the probability that the bid process will be corrupted. Bid corruption occurs through the use of bid suppression, use of complementary quotes, or submission of phantom quotes.

Bid suppression occurs when at least one vendor agrees, either verbally or in writing, with one or more vendors that the competing vendor not respond to a quote solicitation; to withdraw a previously submitted quote, thereby allowing a specific vendor to win; or agrees to not to respond to solicited quotes for a specific customer or a geographic area.⁵ For example, bid suppression occurs when vendor A and vendor B, which have specific geographic sales

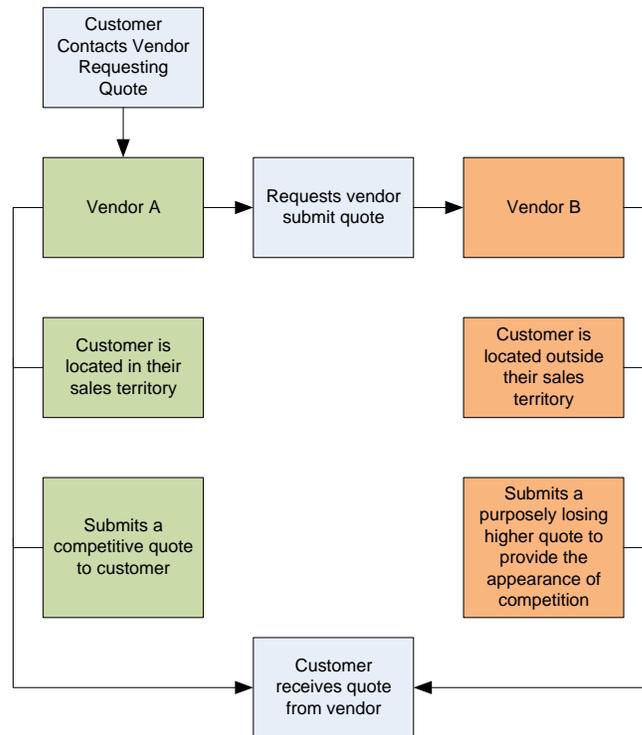
³ Electronic Data Interchange, or EDI, is a method for remitting payments to vendors using bank wire transfers or debits.

⁴ Effective December 7, 2011, cardholders no longer had to verify that vendors were on the Ohio Office of Budget and Management (OBM) approved vendor service list. This change was incorporated into OOBM's revised Payment Card Policies and Procedures Manual dated February 23, 2012.

⁵ Definition summarized from Encyclopedia of Fraud, 2005 Edition, Association of Certified Fraud Examiners, Austin, TX.

territories that do not overlap, enter into an agreement to not respond to customer quote solicitations. Instead, the vendor who is not assigned the specific geographic sales territory will agree to either not submit a quote or submit a higher quote, thus ensuring the other vendor wins.

An example of an alternative method of bid corruption occurs when a competing vendor submits a complementary quote to provide the appearance of competition and to support the validity of the amount submitted by the winning vendor.⁶ Because the additional quote was submitted at a pre-agreed higher price, it is unlikely the additional quote will be accepted by the customer, thereby steering the quote to the company selected by the competitors per their agreement, as shown in the following chart:



⁶ Definition summarized from Encyclopedia of Fraud, 2005 Edition, Association of Certified Fraud Examiners, Austin, TX.

A phantom bid is a quote submitted by a company whose sole purpose is to provide the illusion that the competitive process is working, when in reality the company is bidding against itself.⁷ A variation of this occurs when a company submits bids from an affiliated company in an unrelated line of business.

Types of Antitrust Violations

Antitrust laws were established to protect competition and prohibit agreements, arrangements, and other collaborations to restrain trade within an industry and place limits on allowable types of collaboration between competing vendors.⁸ For an antitrust violation to occur, vendors must have knowledge of, comply with, and/or participate in the agreement to restrain trade in some form or manner. Violations of such laws include price fixing, market allocation, and bid rigging. ORC Chapter 1331 defines conduct that violates Ohio antitrust law.

INVESTIGATIVE SUMMARY

This investigation involved a review of ODOT policies and procedures, and applicable Ohio Revised Code Sections; documentation maintained by ODOT; vendors and their affiliated companies; and interviews of ODOT personnel and vendor employees during the period July 1, 2001, through June 30, 2011 to obtain an understanding of the bid practices followed by ODOT. The following sections of the report summarize practices used by vendors and current and former ODOT employees which were determined to be contrary to ODOT policies and procedures, and the Ohio Revised Code.

⁷ Definition summarized from Encyclopedia of Fraud, 2005 Edition, Association of Certified Fraud Examiners, Austin, TX.

⁸ *Gilbert Law Summaries: Antitrust*. The BarBri Group, Chicago, IL.

Ace Truck Equipment and its Affiliated Companies

Summary

This investigation determined that Ace Truck Equipment was affiliated with Ace Truck Body, Baker Truck Equipment,⁹ and AceCo Inc. Ace Truck Equipment, Ace Truck Body, and Baker Truck Equipment each have a designated sales territory for the sale of truck parts. AceCo Inc. leases semi-trailers to customers and does not sell truck parts. Records reviewed and interviews conducted revealed that the Beitzel family, consisting of father Robert, son David, daughter Janet, and a family trust, collectively own 88 percent of the outstanding stock for the four vendors. These four vendors were in essence acting as one umbrella organization with four separate divisions because of their common ownership, each vendor being assigned a specific geographic sales territory which the other vendors did not cross, and Ace Truck Equipment and AceCo Inc. sharing the same location.

During the period July 1, 2001, through June 30, 2011, ODOT requested Ace Truck Equipment and its affiliated companies to submit quotes to ODOT for specified equipment and parts.

Investigators determined the following information:

- Prior to mid to late 1990s, Ace Truck Equipment sales representatives entered into agreements with competing sales representatives not to compete against each other in specified territories.
- Beginning in the late 1990s, Ace Truck Equipment sales representatives submitted quotes for Ace Truck Equipment or one of its affiliated companies and two competing vendors, without their knowledge, in response to ODOT's quote request.
- Beginning in the early 2000s, Ace Truck Equipment sales representatives submitted quotes for Ace Truck Equipment and its affiliated companies to satisfy ODOT requests for three quotes to purchase a specified item.

The investigation also determined Ace Truck Equipment sales representatives submitted quotes from an affiliate to conceal Ace Truck Equipment's identity from ODOT by submitting a winning quote from an affiliate, supplying the equipment to ODOT, and invoicing the winning

⁹ Baker Truck Equipment is located in Hurricane, West Virginia, and was incorporated in Ohio as Ace Truck of West Virginia on November 5, 1991. This vendor will be referred throughout this report as Baker Truck Equipment.

affiliate for the amount paid by ODOT. These actions resulted in ODOT’s records reflecting that Ace Truck Equipment was awarded 40 percent of the quotes submitted by Ace Truck and its affiliated companies when in reality, Ace Truck Equipment and its affiliated companies received 78 percent of the payments.

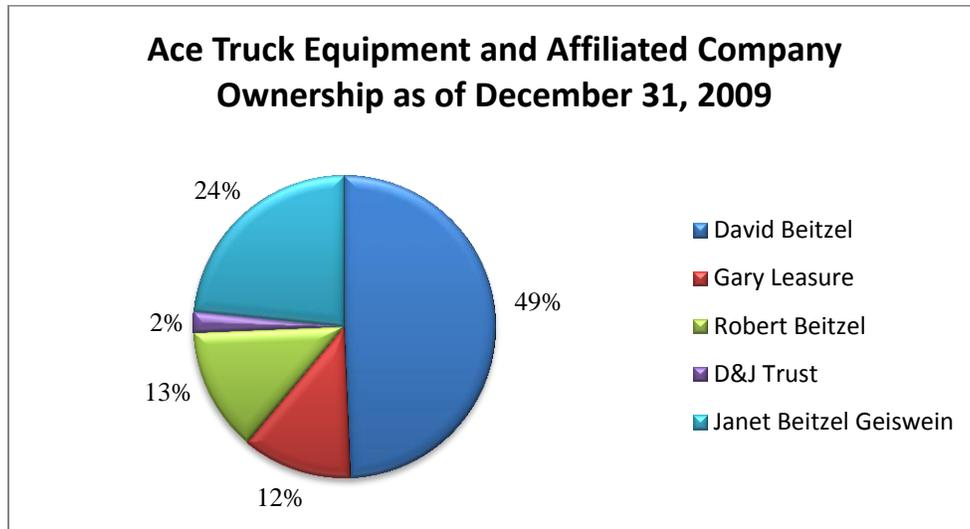
As a result of their conduct, Ace Truck Equipment sales representatives controlled the submission of quotes in their geographically assigned sales territory and guaranteed ODOT would award the quote to Ace Truck Equipment or one of its affiliated companies. Ace Truck Equipment ensured they received ODOT’s payment regardless of who was awarded the quote; and Ace Truck Equipment sales representatives – not ODOT – determined the price for the product. As a result, Ace Truck Equipment and its affiliated companies avoided competition.

Ace Truck Equipment and Affiliated Vendors

The following table outlines historical information about Ace Truck Equipment and its affiliated vendors, as obtained from documents available on the Ohio Secretary of State’s website:

| Vendor Name | Incorporation Date | Incorporators |
|-----------------------|---------------------------|--|
| Ace Truck Equipment | 6/30/60 | Clayton Renner, Harold Moomaw, and Milan Alpeter |
| AceCo Inc. | 7/2/76 | David Beitzel, Howard S. Zwelling, and Patricia A McCoy |
| Ace Truck Body | 7/3/78 | Robert D. Beitzel, R. William Geyer, and Ruth Ross |
| Baker Truck Equipment | 11/4/91 | R. Donald Cultice, Margaret J. Drake, and Peter N. Cultice |

The following chart identifies the percentage of ownership in total for the four vendors based on the number of shares of common stock issued to each owner as of December 31, 2009:



Note: Per the Ohio Secretary of State records, D & J Trust is owned by David Beitzel and Janet Beitzel Geiswein.
 Source: Share ledgers and representations provided by Ace Truck Equipment and its affiliated companies.

In 2010, David Beitzel purchased Ace Truck Equipment stock shares owned by Janet Beitzel Geiswein and Robert Beitzel, making him the sole shareholder for Ace Truck Equipment.

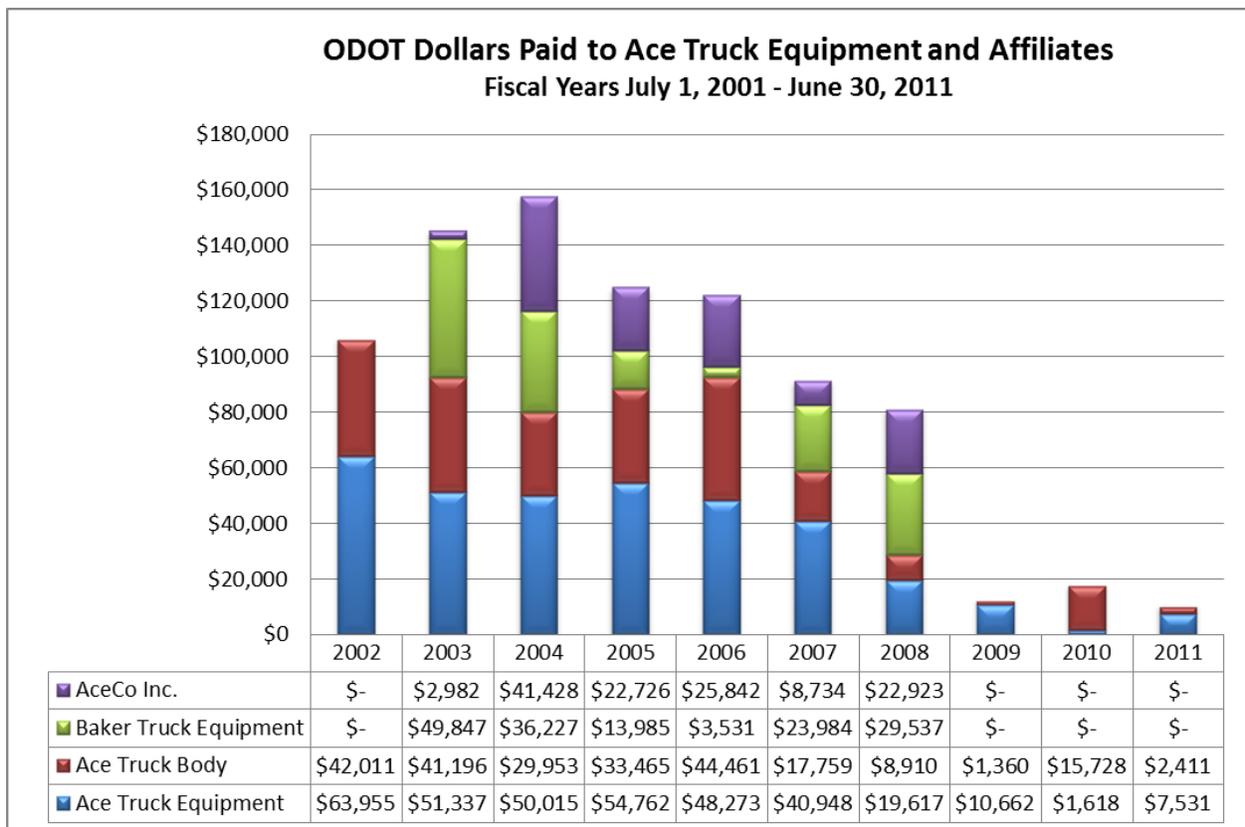
Quotes and invoices submitted to ODOT documented the following locations for Ace Truck Equipment and its affiliated vendors:

| Vendor Name | Address |
|-----------------------|--|
| Ace Truck Equipment | 1130 Newark Road, Zanesville, Ohio |
| AceCo Inc. | 1130 Newark Road, Zanesville, Ohio |
| Ace Truck Body | 1600 Thrailkill Road, Grove City, Ohio |
| Baker Truck Equipment | State Route 60 at Mynes Road in Hurricane, West Virginia |

During interviews, Ace Truck Equipment and Ace Truck Body sales representatives stated that Ace Truck Equipment, Ace Truck Body, and Baker Truck Equipment sell truck parts and had assigned geographic sales territories. These territories were often defined by the manufacturers of the equipment lines carried by each vendor. However, the sales representatives stated AceCo Inc. did not sell truck parts. Instead, AceCo Inc. leased semi-trailers to customers and operated from the same location as Ace Truck Equipment. These four vendors were essentially acting as

one umbrella organization with four separate divisions based on common ownership, designated sales territories, and that two vendors operated from the same address.

The following chart summarizes purchases for equipment and supplies totaling \$867,718.64 made by 10 ODOT district offices and one central office division from Ace Truck Equipment and its affiliated companies for the period July 1, 2001, through June 30, 2011:



Of the \$867,718.64 paid to Ace Truck Equipment and its affiliated companies from July 1, 2001, through June 30, 2011, supporting documentation for 148 transactions that exceeded \$1,000 and totaling \$811,765.79, was reviewed for compliance with ODOT policies and procedures.

Gentlemen's Agreements

A gentlemen's agreement is an agreement between two vendors or their employees in which one vendor or its sales representative agrees to not provide quotes in the other vendor or sales representative's sales territory, or agrees to submit a complementary quote at a higher rate to

The sales representatives explained a vendor's assigned sales territory borders could overlap because manufacturers often designated which vendor was responsible for selling its equipment to customers located in a specific county.

The sales representatives said they understood the concept of a gentlemen's agreement and stated that no such agreement existed between their employer and any unaffiliated competing vendors. However, during an interview conducted on August 30, 2011, Ace Truck Equipment Sales Representative Steve King stated that he had entered into gentlemen's agreements with competing sales representatives who sold the same manufacturer's product line to avoid crossing into each other's sales territory.

Per these agreements, King explained that a sales representative only sold to customers within his or her assigned sales territory, and would submit, if requested, a complementary high quote to a customer in a competing vendor's territory. Not only did King admit to submitting higher quotes to customers residing in a competing affiliated vendor's sales territory, but he admitted to entering into gentlemen's agreements with Cross Truck Equipment and Buckeye Truck Equipment¹⁰ sales representatives. King stated these types of agreements were discontinued in the early- to mid-1990s when the industry began to change. King was not aware of any agreements still in effect as of August 30, 2011, and was unaware whether such agreements were still being entered into, or were still in existence, between other Ace Truck Equipment sales representatives and competing vendors' sales representatives.

King stated a similar arrangement existed between Ace Truck Equipment and its affiliated companies. King indicated that when a customer located in Ace Truck Equipment's territory contacted an affiliated company, the solicited affiliate (i.e., Ace Truck Body, AceCo Inc., or Baker Truck Equipment) notified him and requested he prepare a quote. If King was provided the customer's contact information, he contacted the customer and offered to provide the equipment they were requesting. King stated if both vendor-affiliated companies were dealers

¹⁰ Buckeye Truck Equipment was purchased and changed its name to America's Body Company. For the purposes of this report, this vendor will be referred to as Buckeye Truck Equipment.

for the requested equipment line, the vendor assigned to that sales territory sold the customer the equipment.

During an interview conducted on November 15, 2011, Ace Truck Body Sales Representative Jerry Ardrey confirmed King's statement that an unwritten gentlemen's agreement existed between the affiliated vendors. Ardrey further explained the agreement allowed the affiliate to submit a quote if the customer wanted to conduct business specifically with them. In both instances, Ardrey stated that the sales representative who received the call would contact the affiliate who was assigned to that geographic sales territory about the customer's request to provide the quotes for the identified equipment. Ardrey also stated that he, as an Ace Truck Body sales representative, entered into agreements not to compete or submit complementary quotes with sales representatives from Kaffenbarger Truck Equipment Company, Cross Truck Equipment, and Buckeye Truck Equipment.

The investigation was unable to confirm whether such agreements existed between sales representatives of Cross Truck Equipment, Kaffenbarger Truck Equipment, Buckeye Truck Equipment, and Ace Truck Equipment. However, Buckeye Truck Equipment Sales Representative Jim Butcher stated in an interview conducted on October 26, 2011, that he had entered into a gentlemen's agreement approximately five or six years previously with Ardrey for Madison County and the City of London in which he agreed to not submit quotes or sell equipment to them because Ardrey asserted they were his customers. Butcher believed a similar agreement existed for the City of Westerville, where Ardrey would not submit quotes to the city since it was his (Butcher's) customer.

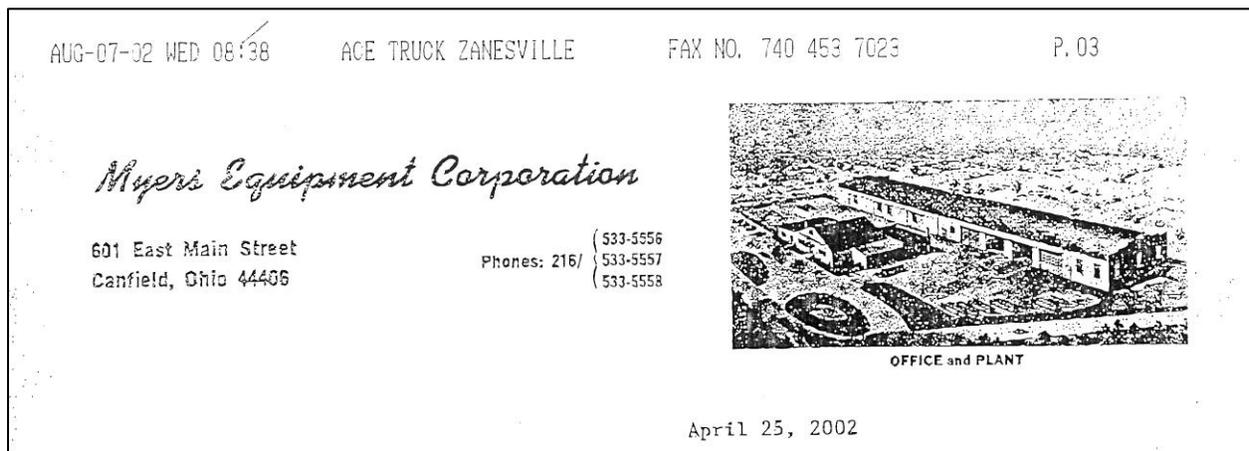
Agreements entered into by Ace Truck Equipment, Ace Truck Body, and Buckeye Truck Equipment sales representatives divided the truck parts market by either geographic territory or customer. These gentlemen's agreements entered into by King as an Ace Truck Equipment sales representative in the 1990s and the gentlemen's agreements entered into by Ardrey for Ace Truck Body with Butcher for Buckeye Truck Equipment five or six years prior to 2011, restricted ODOT's ability to obtain multiple independent quotes in order to select the lowest

bidder. Instead, the sales representatives operating in accordance with these agreements avoided competition by pre-determining which vendor would be awarded ODOT's business.

Accordingly, there is reasonable cause to believe that a wrongful act or omission occurred in this instance.

Fabricated Competing Quotes

ODOT policies and procedures required a specified number of quotes to be obtained based on the equipment's purchase price. A review of available quotes submitted for 148 payments issued to Ace Truck Equipment and its affiliated companies identified irregularities in two vendor quote formats involving 17 quotes. Of the 17 quotes, 13 quotes were submitted as Myers Equipment Corporation ([Exhibit 5](#)) and four were submitted as Kaffenbarger Truck Equipment Company (K-Tec) quotes. ([Exhibit 6](#)) The review also identified two instances in which Myers Equipment Corporation quotes, such as the one below, were faxed from Ace Truck Equipment to ODOT:



In interviews conducted on March 5, 2009, July 10, 2009, and September 29, 2011, Myers Equipment Corporation representatives stated their company conducted minimal business with ODOT, and the 13 quotes provided for review were not submitted by Myers Equipment Corporation because the company:

- Conducted limited business with ODOT's Ravenna and Canfield garages, located in ODOT District 4.
- Submitted quotes that were signed and dated by the sales representative.

- Did not sell the equipment line for the manufacturer listed on some of the quotes.
- Contrary to the address and phone number listed on the fabricated quotes, Myers Equipment Corporation was located at 8860 Akron-Canfield Road, Canfield, Ohio, and had not been in the 216 area code exchange for approximately the past 10 years.

Myers Equipment Corporation representatives were unable to explain why their quotes were faxed from Ace Truck Zanesville to ODOT, but stated they knew the Ace Truck Equipment owners. The Myers Equipment Corporation representatives stated they had not provided Ace Truck Equipment with copies of its letterhead or quote forms and had not authorized Ace Truck Equipment to submit quotes on its behalf.

On February 22, 2011, and September 22, 2011, four different quote formats were reviewed with Kaffenbarger Truck Equipment Company (K-Tec) representatives. The representatives identified the following two formats as legitimate quote formats used by K-Tec when submitting quotes to ODOT:

K-Tec
KAFFENBARGER TRUCK EQUIPMENT CO. Quote # Date 1/19/01

Purchase Order: _____ Date Promised: _____ F.O.B. _____ Dealer: _____ Address: _____ City/State: _____ Attention: _____

| Qty | DESCRIPTION | Material | Labor | Total |
|-----|-----------------------------|----------|-------|------------|
| 1 | Thieman model Tiller 3679 | | | |
| | Aluminum Platform (2 piece) | | | |
| | 1500 lb capacity | | | |
| | 36" x 24" platform | | | |
| | Toggle switch at rear | | | |
| | Installed | | | \$2,334.00 |

EQUIPMENT INFORMATION: CHASSIS INFORMATION: Sub Total: \$2,334.00

SALES TAX: \$315.90

TOTAL: \$2,650.00

***** INVOICE *****

REMIT TO: 10100 BALLENTINE PIKE NEW CARLISLE, OHIO 45344
2529 NORTHLAWN AVE DRYTON, OHIO 45439

REMIT TO: RTEC KAFFENBARGER TRUCK EQUIPMENT COMPANY
3250 E. HEMPER ROAD CINCINNATI, OHIO 45241
1266 WEST MOUND ST. COLUMBUS, OHIO 43223

SOLD TO: 19806 OHIO DEPT. OF TRANSP. MARIETTA 1481 COLEGATE DRIVE MARIETTA OH 45750

INVOICE #: 40462555
INVOICE DATE: 04/25/01
TERMS: NET 30 DAY
P.O.#: 043201
COUNTY: 57
SALESPERSON: 13
JOB ORDER#: 509404

| PART # | DESCRIPTION | QTY. | UNIT PRICE | AMOUNT |
|-----------|--|------|------------|----------|
| EDM | * | 1 | 4,868.00 | 4,868.00 |
| LABOR | * | 1 | 0.00 | 0.00 |
| MISC PART | * | 1 | 0.00 | 0.00 |
| | FURNISH LOOSE | | | |
| | 1) AUTO CRANE 2703PR-10 ELECTRIC POWER ROTATION ELECTRIC HOIST/ELEVATION 18" REMOVABLE REMOTE CONTROL PENDANT | | | |

NOTE: DROP SHIP TO
ATHENS COUNTY ODOT GARAGE
JUNCTION ST. RT. 56 & 682
ATHENS OH 45701
ATTN: LARRY BURNETT
CONTACT: LARRY BURNETT
740-592-7233
PO: 160448

CUSTOMER'S SIGNATURE: *Drop Ship*
I ACKNOWLEDGE RECEIPT OF OWNER, OPERATOR AND MAINTENANCE MANUALS.

SUBTOTAL: 4,868.00
SALES TAX: 315.90
TOTAL: 5,175.90

TERMS: NET 30 DAYS FROM DATE OF THE INVOICE, A FINANCE CHARGE OF 6% PER MONTH AFTER 30 DAYS. THE ANNUAL PERCENTAGE RATE IS 6%.

The K-Tec branch manager stated that in either 2004 or 2005, they discontinued using the hard-copy quote forms (above left) and prepared quotes using their internal computer system (above right). The branch manager stated the quote form was typically dated and signed, which was

consistent with most K-Tec quotes submitted. K-Tec representatives identified the following two formats as fabricated:

K-TEC
KATTENBARGER TRUCK EQUIPMENT CO.

10100 Beaufort Pike
New Castle, Ohio 43084
(614) 845-2884
 2829 Northline Avenue
Dayton, Ohio 45424
(913) 298-9961

1346 N. Mount St.
Columbus, Ohio 43223
(614) 221-8777
 2300 East Knapen Road
Columbus, Ohio 43241
(613) 772-4400

ODOT-DISTRICT 5
ATTN: KEITH RAINES

January 24, 2006

Knapheide PVMX-123

12' 3" Length
96" Width
No sides
40" Drop-in style bulkhead
Pine floor
Standard lights and flaps
Rear bumper

OPTIONS:

1. For rear plate with reese tube add: **\$415.00**
2. For Tommy lift gate model 91-1650TP36 add: **\$2,579.00**
3. For 40" steel stake racks add: **\$780.00**
4. For electric brake control and plug add: **\$345.00**

PRICE: \$2,915.00

K-TEC
KATTENBARGER TRUCK EQUIPMENT CO.

Purchase Order _____ Quote Date _____
Quote Promised _____ Order Date _____
Terms _____

10100 Beaufort Pike
New Castle, Ohio 43084
(614) 845-2884
 2829 Northline Avenue
Dayton, Ohio 45424
(913) 298-9961

1346 N. Mount St.
Columbus, Ohio 43223
(614) 221-8777
 2300 East Knapen Road
Columbus, Ohio 43241
(613) 772-4400

O.D.O.T.-DISTRICT 5
ATTN: KEITH RAINES

January 26, 2006

KNAPHEIDE PVMX-123C STAKE BODY

12' 3" Long x 96" Wide outside
Wood floor
Permanent mount bulkhead
Steel stake racks roadside only
Ladder on curbside
4" x 6" Angle rear of body and curbside
Hitch at rear with pintle hook
Installed

PRICE: \$ 4,725.00

OPTIONS:

For truck mounted hydraulics for post driver ADD: **\$3,686.00**
For treadplate steel floor ADD: **\$345.00**

The K-Tec branch manager stated the four quotes dated in 2006 ([Exhibit 6](#)) were not generated from K-Tec's computer system and were not submitted to ODOT by K-Tec. The branch manager also stated he was unaware that K-Tec's quote form or letterhead was being shared with competing vendors. However, a K-Tec sales representative stated he had heard K-Tec's letterhead was shared with Ace Truck Equipment in approximately 2004, which predated his employment with the company. The investigation was unable to determine whether this occurred.

Based on interviews with representatives from both Myers Equipment Corporation and K-Tec attesting the 17 quotes were not submitted by their respective companies, it was evident the quotes were probably fabricated by an individual unrelated to Myers Equipment and K-Tec. The 17 quotes in question, 13 from Myers Equipment Corporation and four from K-Tec, were submitted to ODOT districts 5, 10, and 11 to compete with Ace Truck Equipment and its affiliated companies between January 1, 2000, and May 6, 2006. In each instance, the winning quote was awarded to Ace Truck Equipment or one of its affiliated companies.

In an interview conducted on July 23, 2009, ODOT District 11 Equipment Superintendent Howard Carpenter stated he did not recall soliciting quotes from Myers Equipment Corporation. Carpenter stated he told Ace Truck Equipment Sales Representative Darren Founds that he (Carpenter) needed quotes from non-Ace companies to avoid arousing the suspicion of ODOT auditors.¹¹ Carpenter also stated he thought Founds provided the fabricated competing Myers Equipment Corporation quotes and he did not pay attention to the quotes because he knew either Ace Truck Equipment or one of its affiliated companies would be awarded the quote.

In an interview conducted on August 3, 2009, ODOT District 10 Equipment Manager Tom McNabb stated he was not familiar with the Myers Equipment Corporation quote, did not know the quote was fabricated, and initially stated that an Ace Truck Equipment sales representative had not provided him with a quote on behalf of Myers Equipment Corporation. However, McNabb admitted he contacted Ace Truck Equipment Sales Representative Kermit Gentry to obtain two quotes from Ace Truck Equipment and one of its affiliated companies to fulfill the three-quote requirement per ODOT policies and procedures. On September 8, 2009, McNabb reiterated he would contact Ace Truck Equipment and its affiliated companies when he was in a bind and needed a vendor to quickly supply an item. McNabb also stated that, to his knowledge, “Ace Truck never submitted any quotes on behalf of Myers.”

During a February 23, 2011, interview, Ace Truck Equipment Sales Representative Kermit Gentry admitted to contacting Myers Equipment Corporation to obtain blank letterhead, neglecting to tell them why he needed their letterhead, and failing to obtain authorization to submit quotes on their behalf. Gentry admitted to using the blank letterhead to fabricate Myers Equipment Corporation quotes submitted to ODOT in response to McNabb’s request to provide three quotes.

During an interview conducted on August 26, 2009, ODOT District 5 Acting Facilities Manager Keith Raines admitted he knew Ace Truck Equipment Sales Representative Steve King submitted Myers Equipment Corporation quotes to ODOT. Raines explained King told him that

¹¹ ODOT changed the name auditor to fiscal officer within each of its districts. However, ODOT employees who have been employed by ODOT for several years still refer to the district fiscal officer as the auditor.

he was authorized to submit quotes on behalf of Myers Equipment Corporation. Raines also confirmed the K-Tec quote received for the same purchase as the Myers Equipment Corporation quote was submitted by an Ace Truck Equipment sales representative and not by K-Tec. Raines admitted he knew the losing quotes which were submitted by King on behalf of Myers Equipment Corporation were improper.

During interviews conducted on February 23 and August 30, 2011, King admitted he submitted both Myers Equipment Corporation and K-Tec quotes dated January 2006 without their knowledge, and did so on three or four other occasions. King stated he started this practice in response to Raines' request that he submit three quotes in the latter part of the 1990s. Records show this practice began after the gentlemen's agreements "fell apart."

King stated he maintained blank letterhead in his desk drawer for Ace Truck Equipment, its affiliated companies, and other vendors including Myers Equipment Corporation and K-Tec, which he and other Ace Truck Equipment sales representatives used to fabricate competing bids. King claimed he did not know how the letterhead was obtained, but admitted to training his co-workers in this practice and showing them where they could find the blank letterhead.

King explained that he created three quotes to be submitted to ODOT. The quotes he submitted included an Ace Truck Equipment or affiliate quote and two fabricated competing vendor quotes. King admitted the competing vendors did not know he submitted quotes on their behalf and he did not have authorization from the vendors to do so. King stated that even though Raines did not direct him on how to obtain the three requested quotes, Raines was aware King was submitting fabricated competing quotes.

King defended his actions by stating the competing vendors were not harmed because Ace Truck Equipment or one of its affiliated companies was always the lowest bidder. King agreed this practice deceived ODOT management into believing the quotes were from three different companies. King reiterated that he was only responsible for supplying three quotes at Raines' request. King later stated that he submitted quotes from Ace Truck Equipment and its affiliated

companies to ensure when one of the vendors had reached the \$50,000 annual purchasing limit that another affiliated vendor would be awarded ODOT’s business.

While ODOT employees acted contrary to ODOT policies and procedures by soliciting multiple quotes from one vendor, Ace Truck Equipment sales representatives intentionally misled ODOT management to believe they received three independent competing quotes. Ace Truck Equipment sales representatives controlled the competitive quote process by submitting fabricated competing quotes without competing vendors’ authorization or knowledge to ensure Ace Truck Equipment or one of its affiliated companies were awarded the quote by ODOT. As a result, Ace Truck Equipment determined the lowest quote instead of a competitive market, thereby avoiding competition and undermining the ODOT purchasing process.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

Affiliated Company Quotes

As of December 30, 2009, Robert Beitzel, his daughter Janet Beitzel, and his son David Beitzel owned the majority of common stock shares issued by Ace Truck Equipment and its affiliated companies. Of the 148 purchases awarded to Ace Truck Equipment and its affiliated companies during the period of July 1, 2001, through July 20, 2007, the following 36 instances were identified in which Ace Truck Equipment and its affiliated companies submitted the only competing quotes to ODOT:

| Competitors | Number of Quotes Awarded | | | | Total Awarded |
|--|--------------------------|----------------|-----------------------|------------|---------------|
| | Ace Truck Equipment | Ace Truck Body | Baker Truck Equipment | AceCo Inc. | |
| Ace Truck Equipment vs. Ace Truck Body vs. Baker Truck Equipment | 11 | 2 | 6 | | 19 |
| Ace Truck Equipment vs. Baker Truck Equipment vs. AceCo, Inc. | 3 | | | 3 | 6 |
| Baker Truck Equipment vs. AceCo, Inc. | | | 1 | | 1 |
| Ace Truck Equipment vs. Ace Truck Body | 2 | 1 | | | 3 |
| Ace Truck Equipment vs. Baker Truck Equipment | 7 | | | | 7 |
| | 23 | 3 | 7 | 3 | 36 |

By competing solely against each other, Ace Truck Equipment and its affiliated companies determined the price to be paid for the items purchased, instead of ODOT determining the lowest price, and received the following ODOT payments:

| Vendor | Amount |
|-----------------------|---------------------|
| Ace Truck Equipment | \$97,292.95 |
| Baker Truck Equipment | 69,677.00 |
| Ace Truck Body | 6,966.00 |
| AceCo Inc. | 21,666.00 |
| | <u>\$195,601.95</u> |

When submitting competing bids against other non-affiliated businesses between the years of 1997 and 2001, Ace Truck Equipment and its affiliated companies lost more quotes than they won. The following chart summarizes results of the quotes submitted by Ace Truck Equipment and its affiliated companies to ODOT based on available records:

| Fiscal Year | Number of Quotes Submitted | Number of Quotes Won | Number of Quotes Lost | Winning % |
|--------------------|-----------------------------------|-----------------------------|------------------------------|------------------|
| 1997 | 11 | 4 | 7 | 36% |
| 1998 | 20 | 7 | 13 | 35% |
| 1999 | 15 | 7 | 8 | 47% |
| 2000 | 24 | 13 | 11 | 54% |
| 2001 | 20 | 10 | 10 | 50% |
| 2002 | 20 | 16 | 4 | 80% |
| 2003 | 21 | 17 | 4 | 81% |
| 2004 | 24 | 22 | 2 | 92% |
| 2005 | 16 | 13 | 3 | 81% |
| 2006 | 22 | 19 | 3 | 86% |
| 2007 | 6 | 3 | 3 | 50% |
| 2008 | 14 | 9 | 5 | 64% |
| 2009 | 4 | 2 | 2 | 50% |
| | <u>217</u> | <u>142</u> | <u>75</u> | |

When engaging in the practice of submitting quotes solely from Ace Truck Equipment and its affiliated companies, the percentage of quotes awarded to the company increased substantially. The percentage of quotes awarded to Ace Truck Equipment and its affiliated companies

decreased when ODOT provided additional training on revised policies and procedures issued in March 2005 and spring 2008 and increased the frequency of Quality Assurance Reviews to determine whether employees were complying with ODOT policies and procedures.

During interviews with ODOT District 3 Transportation Manager Phil Shafer, ODOT District 11 Equipment Superintendent Howard Carpenter, ODOT District 10 Equipment Manager Thomas McNabb, and ODOT District 5 Acting Facilities Manager Keith Raines, the employees admitted to accepting multiple quotes from Ace Truck Equipment and its affiliated companies. The ODOT employees also stated it was common practice for Ace Truck Equipment sales representatives to offer, or for ODOT employees to request, that Ace Truck Equipment sales representatives submit multiple quotes to meet the quote requirements established in ODOT's policies and procedures.

ODOT employees indicated Ace Truck Equipment sales representatives Steve King, Darren Founds, and Kermit Gentry participated in this practice. During interviews conducted on February 23 and August 30, 2011, King admitted to submitting competing quotes solely from Ace Truck Equipment and its affiliated companies. King stated this practice initially began with Raines asking for multiple vendor quotes and then asking for all three quotes to be provided from Ace Truck Equipment and its affiliated companies. Later in the interview, King stated that it was his idea to submit multiple quotes from Ace Truck Equipment and its affiliated companies to satisfy Raines' request for three quotes.

When asked whether other Ace Truck Equipment sales representatives engaged in this practice, King stated he trained both Gentry and Founds on how to submit multiple Ace Truck Equipment and affiliated companies' quotes. King also stated Ace Truck Equipment President David Beitzel was aware of this practice but did not believe he had directly participated. King stated the practice had since been discontinued and was unable to explain why.

In his February 23, 2011, interview, Ace Truck Equipment employee Kermit Gentry admitted to submitting quotes to ODOT from Ace Truck Equipment and its affiliated companies, which was why his name was on the affiliated companies' quotes as the sales representative. Gentry stated

he began this practice at the request of McNabb and confirmed this practice was also used by King and Founds. Ace Truck Equipment Sales Representative Darren Founds declined a request for an interview about these practices.

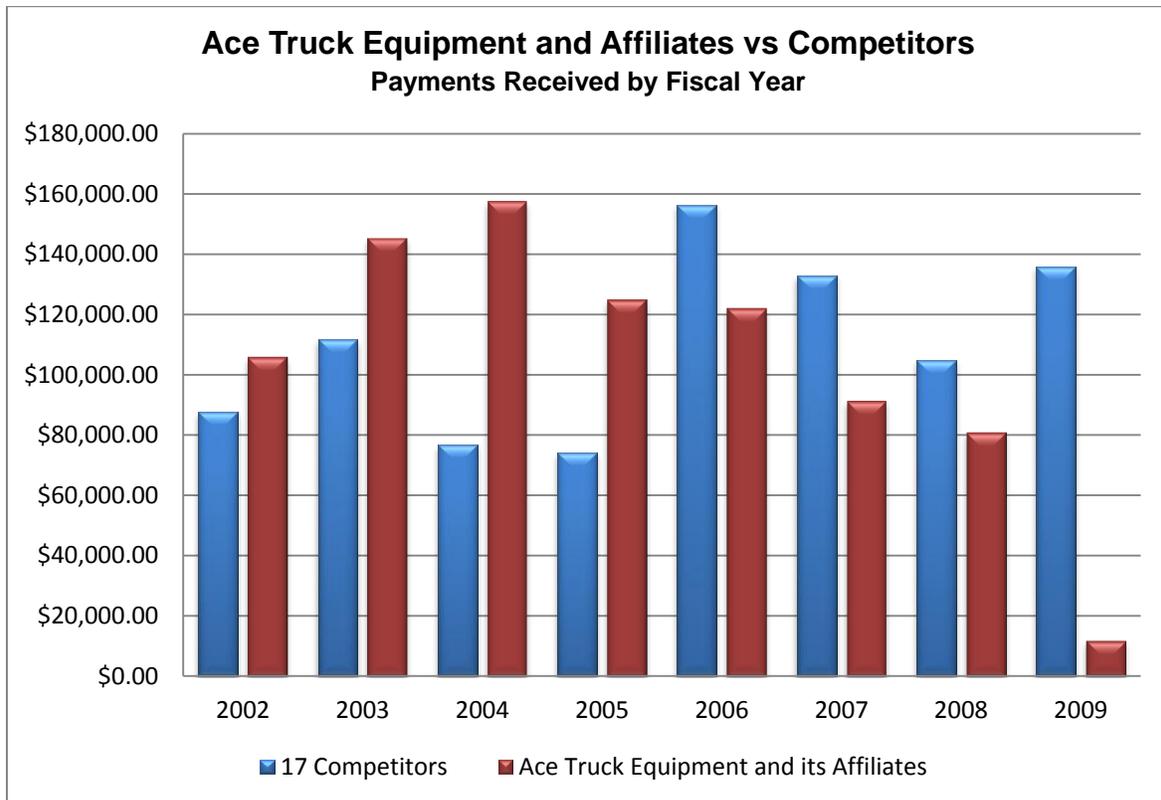
Both King and Gentry stated that this practice permitted Ace Truck Equipment or one of its affiliated companies to win ODOT quotes even though one of the vendors had reached the \$50,000 annual purchasing limit.¹² King stated the ODOT district offices provided him or his co-workers with Ace Truck Equipment's and its affiliated companies' status on the \$50,000 annual purchasing limit list. Based on the quote amount and each affiliate's purchasing limit status, King stated he determined which of the affiliated companies would be the lowest quote submitted to ODOT. King also stated he occasionally received phone calls from ODOT district purchasers stating the winning Ace Truck Equipment or affiliated vendor had reached the \$50,000 annual purchasing limit and requested he submit a quote for another affiliate for the same amount so the ODOT employee could award the quote to Ace Truck Equipment or one of its affiliated companies.

ODOT's acceptance of multiple quotes from one sales representative provided Ace Truck Equipment and its affiliated companies with complete control to manipulate the price and predetermine which company would be awarded the quote. Ace Truck Equipment sales representatives used this opportunity to intentionally submit quotes from three affiliated vendors at whatever price they wanted without any competition, thereby ensuring Ace Truck Equipment or its affiliated companies were awarded ODOT business. This practice prevented ODOT from obtaining competitive bids, allowed Ace Truck Equipment and its affiliated companies to avoid competition, and allowed Ace Truck Equipment and its affiliated companies to determine the price ODOT paid.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

¹² Ohio Revised Code §127.16 Purchasing by Competitive Selection describes the calculation for the annual purchasing limit ODOT can purchase from one vendor in a state fiscal year.

To determine whether King’s assertion that this practice of submitting multiple quotes to ODOT from Ace Truck Equipment and its affiliated companies ceased, quotes submitted by Ace Truck Equipment, its affiliated companies, and competitors for the period July 1, 2001 through June 30, 2009 were reviewed. The following chart represents the total amount of payments made to Ace Truck Equipment and its affiliated companies and to 17 competitors during the period July 1, 2001, through June 30, 2009:



The above chart supports the premise that Ace Truck Equipment and its affiliated companies changed their quote submission in state fiscal year 2009. Beginning in FY 2006, ODOT purchased more equipment from 17 competing vendors in their totality than from Ace Truck Equipment and its affiliated companies. In March 2005, November 2006, and the spring of 2008, selected ODOT purchasers received training on revisions to ODOT purchasing policies and procedures and what practices were unallowable. Additionally, ODOT’s Quality Assurance Review administrator stated there was a significant increase in the frequency of Quality Assurance Reviews in 2005 and 2006 which notified ODOT district personnel of those policies and procedures with which they failed to comply. The trainings and increased notification of

purchaser noncompliance with ODOT policies and procedures may have been among the factors contributing to Ace Truck Equipment sales representatives discontinuing their practice of submitting multiple quotes to ODOT.

Inter-Company Purchases

As stated earlier, investigators determined Ace Truck Equipment, AceCo Inc., Baker Truck Equipment, and Ace Truck Body operated as four divisions of an umbrella organization based on common ownership, location, and interactions. During interviews conducted on February 23, 2011, Ace Truck Equipment sales representatives Steve King and Kermit Gentry indicated AceCo Inc.'s line of business was leasing semi-trailers and not selling truck parts like Baker Truck Equipment and Ace Truck Body. King stated in an August 30, 2011, interview that he submitted quotes to ODOT for Ace Truck Body, AceCo Inc., and Baker Truck Equipment without their knowledge or authorization.

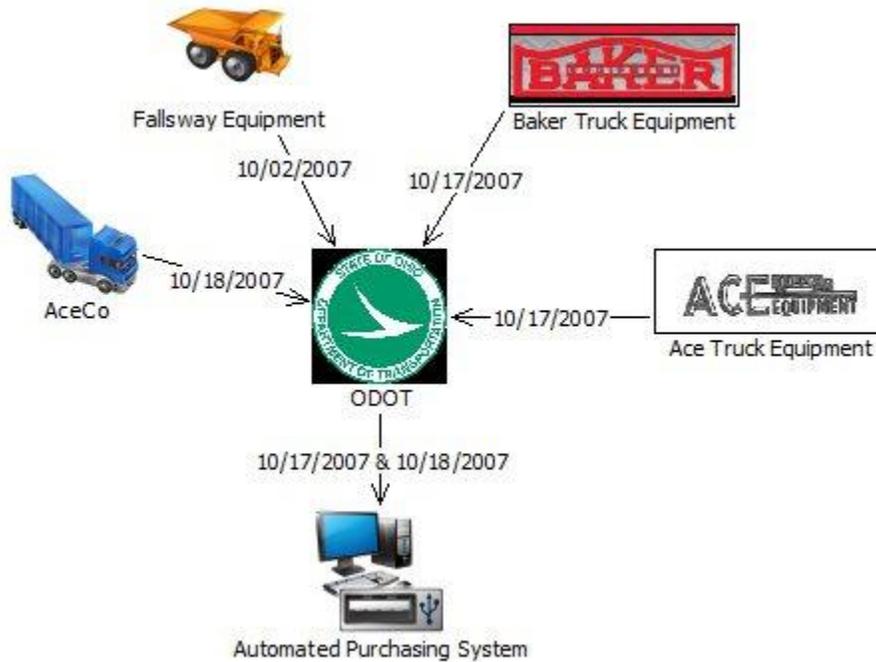
King stated that the practice of submitting quotes for Ace Truck Equipment affiliated companies began because Ace Truck Equipment had reached ODOT's \$50,000 annual purchasing limit. King said he controlled which affiliated company submitted the quotes to ODOT and the quote amounts. King also stated that Ace Truck Equipment delivered the quoted equipment to ODOT and invoiced the winning company for the ODOT award amount. Upon delivery, the winning vendor invoiced ODOT, received ODOT's payment, and paid Ace Truck Equipment for the equipment delivered to ODOT. King said the winning vendor did not keep any of the funds received from ODOT for these transactions.

A review of inter-company bank activity identified checks issued by AceCo Inc., Ace Truck Body, and Baker Truck Equipment to Ace Truck Equipment for the exact amount received from ODOT. This activity confirms that Ace Truck Equipment used affiliated companies to obtain ODOT business by submitting quotes on its affiliated companies' behalf, supplied the equipment purchased to ODOT, and transferred ODOT's payment to Ace Truck Equipment account for the equipment sold. The following chart summarizes ODOT payments to the winning vendors for equipment purchased in relation to the winning vendors' payment to Ace Truck Equipment from July 1, 2001, through June 30, 2008, for delivering the equipment:

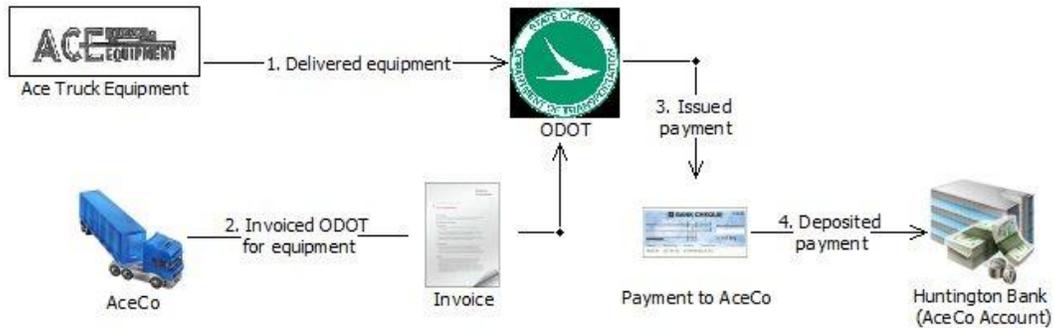
| Winning Vendor | Amount ODOT Paid for Equipment Purchases | Amount Paid by Winning Vendor to Ace Truck Equipment | Variance* |
|-----------------------|--|--|---------------------|
| Ace Truck Body | \$172,387.00 | \$58,013.00 | \$114,374.00 |
| AceCo Inc. | 124,635.30 | 124,635.30 | - |
| Baker Truck Equipment | 150,868.46 | 126,884.46 | 23,984.00 |
| | <u>\$447,890.76</u> | <u>\$309,532.76</u> | <u>\$138,358.00</u> |

*This amounts were determined to be for legitimate purchases.

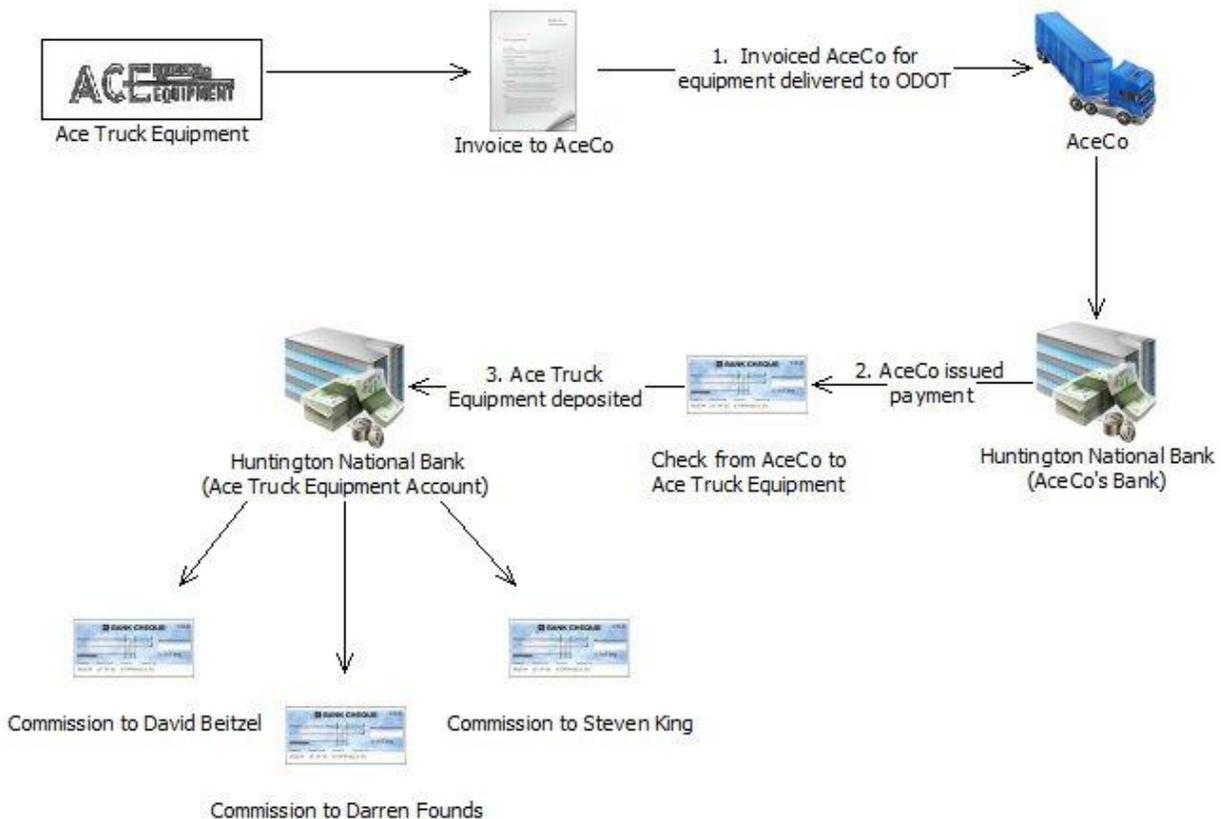
After Ace Truck Body had been awarded a couple of quotes and was invoiced by Ace Truck Equipment for equipment delivered to ODOT, King stated that Ace Truck Body Manager Gary Leasure requested that King discontinue submitting quotes for Ace Truck Body. Leasure stated this practice was limiting the amount of ODOT business Ace Truck Body could be awarded for these types of purchases, since a vendor could only receive up to \$50,000 in a year. King responded to Leasure’s request by discontinuing this practice. The following charts illustrate this process for a quote ODOT awarded to AceCo Inc. for \$6,382. [\(Exhibit 7\)](#) The first chart illustrates the steps from the submission of the vendor’s quote to the information being entered into ODOT’s Automated Purchasing System to generate a purchase order:



The second chart illustrates the steps followed which resulted in ODOT remitting payment to AceCo Inc.:



The third chart illustrates the steps taken by Ace Truck Equipment to obtain payment from AceCo Inc. for equipment delivered to ODOT and payment of sales commissions to the Ace Truck Equipment sales representative, sales manager, and owner:



ODOT's Appropriation Accounting System identified the following amounts paid to Ace Truck Equipment and its affiliated vendors during the period July 1, 2001, through June 30, 2008:

| Vendor | Total Quotes Won | Amount | % of Total Won |
|-----------------------|------------------|---------------|----------------|
| Ace Truck Equipment | 90 | \$ 323,447.19 | 40% |
| Ace Truck Body | 47 | 209,319.32 | 26% |
| Baker Truck Equipment | 21 | 154,363.98 | 19% |
| AceCo | 18 | 124,635.30 | 15% |
| | 176 | \$811,765.79 | |

In actuality, bank account activity identified the following vendors ultimately received ODOT's payments during the period July 1, 2001, through June 30, 2008:

| Vendor | Total Quotes Won | Amount | % of Total Won |
|-----------------------|------------------|--------------|----------------|
| Ace Truck Equipment | 133 | \$632,979.95 | 78% |
| Ace Truck Body | 37 | 151,306.32 | 19% |
| Baker Truck Equipment | 6 | 27,479.52 | 3% |
| AceCo | 0 | - | 0% |
| | 176 | \$811,765.79 | |

Ace Truck Equipment Sales Representative Steve King admitted that he knowingly submitted quotes from Ace Truck Body, AceCo Inc., and Baker Truck Equipment without their authorization or knowledge and used Ace Truck Equipment to supply the items purchased to ODOT when one of these vendors won the quote. King stated the accountant for Ace Truck Equipment was responsible for completing the paperwork to have the funds paid by ODOT to these companies transferred to Ace Truck Equipment.

Ace Truck Equipment used affiliated companies' names and letterhead to submit quotes, effectively concealing from ODOT that the seller's true identity was Ace Truck Equipment. As a result of its actions, Ace Truck Equipment ultimately received ODOT's payment for quotes awarded to AceCo Inc., Ace Truck Body, and Baker Truck Equipment for 43 transactions, totaling \$309,532.76. [\(Exhibit 8\)](#)

By using bid collaboration between related companies to conceal its identity as the actual equipment provider, Ace Truck Equipment was able to exceed the \$50,000 annual purchasing limit as established by ORC §127.16. King submitted competing quotes for Ace Truck Equipment affiliated companies or fabricated quotes to ensure an Ace Truck Equipment-affiliated company would be awarded the quote. In the vast majority of these transactions, Ace Truck Equipment was the final recipient of funds and thus, benefitted the most from these practices.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

A&A Safety and its Affiliate, Quattro, Inc.

Summary

This investigation identified that A&A Safety was affiliated with Quattro, Inc. Records reviewed and interviews conducted revealed both A&A Safety and Quattro, Inc. were owned by brothers Bill, Tom, and Francis Luttmer, and their mother, Ruth Luttmer. Quattro, Inc.'s business operations involve purchasing and renting property to A&A Safety to operate its corporate headquarters. Based on their common ownership and business relationship, these two companies fundamentally acted as one umbrella organization with two divisions.

During the period July 1, 2001, through June 30, 2011, A&A Safety and its affiliate submitted multiple quotes to ODOT at its request. In 2003 and 2006, respectively, former A&A Safety employee Shelaugh O'Bryan incorporated Bain Industries and Bain Enterprises. Both companies competed with A&A Safety when selling traffic control equipment and systems to ODOT. Records reviewed and interviews conducted identified that A&A Safety, Quattro, Inc., Bain Industries, and Bain Enterprises engaged in the following types of conduct:

- Controlled who submitted quotes and, in some instances, the amount of the submitted quotes to ODOT in response to its requests for quotes.
- Concealed A&A Safety's relationship to Quattro, Inc. from ODOT, directing the submission of Quattro, Inc.'s winning quote, supplying the equipment to ODOT, and invoicing and receiving payment from Quattro, Inc. for 100 percent of the amount paid by ODOT.
- Controlled the submission of quotes by Bain Industries and Bain Enterprises by providing their cost and directing the amount of mark-up to be submitted to ODOT, at the same time as either A&A Safety, Quattro, Inc., or an A&A Safety-directed competitor were also submitting quotes to ODOT.
- Requested manufacturers or out-of-area equipment dealers/distributors submit quotes to ODOT. A&A Safety was aware the manufacturer or out-of-area dealer/distributors would quote the manufacturer's list price plus shipping, if applicable. A&A Safety would then submit a lower quote based on the manufacturer's volume discount on its equipment purchases.

Interviews with former A&A Safety employees and current Bain Enterprise employees indicated A&A Safety Sales Manager T.R. O'Brien controlled which vendors submitted quotes and, in some instances, the amounts of their quotes. From these actions, A&A Safety controlled the quotes submitted to ODOT in response to its request for three quotes; avoided competition; predetermined which vendor would be awarded ODOT business; and guaranteed A&A Safety would receive the majority of ODOT's business. As such, A&A Safety – not ODOT – was determining the price to be paid for the product.

This investigation revealed this practice occurred not only for purchases involving ODOT but also the City of Hudson. This investigation found that a former A&A Safety employee who is currently employed by Bain Enterprises, along with an A&A Safety sales manager, conspired with Bain Enterprises to determine the quote amounts to be submitted to ODOT and the City of Hudson by A&A Safety and Bain Enterprises in an effort to control and pre-determine which vendor would be awarded ODOT and City of Hudson business.

On December 18, 2012, Quattro Inc. entered a guilty plea signed by Vice President Bill Luttmmer to:

- One felony count of Prohibition Against Entering Into an Unlawful Combination, Contract, or Agreement in violation of ORC §1331.02; and
- One felony count of an attempt to Engage in a Pattern of Corrupt Activity in violation of ORC §2923.02/2923.32 based on incidents instances of Telecommunications Fraud in violation of ORC §2913.05(A).

As part of its plea, Quattro Inc., agreed to pay restitution of \$32,796 to the state of Ohio and to pay a forfeiture of \$10,000 for investigative and litigation costs pursuant to Ohio Rev. Code §1331.03 payable to the general revenue fund for the state of Ohio.

On the same date, A&A Safety sales manager Timothy O'Brien entered a guilty plea to three misdemeanor counts of Conspiracy Against Trade in violation of Ohio Revised Code §1331.04. O'Brien agreed as part of his plea agreement to pay \$4,372 in restitution to the state of Ohio and

to pay a forfeiture of \$1,500 for investigative and litigation costs pursuant to Ohio Rev. Code §1331.03 payable to the general revenue fund for the state of Ohio.

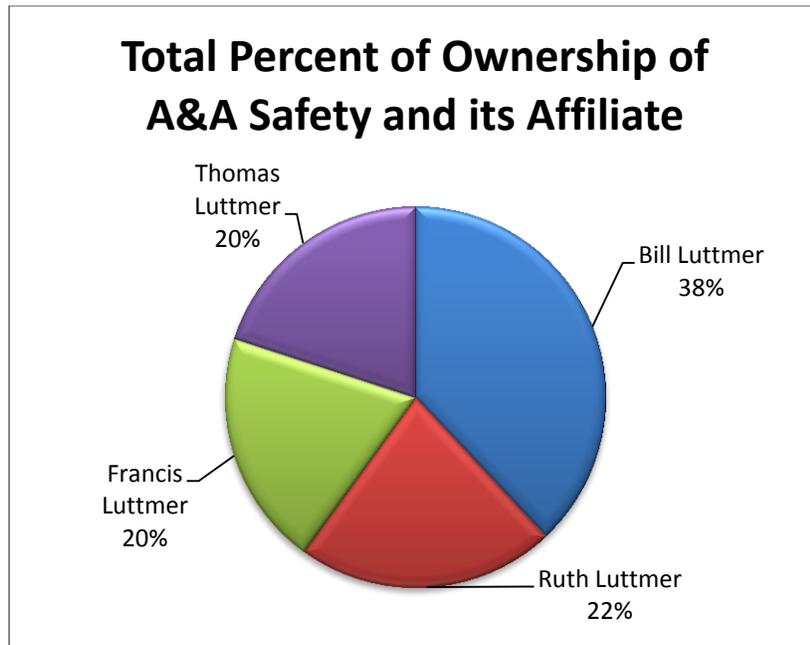
Prosecutors are currently reviewing the investigation to determine whether additional charges are appropriate.

A&A Safety and Affiliated Vendor, Quattro, Inc.

A&A Safety was affiliated with Quattro, Inc. The following incorporation information was obtained from the Ohio Secretary of State's website:

| Vendor Name | Incorporation Date | Incorporated by |
|---------------|--------------------|-------------------------------|
| A&A Safety | 5/3/82 | Ruth Luttmer, Francis Luttmer |
| Quattro, Inc. | 5/21/93 | William N. Luttmer |

The following chart identifies the percentage of ownership in totality for the two vendors, based on the number of shares of common stock issued to each owner as of December 31, 2009:



In a November 17, 2010, interview, Quattro, Inc. co-owner Thomas Luttmer explained that Quattro, Inc. was a land-holding company¹³ and that Quattro, Inc. owned the building and

¹³ A land-holding company is a company who derives the majority of its income through rental income and the majority of assets are properties held in the company's name.

grounds for A&A Safety’s headquarters located in Amelia, Ohio. Luttmer also stated Quattro, Inc. operated from Ruth Luttmer’s residence, did not have any employees, and identified the owners of A&A Safety and Quattro, Inc. as his mother Ruth Luttmer, himself, and his brothers Francis and Bill Luttmer. Given Quattro, Inc.’s sole purpose is to lease land to A&A Safety for its headquarters and is co-owned by the same individuals who own A&A Safety, these two vendors were essentially acting as one umbrella organization with two separate divisions.

The following chart summarizes purchases for equipment and supplies totaling \$638,300.93 made by 12 ODOT district offices from A&A Safety and its affiliate, Quattro, Inc., for the period July 1, 2001, through June 30, 2011:



Of the \$638,300.93 paid to A&A Safety and its affiliate, 110 transactions that exceeded \$1,000 each were reviewed for compliance with ODOT policies and procedures. These transactions totaled \$530,657.51 and covered the period of July 1, 2001, through July 16, 2010.

Inter-Company Purchases

A review of Quattro, Inc. and A&A Safety’s bank activity indicated transactions occurred between the companies for additional activities other than lease payments paid by A&A Safety to

Quattro, Inc. for its headquarters. During interviews conducted on September 8, November 2, and November 5, 2010, former A&A Safety sales representatives Craig Wilhoit and Mark Knabb, and former graphics department employee Kelly Sharkey confirmed that Quattro, Inc. did not have any employees. Although Quattro, Inc. was a legitimate company with a separate tax identification number, each of the three individuals interviewed indicated he or she was employed solely by A&A Safety. Sharkey admitted that she submitted Quattro, Inc. quotes to ODOT because A&A Safety Sales Manager T.R. O'Brien directed her as an A&A Safety employee to sign Quattro, Inc. quotes submitted to ODOT. Sharkey stated she thought this was permissible since Quattro, Inc. had a separate tax identification number.

During an interview conducted on October 14, 2011, Wilhoit stated he felt Quattro, Inc. was essentially the same as A&A Safety. Wilhoit's involvement with Quattro, Inc. included sending quotes using Quattro, Inc. letterhead and delivering equipment purchased from Quattro, Inc. to ODOT wearing A&A Safety apparel, evidence that A&A Safety and not Quattro, Inc. was providing the equipment to ODOT. Wilhoit indicated that everyone at A&A Safety had access to quotations, could have prepared the Quattro, Inc. quotes, and explained both A&A Safety and Quattro, Inc. quotes were submitted when ODOT required three quotes.

In an interview conducted on September 29, 2010, Wilhoit stated that Quattro, Inc., at the direction of A&A Safety President Bill Luttmmer, began submitting quotes to ODOT after A&A Safety had reached the \$50,000 annual purchasing limit. Wilhoit explained that Luttmmer instructed T.R. O'Brien to use Quattro, Inc. to submit quotes since it was a "legitimate company."¹⁴ By using Quattro, Inc. to submit quotes, Wilhoit explained that he believed A&A Safety and Quattro, Inc. were both eligible for \$50,000 of ODOT business. As a result, the umbrella organization would have been eligible for \$100,000 of ODOT's business, \$50,000 more than the allowable annual purchasing limit.

A review of Quattro Inc.'s general accounting ledgers and available Quattro Inc. and A&A Safety bank activity during the period January 1, 2004, through August 4, 2010, identified 57

¹⁴ The reference to legitimate company in this instance means the company was established and registered with the Ohio Secretary of State.

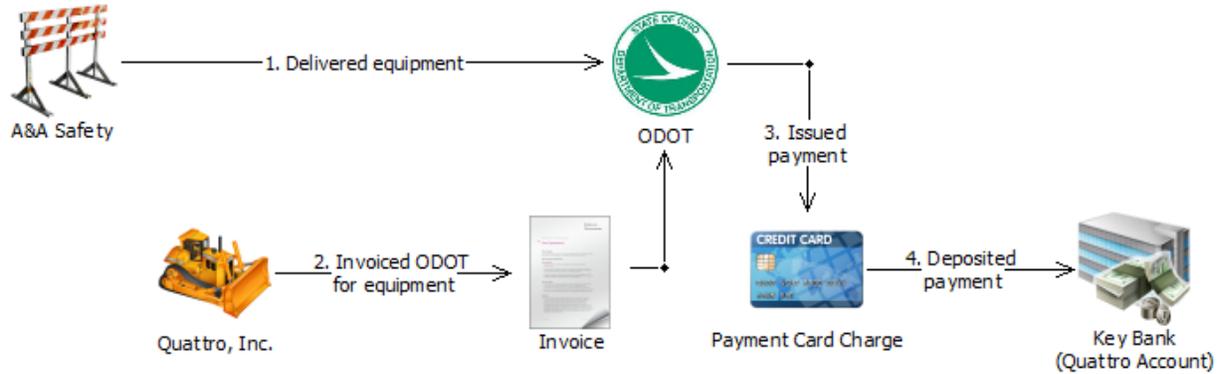
instances totaling \$73,181.55 in which Quattro was awarded the quote by ODOT, and remitted ODOT payments to A&A Safety totaling \$73,181.55 for delivering the quoted equipment.

(Exhibit 9)

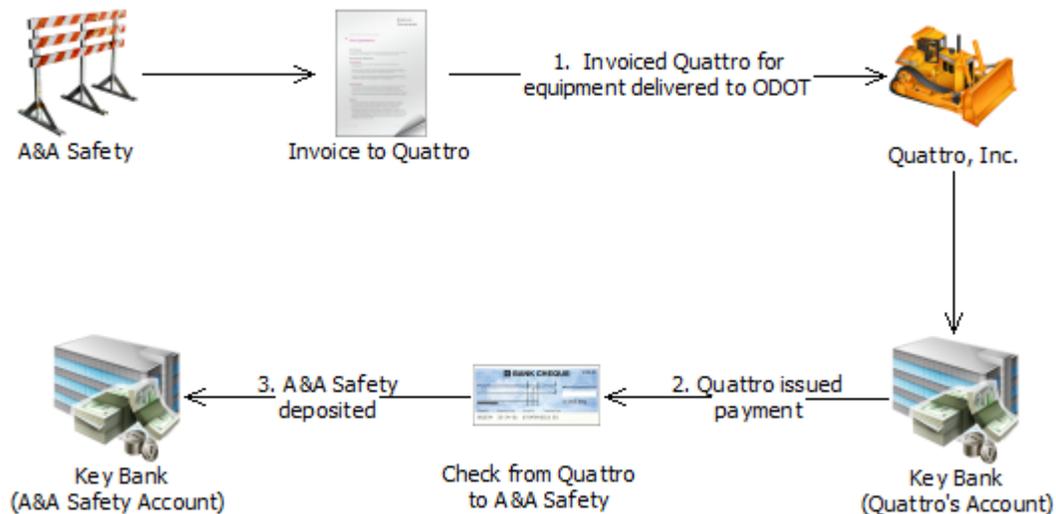
The following charts illustrate this process for a quote ODOT awarded to Quattro, Inc. for \$2,425. **(Exhibit 10)** The first chart illustrates the steps from the submission of the vendor's quote to the information being entered into ODOT's Automated Purchasing System to generate a purchase order:



The second chart illustrates the steps followed that resulted in ODOT remitting payment to Quattro, Inc.:



The third chart illustrates the steps taken by A&A Safety to obtain payment from Quattro, Inc. for equipment delivered to ODOT:



ODOT's Appropriation Accounting System identified the following amounts paid to A&A Safety and Quattro Inc. during the period July 1, 2001, through June 30, 2010:

| Vendor | Amount | Percent of Total Paid |
|------------|----------------------|-----------------------|
| A&A Safety | \$ 337,991.24 | 81% |
| Quattro | 81,409.33 | 19% |
| | <u>\$ 419,400.57</u> | |

A review of bank records revealed the vast majority of the ODOT payments were transferred to A&A Safety's bank account. The following table summarizes payments issued by ODOT and

the respective bank account during the period January 1, 2004, through June 30, 2010, and to whom the funds were ultimately deposited:

| Vendor | Amount | Percent of Total \$ Awarded by ODOT |
|------------|----------------------|-------------------------------------|
| A&A Safety | \$ 411,172.79 | 98% |
| Quattro* | \$8,227.78 | 2% |
| | <u>\$ 419,400.57</u> | |

*Records were unavailable to determine whether Quattro paid these funds to A&A Safety.

A&A Safety Sales Representative Craig Wilhoit confirmed that the equipment purchased by ODOT was delivered by A&A Safety, not Quattro, Inc. Quattro, Inc.'s check registers and accounting ledgers support that, upon receipt of ODOT payments, Quattro Inc. issued checks to A&A Safety equal to the amounts received. Even though Quattro, Inc. was established as a land-holding company and leased property to A&A Safety, Quattro, Inc. was used by A&A Safety to conceal, from ODOT's Central Office and district fiscal office, that the actual equipment seller for 57 transactions totaling \$73,181.55 was A&A Safety. [\(Exhibit 9\)](#)

By using Quattro Inc. to conceal its identity as the actual equipment provider, A&A Safety was able to exceed the \$50,000 annual purchasing limit as established by ORC §127.16. A&A Safety Sales Representative Craig Wilhoit and other A&A Safety employees submitted competing quotes at A&A Safety Sales Manager T.R. O'Brien's direction for Quattro Inc.. This was done to ensure Quattro Inc. would be awarded the quote and that A&A Safety would be the final recipient of the funds. This practice not only concealed from ODOT the true winning vendor but also permitted A&A Safety sales representatives and sales manager to control the bids and avoid competition.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

Quote Direction

ODOT employees were required by ODOT purchasing policies and procedures to obtain a specified number of independent quotes based on the cost of the item being purchased. Contrary

to this practice, during interviews conducted in August and September 2009, ODOT District 3 Transportation Manager Phil Shafer, ODOT District 5 Acting Facilities Manager Keith Raines, and ODOT District 11 Equipment Manager Howard Carpenter admitted to requesting A&A Safety sales representatives to provide ODOT with three quotes.

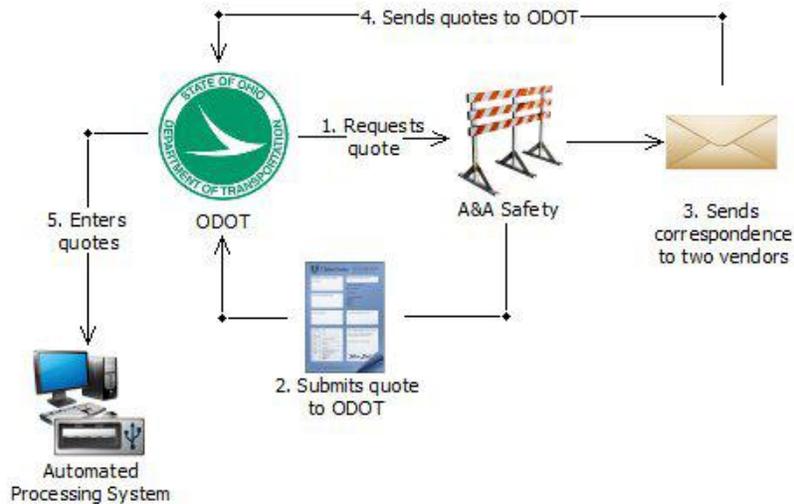
In interviews conducted on September 8, 2010, and September 29, 2010, Wilhoit explained that he had arrangements with ODOT's District 3 Shafer, Carpenter, and Raines, as well as Ron Milliron of ODOT District 4, in which the ODOT employees would contact him directly when they needed three quotes for an equipment purchase. Each time he received a call from one of these employees, Wilhoit stated he contacted A&A Safety T.R. O'Brien, who then arranged for three quotes to be forwarded to the identified ODOT purchaser. Additionally, Wilhoit admitted to arranging three quotes to be sent to the ODOT employees in the same manner as O'Brien when he (O'Brien) was on vacation.

Wilhoit stated that if the ODOT employee requested three Minority Business Enterprise (MBE)¹⁵ quotes, O'Brien would contact three MBEs, provide each of the vendors with the same A&A Safety price, and request the quote be submitted to the ODOT purchaser with their price markup. Wilhoit was unaware whether O'Brien instructed the MBEs what the amount of their price markup should be or the items quoted to ODOT. In each transaction involving an A&A Safety-directed MBE sale to ODOT, Wilhoit stated that the MBE vendor never saw the actual product because it was delivered or shipped by A&A Safety. In return for processing the paperwork, Wilhoit stated that after payment of the invoice the MBE would keep the price markup and paid the rest to A&A Safety for the equipment delivered.

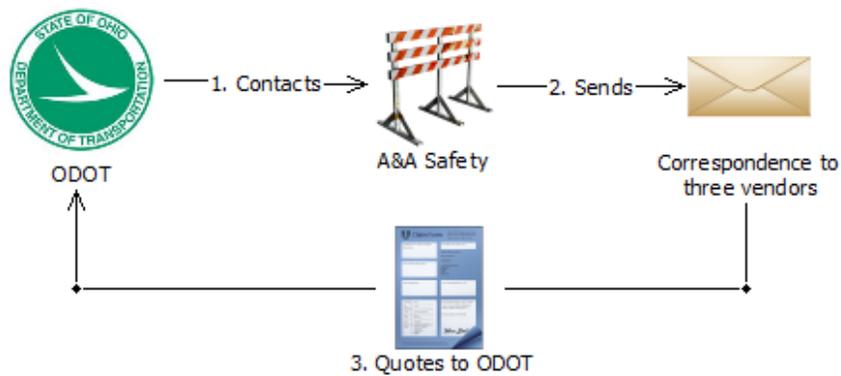
The following charts illustrate the two methods used by A&A Safety Sales Manager T.R. O'Brien and his sales representatives to respond to ODOT employees' requests to provide three quotes for items:

¹⁵ Minority Business Enterprise (MBE) program was designed by the Ohio Department of Administrative Services to assist minority businesses in obtaining state government contracts through a set-aside procurement program for goods and services. The Encouraging Diversity, Growth and Equity (EDGE) program is for participants which are small socially and economically disadvantaged business enterprises owned by Ohio residents who are U.S. citizens for the procurement of supplies and professional, information technology, construction, and professional design services.

Method 1: A&A Safety submits a quote and requests two vendors to submit quotes to ODOT.



Method 2: A&A Safety requests three vendors submit quotes to ODOT.



During an interview conducted on October 14, 2011, Wilhoit stated that upon receiving a quote request from ODOT, A&A Safety would notify competing vendors of ODOT's requests, inform the competing vendor of their costs and/or the amount to quote to ODOT, and direct the competing vendor to submit a quote to the specified ODOT district. In some instances, A&A Safety specified the quote amount to be submitted by the competing vendor to ODOT.

Upon receipt of ODOT's payment, the winning vendor kept its price markup and paid the remainder to A&A Safety. As a result, A&A Safety received the majority of ODOT's payment of the invoice, and the winning vendor who submitted the quote at A&A Safety's direction earned a small profit for processing paperwork.

During an interview conducted on November 28, 2011, Bain Enterprises owner and former A&A Safety employee Shelaugh O’Bryan stated that she shared an office with T.R. O’Brien and Craig Wilhoit at A&A Safety until she left in 2003. O’Brien recalled that T.R. O’Brien called and requested vendors to submit quotes to ODOT. When asked to identify what vendors O’Brien contacted, Shelaugh stated EMM Blacks Distributors and Direct Resources. Shelaugh stated she could not recall whether O’Brien just requested a quote, informed the vendor what A&A Safety’s price would be, or if he instructed the vendor to mark-up the price of the item a specified amount, or to quote a specified amount.

During an interview conducted on August 26, 2009, Acting Facilities Manager Keith Raines stated that he recalled reviewing a quote package awarded to A&A Safety totaling \$4,595. Quotes were submitted by A&A Safety, Quattro, Inc., and Direct Resources. Raines said after reviewing the quote package that he did not solicit the Direct Resources quote and did not know anyone there. Raines stated he thought the three quotes were supplied to him by A&A Safety Sales Manager T.R. O’Brien.

A&A Safety provided copies of letters they sent to the following vendors requesting quotes be prepared and submitted to ODOT for a specified price or at the identified price plus their mark up to the identified address and fax number:

| Vendor | No of Instances | Date of First Letter | Date of Last Letter |
|----------------------------------|------------------------|-----------------------------|----------------------------|
| Direct Resources | 72 | 3/28/2002 | 3/18/2008 |
| Ohio Sporting Goods | 1 | 8/7/2002 | 8/7/2002 |
| Mopack Services | 24 | 3/4/2003 | 3/13/2006 |
| Trio Enterprises | 72 | 3/4/2003 | 9/14/2007 |
| Morgan Packaging Company | 1 | 7/23/2003 | 7/23/2003 |
| Ebony Construction | 31 | 1/21/2004 | 7/18/2007 |
| Bain Industries/Bain Enterprises | 37 | 3/23/2004 | 4/3/2007 |
| Quality Building Supplies | 3 | 4/6/2004 | 8/24/2004 |
| JEM Industrial Maintenance | 4 | 9/15/2006 | 9/14/2007 |
| EMM Blacks Distributors | 1 | N/A | N/A |

Various interviews were conducted with a Bain Enterprises representative on November 30, 2011, Trio Trucking Inc. representatives on December 20, 2011, a Direct Resources representative on December 16, 2011, and an Ebony Construction representative on January 23,

2012. The vendor representatives agreed these letters were addressed to their respective companies; were issued by A&A Safety; and that these letters directed each of them to submit a quote with an unspecified price markup to ODOT. This is contrary to ODOT's policy for ODOT purchasers, which directs that letterhead quote forms are to be used when soliciting quotes from competing vendors. [\(Exhibit 11\)](#) The representatives stated that had ODOT awarded any of these vendors the quote, the item would have been purchased directly from and delivered by A&A Safety, their supplier.

On January 6, 2012, Trio Trucking Inc. representatives provided records supporting nine instances where A&A Safety faxed letters to them requesting quotes be marked up and submitted to ODOT. Again, this is contrary to guidance contained in ODOT's Purchasing and Contract Administration manual [\(Exhibit 1\)](#) [\(Exhibit 2\)](#) [\(Exhibit 3\)](#) requiring its purchasers to contact the vendor directly to obtain a quote. Trio Trucking Inc.'s director of operations stated the items sold to ODOT were a small part of its business, and to fulfill quotes, Trio Trucking Inc. had to contact A&A Safety who was their supplier.

For these nine instances, Trio Trucking Inc. invoiced ODOT once A&A Safety delivered the equipment, and received \$69,723.85 from ODOT for quotes dated between July 9, 2004, and November 21, 2007. [\(Exhibit 12\)](#) A&A Safety failed to follow ODOT policy requiring its purchasers to request the quotes and directing Trio Trucking Inc. to submit a quote. A&A received \$66,332.70 for goods they delivered to ODOT and paid a minimal paperwork processing fee of \$3,391.15 to Trio Trucking Inc. This practice resulted in A&A Safety concealing its identity from ODOT as the winning supplier for the quote from ODOT, and resulted in A&A Safety receiving ODOT funds which were not counted towards its \$50,000 annual purchasing limit calculation.

The investigation also revealed three instances totaling \$15,799 [\(Exhibit 13\)](#) in which A&A Safety directed two vendors to submit competing quotes, and then submitted a quote for less than the amount A&A Safety directed the competing vendors to quote, thereby ensuring that A&A Safety was awarded the winning quote from ODOT and avoided competition.

A&A Safety's directions to non-A&A Safety-affiliated vendors requesting they submit quotes to ODOT allowed A&A Safety to control who submitted quotes, ensured that equipment was purchased from them, and in some instances, determined which vendor, including A&A Safety, would be awarded the winning quote. Instead of ODOT purchasers determining the lowest responsive and responsible¹⁶ quote as required in ODOT's Purchasing and Contract Administration manual, A&A Safety determined who would provide the lowest quote, avoided competition, and ensured A&A Safety ultimately received the majority of the funds paid by ODOT, either directly or through another vendor.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

During an interview conducted on March 12, 2012, the ODOT District 11 facilities and equipment manager stated he contacted A&A Safety to obtain a "ballpark" quote for a Wanco arrow board.¹⁷ The manager stated he had never purchased this item before and was referred to A&A Safety by a District 11 roadway manager because they had purchased items from A&A Safety in the past. When the District 11 facilities and equipment manager contacted A&A Safety, Sales Manager T.R. O'Brien stated his company had reached the ODOT \$50,000 annual fiscal year purchasing limit and could not provide a quote. Because of his lack of knowledge about arrow boards, the manager asked O'Brien for other vendors who sell the same equipment line. O'Brien referred the manager to Ebony Construction and Direct Resources. The manager was not aware that A&A Safety was the supplier of Wanco arrow boards to both companies. Because A&A Safety recommended vendors who depended on them for equipment, A&A Safety had the ability to control the minimum price quoted by two vendors to ODOT. This may have resulted in A&A Safety, and not ODOT, predetermining the price for the arrow board to be purchased. In this specific instance, no purchase was made because the quotes were obtained for only a "ballpark" price.

¹⁶ Ohio Revised Code §9.312(A) provides "a bidder on the contract shall be considered responsive if the bidder's proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage." This section also includes the following factors to be considered: bidder's experience; financial condition; conduct and performance on previous contracts; facilities; management skills; and the ability to execute the contract as required.

¹⁷ Arrow boards are used to warn drivers in advance while directing traffic through construction zones.

Quote Direction –Bain Industries/Bain Enterprises

The investigation identified 37 communications that A&A Safety sent to Bain Industries or Bain Enterprises directing them to submit a quote. In an interview conducted on November 28, 2011, Bain Industries and Bain Enterprises¹⁸ owner Shelaugh O’Bryan stated she left employment with A&A Safety in 2003. O’Bryan explained she was encouraged by A&A Safety owner Bill Luttmmer to start her own business and to compete in the MBE program. O’Bryan stated that Luttmmer assisted her in completing the paperwork to establish Bain Industries and to obtain the MBE designation.

O’Bryan incorporated Bain in September 2003 and stated she was initially unable to obtain the MBE designation because Bain did not have six months of revenue received as required by ODOT at the time of her application. O’Bryan said she mentioned this problem to Bill Luttmmer. Shortly after that discussion, she received a letter dated March 23, 2004, with Bill Luttmmer’s signature block containing the following opening paragraph ([Exhibit 14](#)):

Hey Shelaugh, This quote needs to go to Chris Bateman at ODOT District #8 1109 Summit Rd. Cinti, OH 45237 Ph. 513-821-1409 Fax 513-821-3948. Bill said this is not a bid it is just a "flow thru" showing you getting business??. I assume you understand that. There is no mark up needed.

In response to this letter, Bain submitted and was awarded the quote by ODOT. O’Bryan stated in an interview conducted on November 28, 2011, that to fulfill the order, she purchased the equipment from A&A Safety, invoiced ODOT when A&A Safety delivered the equipment to ODOT, and paid A&A Safety the amount received from ODOT less the price markup. O’Bryan said she would periodically receive, from A&A Safety, faxes with similar letters and further directions on the amount of price mark-up via a letter, a fax coversheet, or a telephone call from A&A Safety Sales Manager T.R. O’Brien. O’Bryan stated she did not know in advance whether or not she would win or lose a quote, but she knew O’Brien of A&A Safety was controlling the quote process.

¹⁸ On September 19, 2003, Stephen S. Marcum of Hamilton, Ohio, incorporated Bain Industries as a limited liability company. Shelaugh O’Bryan was appointed as Bain Industries’ statutory agent on October 15, 2003, for the company which is located in Hamilton County at 5580 Fields Ertel Road, Cincinnati, Ohio. This company was dissolved by Ms. O’Bryan effective December 31, 2006. On February 10, 2006, Shelaugh O’Bryan incorporated Bain Enterprises, LLC located at 5580 Fields Ertel Road, Cincinnati, Ohio. For the remainder of this report, these two companies will be collectively referred to as Bain.

A review of records provided by A&A Safety and Bain identified 18 instances totaling \$87,985.63 during the period of March 24, 2004, through January 4, 2007, [\(Exhibit 15\)](#) where A&A Safety faxed instructions to Bain directing Bain to submit a quote for identified items to a specified ODOT district. These letters, fax coversheets, emails, or in some instances, a phone conversation between Bain and A&A Safety identified either the percentage Bain was to use to mark up the price of the quote submitted to ODOT [\(Exhibit 16\)](#) or the specific amount of the quote to be submitted to ODOT. [\(Exhibit 17\)](#)

Of the \$87,985.63 received from ODOT, O'Bryan profited \$5,682.42 [\(Exhibit 15\)](#) for processing the paperwork and paid the remaining \$82,303.21 to A&A Safety. This practice allowed Bain to obtain both the MBE and Disadvantaged Business Enterprise designations and become a recognized vendor from which ODOT purchased equipment in an effort to achieve their 15 percent minority participation goal.¹⁹ It also resulted in A&A Safety ultimately receiving \$82,303.21 from ODOT which surpassed ODOT's \$50,000 annual purchasing limit.

Bain provided to the Office of the Ohio Inspector General a copy of the quote submitted to the City of Hudson, Ohio, for the purchase of 300 square posts for \$13,710, dated March 14, 2008. [\(Exhibit 18\)](#) Attached to the quote was an invoice in the amount of \$13,230 from A&A Safety to Bain for the purchase of these 300 square posts. At the investigator's request, the City of Hudson finance director provided copies of available quotes supporting purchases made from A&A Safety and Bain. The records identified that A&A Safety submitted a competing quote for the 300 square posts for \$13,845, which was higher than what A&A Safety quoted Bain as its cost.

¹⁹ ORC §125.081 requires state agencies to make 15 percent of their purchases during each fiscal year from minority business enterprises as defined by Ohio Administrative Code Section 123:2-15-01. This section requires the agency to only solicit certified MBE companies for competitive quotes when making such a purchase.

The following table summarizes quote correspondence between A&A Safety, Bain, and the City of Hudson for a March 2008 transaction:

| Date | Time | Activity | Quote No | Quote Amount | Sent by |
|-----------|------------|--|-------------------|--------------|------------------------------------|
| 3/14/2008 | 4:19 p.m. | Fax from Bain Enterprises to City of Hudson with quote | N/A | \$13,710 | Shelaugh O'Bryan, Bain Enterprises |
| 3/19/2008 | 11:17 a.m. | Fax from A&A Safety to O'Bryan at Bain Enterprises providing a quote | A&A Safety - 8408 | \$13,230 | Matt Segal, A&A Safety |
| 3/19/2008 | 11:38 a.m. | Fax from A&A Safety to City of Hudson with quote | A&A Safety - 8508 | \$13,845 | Matt Segal, A&A Safety |

Further review of the City of Hudson's records identified quotes submitted by both A&A Safety and Quattro, Inc. in competition with Bain in early January 2007 for the purchase of \$16,745 worth of galvanized posts. [\(Exhibit 19\)](#) Similar to the previous instance, these two quotes were higher than the amount A&A Safety quoted as Bain's cost to purchase the items to resell to the City of Hudson.

The following table summarizes quote correspondence between A&A Safety, Bain, and the City of Hudson for a January 2007 transaction:

| Date | Time | Activity | Quote No | Quote Amount | Sent by |
|----------|------------|--|-------------------|--------------|------------------------------------|
| 1/5/2007 | 11:35 a.m. | Fax from Quattro to the City of Hudson providing a quote | 2350 | \$17,440 | No sales rep listed |
| 1/5/2007 | 12:32 p.m. | Fax from A&A Safety to the City of Hudson providing a quote | A&A Safety - 0307 | \$16,935 | Craig Wilhoit, A&A Safety |
| 1/5/2007 | 12:50 p.m. | Fax from A&A Safety to O'Bryan at Bain Enterprises providing a quote | A&A Safety - 0407 | \$16,440 | Craig Wilhoit, A&A Safety |
| 1/5/2007 | 5:55 p.m. | Fax from Bain Enterprises to the City of Hudson providing a quote | None | \$16,745 | Shelaugh O'Bryan, Bain Enterprises |

In both of these transactions, A&A Safety supplied Bain Enterprises with the items to resell to the City of Hudson. In an interview conducted on October 14, 2011, former A&A Safety employee and current Bain employee Craig Wilhoit said that the City of Hudson was his customer while employed at A&A Safety and that he had submitted the quotes to the City of Hudson in both of these transactions. Wilhoit said he had received a call from the City of Hudson asking whether there was any way to lower the price for the January 5, 2007, transaction

and for another vendor to submit a quote for the March 14, 2008, transaction. Wilhoit stated he contacted O'Bryan and told her that if she submitted a quote to the City of Hudson lower than the A&A Safety's quote that she would win the quote. O'Bryan submitted a quote to the City of Hudson for each transaction and was awarded the quote both times.

In an interview conducted on November 28, 2011, O'Bryan stated the City of Hudson was Wilhoit's customer which he brought with him when he left A&A Safety. O'Bryan explained that Wilhoit set his quote pricing and prepared his own quotes. In a follow-up interview conducted on December 2, 2011, O'Bryan explained the purchases made by the City of Hudson from Bain followed the same process as the faxes with instructions to submit a quote to ODOT that she received from T.R. O'Brien of A&A Safety. O'Bryan stated Wilhoit faxed the City of Hudson's quote form to her, she had a discussion about the price, and she acknowledged the handwriting on the quote forms was hers.

A comparison of Wilhoit's expense reports while employed by Bain and quotes submitted to the City of Hudson by Bain indicated that Wilhoit visited Beth's Barricades, located in Gibsonia, Pennsylvania, on April 25, 2008. [\(Exhibit 20\)](#) Beth's Barricades Sales Manager Doug Nury submitted a quote for \$4,316 to the City of Hudson to purchase caps and crosspieces on April 30, 2008. Bain submitted a quote for \$3,997.50 to the City of Hudson on April 29, 2008, and was awarded the quote by the City of Hudson. [\(Exhibit 21\)](#)

On October 14, 2011, Wilhoit admitted to visiting Doug Nury of Beth's Barricades in April 2008. Wilhoit stated that he probably told Nury, "Hey, could you mind helping me out and, you know, quote Hudson these items?" and probably told Nury what his price would be. In an interview conducted on September 27, 2011, Beth's Barricade Sales Manager Doug Nury recalled Wilhoit contacting him and requesting he submit a quote. However, Nury could not recall whether pricing was discussed or what company Wilhoit worked for at the time.

An avoidance of competition was evident in A&A Safety submitting a quote and determining which vendors would submit "competing" quotes to ODOT. In addition, A&A Safety directed Bain's mark-up or the amount to be quoted to ODOT. These actions ensured A&A Safety received the majority of ODOT's business. These practices are contrary to ODOT's Purchasing

and Contract Administration manual [\(Exhibit 1\)](#) [\(Exhibit 2\)](#) [\(Exhibit 3\)](#) which require ODOT to obtain quotes and award the quote to the lowest bidder. Additionally, Bain engaged in a similar practice with Beth's Barricades in April 2008. As a result, the vendors – and not ODOT or the City of Hudson – manipulated the price to be paid.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

On December 18, 2012, Quattro Inc. entered a guilty plea signed by Vice President Bill Luttmmer to:

- One felony count of Prohibition Against Entering Into an Unlawful Combination, Contract, or Agreement in violation of ORC §1331.02; and
- One felony count of an attempt to Engage in a Pattern of Corrupt Activity in violation of ORC §2923.02/2923.32 based on incidents instances of Telecommunications Fraud in violation of ORC §2913.05(A).

As part of its plea, Quattro Inc., agreed to pay restitution of \$32,796 to the state of Ohio and to pay a forfeiture of \$10,000 for investigative and litigation costs pursuant to Ohio Rev. Code §1331.03 payable to the general revenue fund for the state of Ohio.

On the same date, A&A Safety sales manager Timothy O'Brien entered a guilty plea to three misdemeanor counts of Conspiracy Against Trade in violation of Ohio Revised Code §1331.04. O'Brien agreed as part of his plea agreement to pay \$4,372 in restitution to the state of Ohio and to pay a forfeiture of \$1,500 for investigative and litigation costs pursuant to Ohio Rev. Code §1331.03 payable to the general revenue fund for the state of Ohio.

Prosecutors are currently reviewing the investigation to determine whether additional charges are appropriate.

Quote Direction – Manufacturers and Competing Dealers/Distributors.

In interviews conducted September 8, 2010, September 29, 2010, and October 14, 2011, former A&A Safety Sales Representative Craig Wilhoit explained that A&A Safety employees,

specifically Sales Manager T.R. O'Brien or himself, would request manufacturers, dealers, or distributors to submit competitive quotes with the knowledge that A&A Safety could undercut their prices based on manufacturer volume discounts. These volume discounts allowed A&A Safety to reduce its costs and permitted it to charge rates lower than the manufacturers' list prices. Additionally, A&A Safety could undercut competing dealers or distributors assigned to territories outside of Ohio because they would submit a quote for the manufacturer's list price plus shipping, when applicable. Wilhoit identified these manufacturers and distributors as Stanley, E.H. Wachs Company, Tallman Equipment Company, and Buckeye Lite & Barricade Rental.

A&A Safety's website confirmed that it carries equipment lines for Stanley, Horizon Signal Technologies, Traffix Devices, E.H. Wachs Company, Wanco, and Wacker Neuson. A review of quotes submitted to ODOT by A&A Safety, Quattro, Inc., and a third vendor identified the following manufacturers, out-of-state dealers, or distributors submitting quotes to ODOT:

| Vendor | Total Quotes Submitted | Relationship To A&A Safety |
|-----------------------------|-------------------------------|---------------------------------------|
| E.H. Wachs Company | 2 | Manufacturer |
| Agile Displays | 1 | Manufacturer |
| Solar Tech | 1 | Manufacturer |
| Buckeye Lite & Barricade | 7 | Competitor |
| Horizon Signal Technologies | 1 | Manufacturer |
| Circle R Safety | 5 | Competitor |
| Trafcon Industries | 2 | Manufacturer |
| WANCO | 3 | Manufacturer |
| Traffix Devices | 3 | Manufacturer |
| Tallman Equipment | 2 | Competitor |
| Ver-Mac | 1 | Manufacturer |
| Stanley | 9 | Manufacturer |

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The investigation determined only Wanco and Trafcon Industries were awarded quotes by ODOT. The remaining manufacturers and vendors submitting quotes lost to either A&A Safety, Quattro, Inc., or Bain. During an interview conducted on October 14, 2011, former A&A Safety Sales Representative Craig Wilhoit explained that an unwritten understanding existed that manufacturers would submit quotes when requested at either the list price or higher. Wilhoit did

not explain what the manufacturer's understanding was when submitting their quotes to ODOT. Wilhoit stated he contacted Tallman Equipment and Circle R Safety, competing dealers, to submit quotes to ODOT in response to a request for three quotes and was aware that O'Brien contacted Stanley, E.H. Wachs Company, and Buckeye Lite & Barricade Rental.

During an interview conducted on October 28, 2010, Buckeye Lite & Barricade Rental Service Manager Kevin Murray stated that his business and A&A Safety shared a warehouse in Dayton until his business closed on November 30, 2009. Contrary to ODOT policies and procedures that ODOT employees solicit their quotes directly from vendors, Murray stated he periodically received a fax from A&A Safety Sales Manager T.R. O'Brien informing him that an ODOT district office wanted to purchase an item and provided Murray with the contact and product information. Murray explained he would then review pricing guides, prepare the quote for list price, and submit it to the specified district. Murray stated O'Brien did not dictate what price he should quote to ODOT, but O'Brien would have known Murray quoted his retail price to ODOT.

Murray explained that if ODOT awarded the quote to Buckeye Lite & Barricade Rental they would have had to purchase the item from A&A Safety to resell it to ODOT. ODOT records identified seven quotes that were submitted by Buckeye Lite & Barricade Rental.

During an interview conducted on September 27, 2011, former Circle R Safety Vice President and current Beth's Barricades employee Doug Nury explained these companies were located in Gibsonia, Pennsylvania and sold traffic control equipment, similar to equipment sold by A&A Safety. Nury explained Circle R Safety and Beth's Barricades began submitting quotes to ODOT after he was contacted by A&A Safety Sales Manager T.R. O'Brien. Nury stated that O'Brien explained that ODOT needed three quotes per its policy to purchase an item and asked him to submit a quote in order for ODOT to meet its requirement. Upon receipt of the quote request or form, Nury stated he completed the quote and returned it to the requestor as opposed to ODOT. Nury confirmed his signature on the two quotes submitted for Circle R Safety and the one quote submitted for Beth's Barricades.

Nury stated O'Brien did not discuss what price would be submitted to ODOT. Nury said that he did not expect to win the quote since one of his competitors, A&A Safety, was requesting he

provide ODOT a quote. Nury stated he felt it was O'Brien's intent for Nury to submit a high quote. Nury explained when he submitted quotes outside of Pennsylvania he would quote list price or higher to the customer requesting the quote, in this case ODOT. Nury explained he thought O'Brien was aware Nury's bid would be "list price-plus" since Circle R Safety did not sell products in Ohio because the manufacturer of the equipment sold by Circle R Safety had not designated them as an Ohio dealer.

The following table summarizes the transactions awarded to either A&A Safety or Quattro, Inc. where T.R. O'Brien solicited quotes from manufacturers and competing dealers to direct the winning ODOT quote to either A&A Safety or Quattro, Inc.:

| Encumbrance (PO) # | Encumbrance Date | Requisition # | Vendor Name | Sum of PO Line Disbursements |
|--------------------|------------------|---------------|---------------|------------------------------|
| 239097 | 04/09/07 | 046667 | Quattro, Inc. | \$4,695.00 |
| 414519 | 09/11/08 | 017039 | A&A Safety | 1,678.00 |
| 404319* | 07/30/08 | 003179 | Quattro, Inc. | 4,695.00 |

* This purchase order replaced purchase order number 247567 dated 6/8/07 issued to Quattro, Inc.

\$11,068.00

Requests by A&A Safety to manufacturers and competitors to submit quotes to ODOT allowed the company to control who submitted quotes, ensured A&A Safety was able to undercut the competing quotes because of the volume discounts it earned, and ensured A&A Safety would be awarded the winning quote. Instead of ODOT purchasers determining the lowest quote, A&A Safety determined who would provide the lowest quote, avoided competition, and ensured A&A Safety ultimately received the majority of the funds paid by ODOT.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

Southeastern Equipment and its Affiliated Companies

Summary

This investigation identified that Southeastern Equipment was affiliated with Equipment Salvage LLC, Equipment Salvage Inc., and Lease Lift Inc. These four companies shared common ownership and their business locations were owned by the same individual, William L. Baker, and in most instances, his wife Nancy. Directors of Equipment Salvage LLC, Equipment Salvage Inc., and Lease Lift also included Baker's children, William L. Baker II and Susan Hess. Lease Lift Inc. was dissolved by these individuals on November 2, 2001. During the period of July 1, 2001, through June 30, 2011, ODOT requested Southeastern Equipment and its affiliated companies submit quotes to ODOT for equipment. A review of quotes submitted by, and payments issued to, Southeastern Equipment and its affiliated companies revealed the following conduct:

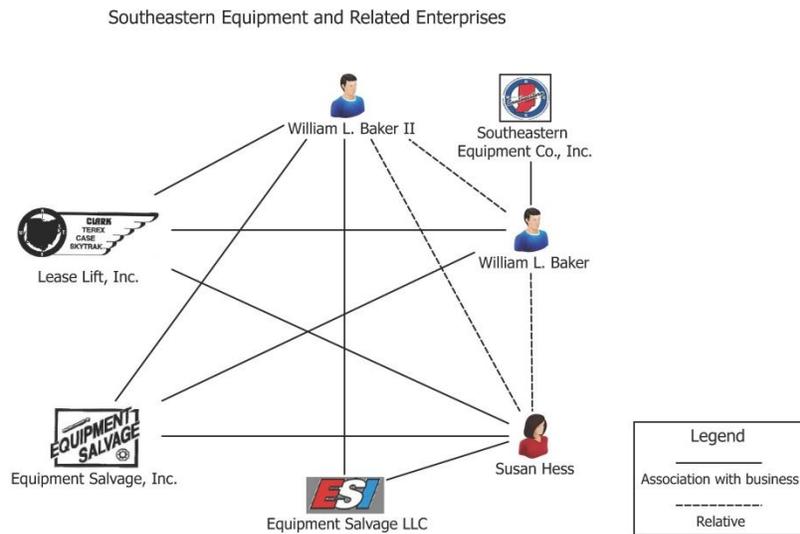
- Southeastern Equipment and its affiliated companies controlled the submission of quotes to ODOT by using an affiliate that no longer existed. This guaranteed Southeastern Equipment would receive the majority of business from ODOT through a direct award or as a supplier to an affiliate.
- Southeastern Equipment and its affiliated companies directed ODOT employees to contact certain vendors for the purchase of particular brands of equipment.
- Southeastern Equipment and its affiliated companies entered into an agreement with Horner Construction Inc., effective until its dissolution on December 31, 2005, in which Southeastern Equipment dictated what quotes and amounts would be submitted to ODOT, prepared the quotes for Horner Construction to sign, and in some instances submitted the Horner Construction quotes to ODOT on its behalf. A subsequent agreement similar in nature was entered into with Ebony Construction in February 2006 in order to direct the quote amounts submitted to ODOT.
- Southeastern Equipment directed Ebony Construction's submission of quotes and the amounts to be quoted to ODOT.

Documents reviewed and interviews conducted revealed ODOT employees accepted quotes from Southeastern Equipment and its affiliated companies that were faxed from the same location and

requested and accepted multiple quotes from the same Southeastern Equipment sales representative. Additionally, documentation revealed an incident where an affiliate was awarded the ODOT quote and the equipment was delivered by Southeastern Equipment. Southeastern Equipment’s controlling the submission of quotes by its affiliated companies and through vendor agreements provided the appearance to ODOT that competition was occurring. In fact, competition was avoided because of Southeastern Equipment’s ability to control the quote process. As a result, Southeastern Equipment – not a competitive bid process – was determining the price to be paid by ODOT and not allowing ODOT to select the lowest price for the product obtained through competition.

Southeastern Equipment and Affiliated Vendors

Southeastern Equipment Company Inc. and its affiliated companies include: Southeastern Equipment Company Inc., Lease Lift, Equipment Salvage Inc., and Equipment Salvage LLC. Ohio Secretary of State records show the following relationships between these companies:



The Ohio Secretary of State’s website records indicate Equipment Salvage Inc.’s statutory agent changed from William L. Baker to his son, William L. Baker II, on May 25, 2007, and was dissolved by directors William L. Baker II and Susan Hess on April 23, 2008. Records further show that directors William L Baker, William L. Baker II, and Susan Hess voted to dissolve Lease Lift Inc. on November 2, 2001.

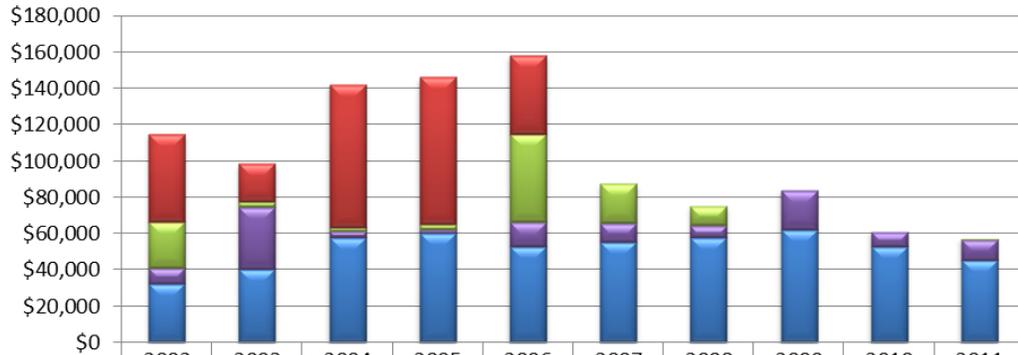
A review of applicable county auditor property searches identified the following owners for the addresses associated with these companies:

| Company | Address | Property Owner |
|------------------------|--|---|
| Southeastern Equipment | 10874 East Pike Road, Cambridge, Ohio | William L. and Nancy Baker |
| Southeastern Equipment | 6415 Promler Avenue, North Canton, Ohio | William L. and Nancy Baker |
| Southeastern Equipment | 1500 Industrial Parkway, Brunswick, Ohio | William L. and Nancy Baker |
| Southeastern Equipment | 3875 West Fourth Street, Mansfield, Ohio | American Properties & Development/ William L. Baker |
| Lease Lift Inc. | 6415 Promler Avenue, North Canton, Ohio | William L. and Nancy Baker |
| Lease Lift Inc. | 1500 Industrial Parkway, Brunswick, Ohio | William L. and Nancy Baker |
| Lease Lift Inc. | 3875 West Fourth Street, Mansfield, Ohio | American Properties & Development/ William L. Baker |
| Equipment Salvage Inc. | 11275 East Pike Road, Cambridge, Ohio | William L. and Nancy Baker |
| Equipment Salvage LLC | 11275 East Pike Road, Cambridge, Ohio | William L. and Nancy Baker |

Using Ohio Secretary of State records and county auditor property searches, it was determined that Equipment Salvage LLC, Equipment Salvage Inc., Lease Lift Inc., and Southeastern Equipment and their business locations were owned by either William L. Baker and/or his son, William L. Baker, II; subsequently sharing common ownership.

The following chart summarizes purchases by 12 ODOT district offices and two central office divisions during the period of July 1, 2001, through June 30, 2011, for equipment and supplies from Southeastern Equipment and its affiliated companies totaling \$1,062,596.80:

ODOT Dollars Paid to Southeastern Equipment and its Affiliates
Fiscal Years July 1, 2001 through June 30, 2011



| | | | | | | | | | | |
|-------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Horner Construction Inc | \$48,123 | \$20,872 | \$78,708 | \$80,964 | \$43,375 | \$- | \$- | \$- | \$- | \$- |
| Ebony Construction | \$25,638 | \$2,799 | \$2,263 | \$2,780 | \$48,818 | \$21,780 | \$10,555 | \$- | \$- | \$82 |
| Equipment Salvage | \$8,948 | \$34,602 | \$3,500 | \$2,007 | \$13,079 | \$10,135 | \$6,559 | \$21,564 | \$8,213 | \$11,695 |
| Southeastern Equipment | \$32,115 | \$40,173 | \$57,702 | \$60,355 | \$53,081 | \$55,453 | \$57,878 | \$62,155 | \$52,621 | \$45,055 |

Quote Review

The ODOT Purchasing and Contract Administration manual required purchasers to obtain two quotes for purchases in excess of \$1,000 but less than \$2,500 and required three quotes for purchases exceeding \$2,500 but less than \$50,000. The Office of the Ohio Inspector General reviewed available hard copy and electronic documentation for 121 transactions exceeding \$1,000 for the period July 1, 2001, through June 30, 2011, totaling \$661,387.02. The investigation found that for nine transactions, Southeastern Equipment submitted competing quotes against Equipment Salvage LLC, Equipment Salvage Inc., Lease Lift Inc., and affiliated companies, during the period of May 1, 2003, through October 12, 2010. [\(Exhibit 22\)](#)

The investigation determined that Lease Lift Inc. submitted quotes for six of the nine transactions that competed with Southeastern Equipment during the period of May 1, 2003, through June 1, 2005. A third company, Horner Construction Inc., with which Southeastern Equipment had a bidding arrangement, also submitted quotes during this period. Lease Lift Inc.'s quotes were signed by either Brian James or Chris Kurz and identified business locations in Cambridge, North Canton, Brunswick, and Mansfield. [\(Exhibit 23\)](#) Each Lease Lift Inc. location is owned by William L. Baker. In the case of the North Canton, Brunswick, and Mansfield locations, Lease Lift operated from the same location as Southeastern Equipment.

The investigation also found the two employees signing the Lease Lift Inc. quotes submitted to ODOT were, in actuality, Southeastern Equipment employees.

This investigation determined that Lease Lift Inc. had been dissolved by its owners prior to the dates the six quotes were submitted. Additionally, the sales representatives signing Lease Lift's quotes submitted to ODOT were employees of Southeastern Equipment. As such, Southeastern Equipment controlled the quote process for quotes submitted to ODOT and used Lease Lift Inc. to provide the appearance that competition was occurring. In fact, there was no bid competition since Southeastern Equipment determined what ODOT's winning quote would be and prevented the market from determining the lowest price from independent vendors.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

The investigation also determined that Equipment Salvage and Southeastern Equipment submitted three competing quotes during the period of March 2006 through October 12, 2010. [\(Exhibit 23\)](#) As previously reported, William L. Baker II, son of Southeastern Equipment owner William L. Baker, was identified as the registered agent of both Equipment Salvage Inc. and Equipment Salvage LLC. A review of quotes, bank records, and memorandums identified the following actions which further support the affiliation between Equipment Salvage and Southeastern Equipment:

- Even though ODOT's records reflected \$33,061.58 was paid to Equipment Salvage, only \$626.50 was deposited into Equipment Salvage's bank account. A memorandum attached to a September 30, 2004, Equipment Salvage credit card charge for ODOT District 8 purchases stated that Equipment Salvage used Southeastern Equipment as "...an outsource to get a lower cost and lower fees for the credit card transactions."

[\(Exhibit 24\)](#)

- One transaction identified Equipment Salvage as the sole source provider²⁰ for the items purchased. Yet, the delivery ticket reflected the purchased items were delivered by Southeastern Equipment. [\(Exhibit 25\)](#)

Southeastern Equipment, Equipment Salvage Inc., and Equipment Salvage LLC individually submitted quotes to ODOT to provide the appearance that competition was occurring. The common company ownership, financial relationship, and Southeastern Equipment's delivery of purchased equipment to ODOT shows Southeastern Equipment and its affiliated companies were working together to conceal their relationship from ODOT and to provide the appearance of competition when, in fact, competition was not occurring. As such, Southeastern Equipment and its affiliated companies manipulated the prices rather than allowing the market to determine the lowest price from independent vendors.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

In another instance, a Southeastern Equipment employee sent a fax to ODOT District 11 Transportation Manager Howard Carpenter on August 5, 2008, providing contact information for Werk-Brau and Valco Equipment. ODOT records reflected that on the same date, Carpenter sent quote requests and received responses from both vendors and Southeastern Equipment. The quote was awarded to Valco Equipment for \$3,250 on August 28, 2008. [\(Exhibit 26\)](#)

A review of the supporting documentation for this purchase and from interviews conducted revealed:

- Fax numbers listed on the Werk-Brau quote were from an area code other than 419 where Werk-Brau is located.
- During an interview conducted on January 7, 2010, Werk-Brau representatives confirmed that the handwriting on the quote belonged to a Werk-Brau sales manager, but he did not recall submitting the quote to ODOT.

²⁰ ODOT Policy 18-007(P) defines a sole source vendor as “the only vendor capable of providing a service or commodity.”

- Werk-Brau’s practice was not to quote directly to ODOT but to send the quote to another company to submit to the customer. One such company was Southeastern Equipment, who was an authorized Werk-Brau dealer.
- Valco Equipment representatives stated their supplier for the equipment they quoted was Southeastern Equipment.

Southeastern Equipment sales representatives directed ODOT employees to certain vendors to solicit and, in some instances, controlled the quotes submitted to ODOT. As such, Southeastern Equipment avoided competition and manipulated the prices rather than allowing the market to determine the lowest price from independent vendors.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

Teaming Agreements

ODOT awarded \$272,042.22 to Horner Construction for 16 quotes submitted during the period of September 1, 2001, through August 26, 2005. [\(Exhibit 27\)](#) During an interview conducted on February 19, 2010, Horner Construction Inc. President Bob Hunt stated that his company had initially provided only excavation services and then transitioned into providing general construction supplies and materials. Hunt was unable to explain how he transitioned into selling heavy equipment to ODOT, but stated he entered into a “teaming agreement” with Southeastern Equipment.²¹

Hunt explained the teaming agreement between his company and Southeastern Equipment stated Horner Construction agreed to become Southeastern Equipment’s certified Minority Business Enterprise (MBE) distributor and dictated how Horner Construction would bid projects, and how the profits from those projects would be distributed. Each time ODOT solicited quotes, Hunt stated Southeastern Equipment sales representatives Brian James, Chris Kurz, and Vice President

²¹ Hunt stated he had a pre-existing relationship with Southeastern Equipment. Prior to purchasing Horner Construction, Hunt stated he was employed by Southeastern Equipment. Hunt stated he needed financial assistance to purchase the equipment side of Horner Construction’s business. As such, he contacted Southeastern Equipment Vice President Charles Patterson who offered to finance approximately \$100,000 - \$125,000 of the equipment purchase. Hunt stated he has since repaid these funds to Southeastern Equipment.

Charles Patterson determined whether Horner Construction would submit a quote to ODOT, calculated the quote amount, and prepared the quote on blank Horner Construction letterhead provided by Hunt at Southeastern Equipment's request. Hunt stated he would either meet with a Southeastern Equipment representative or would authorize the representative to sign his name on the quote, which was then submitted to ODOT. Hunt stated that if Horner Construction was awarded the quote, then Southeastern Equipment would deliver the equipment to ODOT, and Horner Construction would pay Southeastern Equipment for the cost of the equipment delivered.

Documentation supporting this agreement included a fax sent by Southeastern Equipment notifying ODOT that they could purchase equipment from certain manufacturers by contacting HCI²² ([Exhibit 28](#)); a letter recommending the use of Horner Construction as an MBE ([Exhibit 29](#)) to meet MBE goals; and a memorandum dated November 2, 2005, between Hunt and Patterson found at ODOT District 11 offices discussing the use of Horner Construction, which held two state of Ohio payment accounts. ([Exhibit 30](#))

From interviews with certain ODOT employees and a review of documents supporting the 16 quotes awarded to Horner Construction, this investigation identified:

- Competing quotes were submitted for both Horner Construction and HCI Huron, its trade name;
- Old letterhead was used by someone other than Hunt and his employees to submit a May 23, 2005, quote ([Exhibit 31](#)); and
- Instances where Horner Construction quotes were faxed from Southeastern Equipment's offices instead of Horner Construction.

²² HCI is the acronym for Horner Construction Inc.

For example:



Horner Construction ceased to do business December 31, 2005, and as such, their agreement with Southeastern Equipment ended. According to documents obtained, Southeastern Equipment entered into a similar teaming agreement with Ebony Construction in February 2006, for equipment purchases made using State Term Schedule (STS)²³ contracts awarded by the Ohio Department of Administrative Services. [\(Exhibit 32\)](#) The agreement between Southeastern Equipment and Ebony Construction required a predetermined price markup to be used when the quote amount was calculated for items sold to ODOT which were included on the STS contracts. [\(Exhibit 32\)](#) Shortly after the agreement was signed, Ebony Construction began submitting quotes for heavy equipment to ODOT even though its primary business was asphalt milling and paving.

The teaming agreement entered into by Horner Construction and Ebony Construction with Southeastern Equipment permitted Southeastern Equipment to direct the quote amounts and when quotes were submitted to ODOT. These agreements guaranteed Southeastern Equipment ODOT business through the submission of Horner Construction quotes and Ebony Construction quotes for STS contract purchases; by Southeastern Equipment's submissions of competing quotes with Ebony Construction or Horner Construction to ODOT; and by directing vendors to submit quotes to compete with either a Horner Construction or Southeastern Equipment quote. As such, Southeastern Equipment or its affiliated companies determined prior to the submission of the quotes which vendor would be awarded ODOT's business. Therefore, Southeastern

²³ State Term Schedule contracts are established with vendors for various supplies and services at a specified price to multiple purchasers including state agencies and in some instances, local governments.

Equipment, through these agreements, eliminated competition and failed to allow the market to determine the lowest price to be paid for equipment purchases.

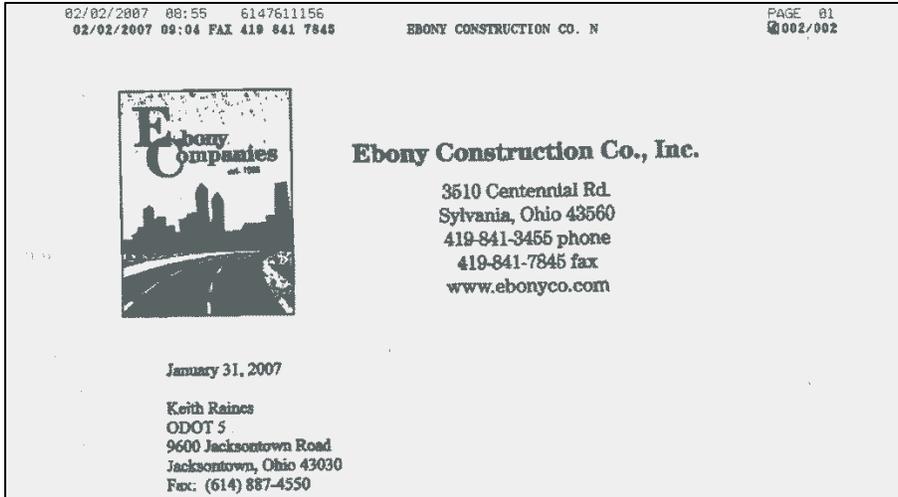
Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

Directing Quotes

Ebony Construction submitted five quotes ([Exhibit 33](#)) to ODOT from March 2006 through September 2007 in competition with Southeastern Equipment. One of the five quotes awarded to Ebony Construction by ODOT in September 2007 included competing quotes submitted by Southeastern Equipment and Valco Equipment. In an interview conducted on January 25, 2010, a Valco Equipment representative stated that the quote was submitted without Valco's knowledge and was for items which Valco Equipment did not stock. The fax stamp header, as seen below, reflected the unauthorized Valco Equipment quote was sent by Southeastern Equipment:

| | | | |
|---|---|---|----------------------------|
| Jan 22 10 04:41p 01/22/2007 10:58 | Dist 03 BHR 913284947739 | 419 281 9342 SOUTHEASTERN EQUIP 083 GARAGE ODOT | P. 4 PAGE 01 PAGE 02 |
| 05/02/2007 05:33 | 4192817590 | | |
|  ODOT - Request for Quotation  | | | |
| Date of Request: | | 5/3/07 | |
| RESPONSE Deadline: | | 5/7/07 | |
| Commodity or Service must be provided no later than: | | ASAP | |
| Ohio Department of Transportation 908 N. CLARK ABLAND, OHIO 44806 | | ODOT Contact Person: PHIL SHAFER Ph: 419-207-7144 Fax 419-281-7500 Em: pshaf@odot.state.oh.us | |
| To | Fed. Tax ID #: 34-1563983 Vendor Name: VALCO ATTN: DAVE MAIER | | Terms Offered: |

ODOT District 5 acting facilities manager's email and facsimile records also supported Southeastern Equipment's involvement in submitting the two Ebony Construction quotes to ODOT. The Ebony Construction quote dated January 31, 2007, was faxed to ODOT District 5 employee Keith Raines and reflected the following two fax numbers:



The first fax number (614) 761-1156 was from Southeastern Equipment's Dublin location, [\(Exhibit 34\)](#) and the second fax number (419) 841-7845 was from Ebony Construction's office. Based on the fax time stamps, the quote was initially faxed from Southeastern Equipment to Ebony Construction and subsequently faxed from Ebony Construction to Raines at ODOT.

A draft of the second quote was attached to an email sent by Southeastern Equipment employee Brian James to Ebony Construction Vice President Mike Bass and copied to Raines. The email attachment included a quote addressed to Raines on a blank piece of paper with a signature line titled Mike Bass and dated April 25, 2007, with a price of \$5,350.80. [\(Exhibit 35\)](#) The email contained the following request which resulted in Bass submitting a signed quote on Ebony Construction letterhead to ODOT:

From: "Brian James" <bjames@southeasternequip.com>
To: "Mike Bass" <mbass@ebonyco.com>
cc: "Keith Raines" <Keith.Raines@dot.state.oh.us>

Date: Thursday, April 26, 2007 02:20AM
Subject: Cronkhite Trailer Quote

Mr. Bass,

Attached is a quote you have already sent ODOT 5, but there have been some add ons. Could you please print and fax to the number given.

Sorry for the mishap. Thanks

Brian James

For these two transactions, Southeastern Equipment used its knowledge of Ebony Construction's quote amount submitted to ODOT, directed the Ebony quote amount, and submitted a lower bid than Ebony. The purchase was then awarded to Southeastern Equipment by ODOT District 5.

In an interview conducted on January 23, 2011, Ebony Construction Vice President Mike Bass admitted to having an agreement for purchases from Southeastern Equipment which were resold to ODOT. These purchases required a predetermined price markup when calculating the quoted amount for items sold to ODOT because they were included on the State Term Schedule of contracts awarded by the Ohio Department of Administrative Services. [\(Exhibit 32\)](#) However, Bass stated he did not believe the items on the two quotes were included on the State Term Schedule of contracts and assumed that Southeastern Equipment had included the predetermined agreed-upon price markup quoted. Bass stated he expected each time he requested a quote from Southeastern Equipment that they would reciprocate and submit a quote. Bass explained that he knew his company could not compete with Southeastern Equipment's quote because they were Ebony Construction's supplier.

During an interview conducted on July 23, 2009, ODOT District 11 Equipment Superintendent Howard Carpenter explained that he had received three quotes from Southeastern Equipment Sales Representative Chris Kurz, who controlled the amount of all the quotes submitted and ensured Ebony Construction would win. Carpenter stated he was aware that Southeastern Equipment was actually supplying the heavy machinery equipment when Ebony Construction was awarded the quote.

The practice of allowing Southeastern Equipment to determine the amount to be quoted when Ebony Construction submitted a quote to ODOT, and Southeastern Equipment's practice of submitting competing quotes when they had instructed Ebony Construction to submit its quote for a specified amount prevents competition. In instances in which Ebony Construction submitted a quote at Southeastern Equipment's direction, Ebony Construction was unaware of whether Southeastern Equipment also submitted a competing quote. Instead of ODOT requesting and receiving three independent competitive quotes, Southeastern Equipment

completely controlled who submitted the quotes, who would win the quote, and failed to allow the market to determine the lowest price to be paid for equipment purchases.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

Rath Builders Supply and its Affiliate, Fort Defiance Construction Building and Supply

Summary

From interviews conducted and a review of records, investigators determined that Rath Builders Supply was affiliated with Fort Defiance Construction Building & Supply Inc. because the owners of the two companies are siblings. During the period from July 1, 2001, through June 30, 2011, ODOT requested Rath Builders Supply and its affiliate to submit quotes for specified equipment. A review of quotes submitted by and payments issued to Rath Builders Supply and its affiliate revealed the following conduct:

- Rath Builders Supply and its affiliate submitted all of the quotes for 25 transactions, guaranteeing it would be awarded ODOT business.
- One owner submitted quotes to ODOT for both companies using one fax number, typically Rath Builders Supply.

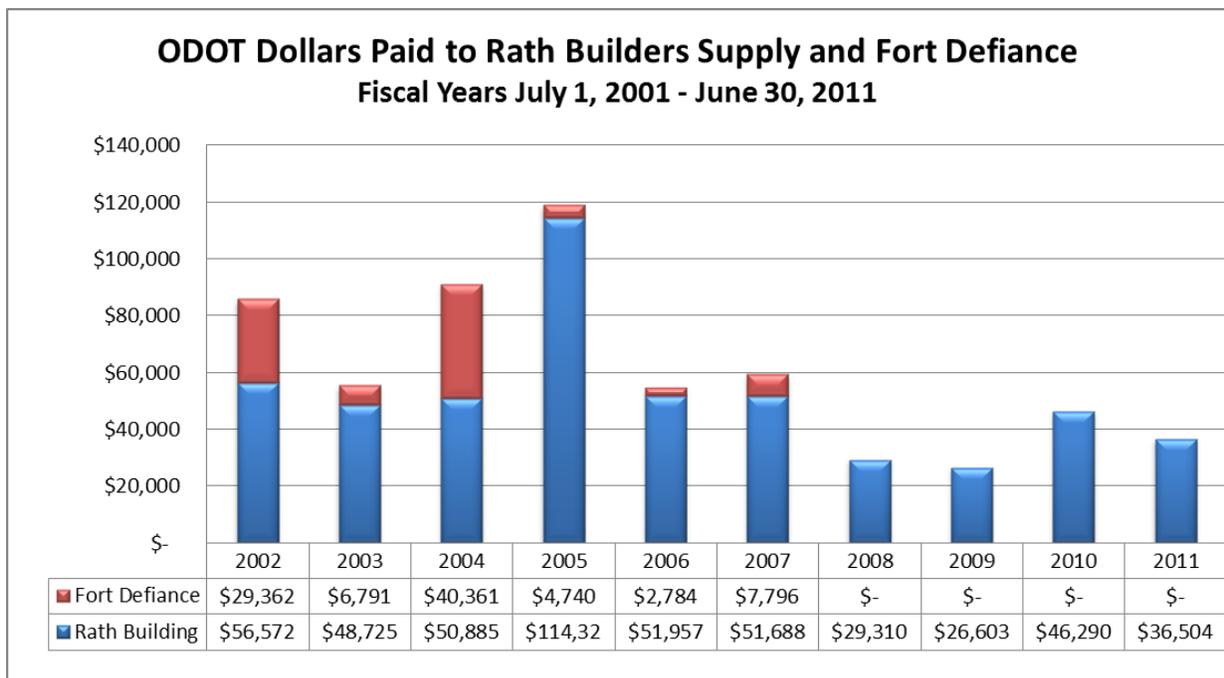
Contrary to ODOT policies and procedures which require ODOT employees to contact vendors directly to obtain quotes using ODOT's letterhead quote request form, ODOT District 7 employee David Goffena stated he often contacted either Barbara Rath or Sara Varner, owners of Rath Builders Supply, to obtain two quotes to fulfill ODOT's quote requirement. By submitting both of these quotes, Rath Builders Supply and its affiliate provided the appearance of competition. In actuality, competition was avoided and the owners of Rath Builders Supply determined the price to be paid for equipment purchases.

Rath Builders Supply and Affiliated Vendor, Fort Defiance Construction & Building Supply

Rath Builders Supply Inc. (Rath Builders Supply) was incorporated on November 7, 1986, in Defiance, Ohio and is equally owned by three sisters, Barbara Rath, Jennifer Horvath, and Sara Varner. The three sisters were employed by Fort Defiance Construction & Building Supply Inc. (Fort Defiance) before establishing Rath Builders Supply. Fort Defiance was incorporated on August 14, 1980, and is equally owned by Michael Rath and Chris Rath. Fort Defiance executive officers include Patricia Rath and Randy Varner, husband to Sara Varner, owner of Rath Builders Supply.

Records submitted to the Ohio Department of Administrative Services (ODAS) for EDGE/MBE²⁴ certification status by Rath Builders Supply and Fort Defiance and an interview with ODOT's prevailing wage manager established that Rath Builders Supply owners Barbara Rath, Sara Varner, and Jennifer Horvath are siblings to Michael Rath and Chris Rath, owners of Fort Defiance, and that Patricia Rath is their mother.

The following chart summarizes purchases by seven ODOT district offices of equipment and supplies totaling \$604,685.92 from Rath Builders Supply and Fort Defiance for the period July 1, 2001, through June 30, 2011:



²⁴ Minority Business Enterprise (MBE) program was designed by the Ohio Department of Administrative Services to assist minority businesses in obtaining state government contracts through a set aside procurement program for goods and services. The Encouraging Diversity, Growth and Equity (EDGE) program is for participants which are small socially and economically disadvantaged business enterprises owned by Ohio residents who are US citizens for the procurement of supplies and professional, information technology, construction, and professional design services.

Quote Review

ODOT policies and procedures required purchasers to obtain a specified number of quotes based upon the estimated equipment cost. A review of 118 transactions exceeding \$1,000 for the period July 1, 2001, through June 30, 2011, totaling \$443,154.85 indicated that both Rath Builders Supply and Fort Defiance submitted competing quotes to ODOT districts for 44 transactions. Of those 44 transactions, Rath Builders Supply and Fort Defiance were the sole competitors for 23 transactions submitted to ODOT District 7, for one transaction submitted to ODOT District 2, and for one transaction submitted to ODOT District 1. [\(Exhibit 36\)](#) Seven of the 44 transactions that Fort Defiance submitted to ODOT District 7 were faxed from Rath Builders Supply. [\(Exhibit 37\)](#)

During an interview conducted on February 1, 2010, ODOT District 7 Storekeeper David Goffena stated his job responsibilities included buying equipment parts for District 7's nine counties; identifying which vendors to solicit when purchasing equipment; and requesting, receiving, and forwarding the quotes to the district's fiscal office. Goffena stated he initially obtained quotes by telephone, however, he later began using the quote form. Available quote records confirmed Goffena began using the quote form as early as 1998.

Goffena stated quotes were received on the responding vendor's letterhead and that he made it a practice to purchase goods and services from minority vendors to assist the district in meeting its 15 percent annual goal.²⁵ Goffena identified Rath Builders Supply as the best minority firm he has conducted business with; that the owner provided the requested items quickly and at a fair price; and that he was aware of a relationship existed between Rath Builders Supply and Fort Defiance. However, Goffena stated he was unsure of the specifics of that relationship.

Goffena stated he understood that ODOT's policies and procedures required him to obtain competitive quotes. Yet, Goffena admitted to knowingly accepting competitive quotes faxed to ODOT from Rath Builders Supply for both companies. Goffena said he knew when he requested

²⁵ ORC §125.081 requires state agencies to make 15 percent of their purchases during each fiscal year from minority business enterprises as defined by Ohio Administrative Code Section 123:2-15-01. This section requires the agency to only solicit certified MBE companies for competitive quotes when making such a purchase.

quotes from both companies that he would receive the same product regardless of whether Rath Builders Supply or Fort Defiance was awarded the quote.

Goffena explained he would contact either Barbara Rath at Rath Builders Supply or Sara Varner at Fort Defiance when he requested quotes from both vendors and that whomever he contacted for a quote would provide quotes from both Rath Builders Supply and Fort Defiance. Goffena stated it was his understanding that ODOT permitted the practice of obtaining quotes from affiliated vendors as long as the vendors had separate tax identification numbers. Goffena felt this practice was helpful because he could obtain two quotes from essentially the same entity, which saved time, and resulted in ODOT receiving a good quality product. ODOT representatives were unable to locate a written policy supporting Goffena's statement that soliciting and accepting quotes from affiliated vendors was acceptable as long as the vendors had separate tax identification numbers.

Goffena confirmed he was responsible for obtaining the product at the lowest price. Goffena stated the requesting of two quotes from the same individual achieved this objective because he did not believe Barbara Rath overcharged ODOT and thought the prices were reasonable. Yet, Goffena stated he knew that Barbara Rath controlled both the sale and purchase price when he solicited quotes from both Rath Builders Supply and Fort Defiance. Goffena ultimately conceded that he probably could have purchased the products for less money had the quotes been obtained using an actual competitive process.

Contrary to Goffena's assertion that Sara Varner was a Fort Defiance employee, vendor bank records and documentation submitted to the Ohio Department of Administrative Services showed that Sara Varner was employed by Rath Builders Supply and that her husband was employed by Fort Defiance. Rath Builders Supply owners Barbara Rath or Sara Varner predetermined which vendor would win the quote.

While providing the appearance that competition occurred, the practice of obtaining two quotes from the same individual for two affiliated vendors avoided competition contrary to ODOT policy and procedures. Rath Builders Supply and Fort Defiance ensured ODOT would remit

payment – based not on the lowest price for the product through competitive bidding – but rather on a price determined by the companies themselves.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

On July 22, 2010, ODOT suspended Goffena for disciplinary reasons due to an internal investigation of his actions regarding relating to Rath Builders Supply and Fort Defiance. On August 1, 2011, ODOT reinstated Goffena in the same position as District 7 Storekeeper.

Pengwyn and its Affiliated Companies

Summary

From an interview conducted and a review of records, investigators determined Pengwyn was affiliated with Hydron Inc., Ice Control Equipment Inc., and Petro Pascal Inc. These four companies shared common ownership and operated from the same location. As such, these four companies were acting as one umbrella organization with four separate divisions. During the period July 1, 2001, through June 30, 2011, ODOT requested Pengwyn to submit quotes to ODOT for specified equipment. A review of quotes submitted by, and payments issued to, Pengwyn and its affiliated companies revealed the following conduct:

- Pengwyn and its affiliated companies submitted all of the quotes for 21 transactions guaranteeing Pengwyn and its affiliated companies would be awarded ODOT business.
- Pengwyn used an affiliate to conceal from ODOT that Pengwyn, who had reached the \$50,000 annual purchasing limit, was actually supplying the equipment.

Interviews conducted by investigators revealed that certain ODOT purchasers were aware of the relationship between Pengwyn and its affiliated companies but continued to accept quotes from the affiliated companies simply because they had separate tax identification numbers. By engaging in this conduct, Pengwyn and its affiliated companies provided the appearance of competition occurring. However, Pengwyn and its affiliated companies avoided competition by bidding against themselves. This ensured ODOT remitted a payment to the companies based on a price manipulated by Pengwyn and its affiliated companies and not necessarily the lowest price for the product obtained thru competitive bidding.

Pengwyn and Affiliated Vendors

Pengwyn and its affiliated vendors include: Pengwyn,²⁶ Hydron Inc., Ice Control Equipment, Inc., and Petro Pascal Inc. The following incorporation information was obtained from the Ohio Secretary of State’s website:

| Vendor Name | Incorporation Date | Incorporated by |
|----------------------------|--------------------|---|
| Hydron Inc. | 5/22/1969 | James Kime, Linda Kime, and Dale C La Dow |
| Petro Pascal Inc. | 8/20/1985 | Martin Kerscher |
| Pengwyn | 1/21/1987 | Martin Kerscher |
| Ice Control Equipment Inc. | 7/28/2000 | Robert T. Pappas |

The Ohio Secretary of State’s website indicated that the Ohio Department of Taxation dissolved Petro Pascal Inc. on December 16, 1991. A subpoena issued for Petro Pascal Inc.’s bank records showed that Petro Pascal Inc.’s bank account has been dormant since 2003 and the investigation determined ODOT had not issued warrants to Petro Pascal Inc. since April 2003.

Quotes and invoices submitted to ODOT by Pengwyn and its affiliated companies’ reflected the same business address, 2550 West Fifth Avenue, Columbus, Ohio 43204. In addition to the West Fifth Avenue address, Ice Control Equipment’s and Petro Pascal Inc.’s quotes identified a second business address. A property search from Franklin County Auditor’s website identified the following owners for the business addresses used by Pengwyn and its affiliated companies:

| Address List on the Quotes and Invoices | Vendors Using This Address | Property Owner |
|--|--|-----------------------|
| 2550 West Fifth Avenue, Columbus, Ohio 43204 | Pengwyn, Hydron Inc., Ice Control Equipment, and Petro Pascal Inc. | James and Sheila Kime |
| 3561 Rocky Road, Columbus, Ohio 43223 | Ice Control Equipment Inc. | Thomas Nolan |
| 3987 Riverview Drive, Columbus, Ohio 43221 | Petro Pascal Inc. | James Kime |

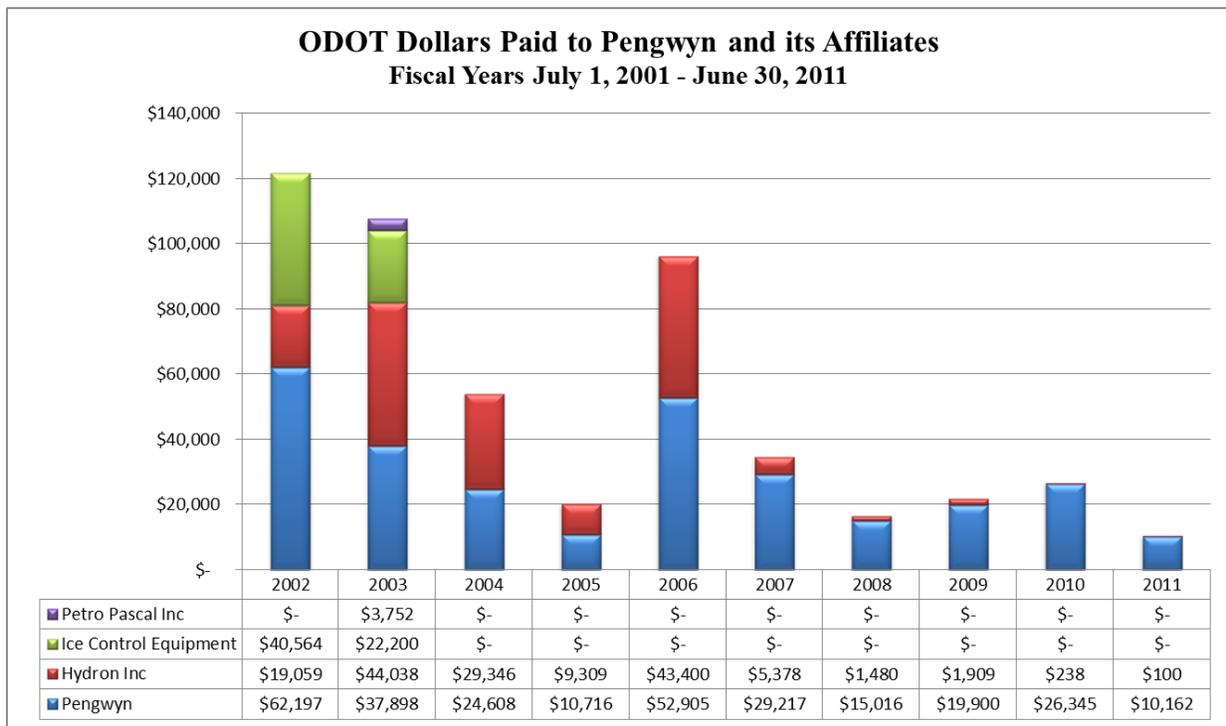
During a telephone conversation on January 26, 2009, James Kime stated he established Pengwyn and Hydron, Inc. to sell parts, equipment, and maintenance services to ODOT. Kime stated he started Petro Pascal Inc. when he was in the oil field business and Petro Pascal Inc.

²⁶ On January 21, 1987, Pengwyn was approved as a trade name for HYO Inc. For the remainder of the report, we will use Pengwyn when discussing HYO activities.

conducted very limited business with ODOT. Kime said he also owned Ice Control Equipment, Inc. A review of invoices and quotes submitted by the four companies identified Thomas Nolan as both the Vice President of Ice Control Equipment and an employee of Hydron, Inc.

Because all four companies used the same address, were owned by the same individual, and the alternative addresses used by Ice Control Equipment and Petro Pascal Inc. were properties owned by Kime or his employee, these four companies were essentially acting as one umbrella organization with four divisions.

The following chart summarizes purchases of equipment and supplies totaling \$509,737.65 purchased from Pengwyn and its affiliated companies by 12 ODOT district offices and two divisions at ODOT’s Central Office during the period from July 1, 2001, through June 30, 2011:



Quote Review

ODOT policies and procedures required purchasers to obtain a specified number of quotes based on the equipment's purchase price. A review of 86 transactions in excess of \$1,000 totaling \$361,271.54 showed 21 transactions in which Pengwyn and its affiliated companies submitted the only quotes to ODOT district offices and county garages. [\(Exhibit 38\)](#) The last date Pengwyn and its affiliated companies submitted quotes to ODOT was September 19, 2006.

During a telephone interview conducted on January 26, 2009, Kime admitted to using Ice Control Equipment, Inc. letterhead to submit quotes to ODOT when Pengwyn had reached the annual \$50,000 purchase limit.²⁷ Kime stated that he used several entities to avoid the \$50,000 limit and stated he was aware ODOT no longer considered this practice acceptable. Kime recalled one time, an employee at ODOT's Equipment Management Division recommended this practice of submitting quotes from other vendors owned by Kime as a method to purchase items which were not on term contract and the vendor had reached its \$50,000 annual purchasing limit.

During an interview conducted on August 26, 2009, ODOT District 5 Acting Facilities Manager Keith Raines stated that he knew one of the addresses used by Petro Pascal Inc. was Kime's home address. Raines also admitted he knew Kime owned Pengwyn, its affiliated companies, and accepted competitive quotes from Pengwyn and its affiliated companies based on retired ODOT employee Bill Marland's approval. Raines explained that Marland stated it was permissible to obtain competitive quotes from Pengwyn and its affiliated companies for water tailgates because, unlike other Pengwyn products, the tailgates were not on contract.

The investigation also identified three instances, such as the following example, in which ODOT awarded a quote to Petro Pascal Inc., who then ordered the equipment from Pengwyn, and directed Pengwyn to deliver the equipment directly to ODOT:

²⁷ Ohio Revised Code Section 126.17 (B)(1) prohibits a state agency from using appropriated funds to purchase equipment or supplies from a specific vendor equal to or exceeding \$50,000 using the prescribed calculation in a calendar year unless the purchase is competitively bid or approved by the Controlling Board.

```
PENGWYN
2550 W FIFTH AVE
COLUMBUS OH
43204-3815
FID #31-1201883
614-488-2861

*****
*           *
*   O R D E R   *
*           *
*****

Document Number: 008566

Document Date: 09/25/03

Page: 1
Ship ODOT #5 MUSKINGUM CO.
To: PHIL NEWMAN, CO MANAGER
3399 EAST PIKE
ZANESVILLE OH
43701

Sold PETRO PASCAL INC
To: 2550 W FIFTH AVE
COLUMBUS OH
43204
```

Had the three orders been completed instead of being canceled by ODOT, Petro Pascal Inc. would have received the funds from ODOT instead of Pengwyn who delivered the purchased equipment to ODOT. This practice concealed from ODOT that Pengwyn - who at the time had reached its \$50,000 limit - was the vendor actually supplying the equipment purchased.

Even though Petro Pascal Inc. ceased to exist in 1991, seven Petro Pascal Inc. quotes dated between November 29, 2001, and February 27, 2007, were submitted to ODOT district offices and the Ohio Penal Institution, which is the agency responsible for building ODOT trucks using parts obtained from vendors. Sheila Kime, who is James Kime’s wife, signed the quotes as President of Petro Pascal Inc. [\(Exhibit 39\)](#) These quotes are another example of Kime using a vendor to submit quotes to ODOT to provide the appearance of competition, when in actuality, competition was being avoided and directing ODOT business to another Kime-owned company.

Pengwyn and its affiliated companies misled ODOT into believing that competition was occurring between vendors by submitting quotes from Pengwyn and its affiliated companies in response to ODOT’s quote requests. In addition, Kime admitted that he used letterhead of other companies he owned to bypass the \$50,000 annual purchasing limit by submitting quotes to ODOT from a company that had ceased operations. By engaging in these practices, Kime provided ODOT with the appearance that competition was occurring. In actuality, these practices eliminated competition and ensured ODOT would remit payment based not on the

lowest price for the product through competitive bidding – but rather on a price determined by the companies themselves.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

Ohio Department of Transportation

Summary

Ohio Revised Code Section 5513.03 required ODOT adopt policies and procedures identifying the purchasing authority, establishing how purchases could be made, and identifying the notices to be provided to solicited vendors. Additional ORC Sections provided guidance on the awarding of bids, the calculation of the \$50,000 annual purchasing limit, when controlling board approvals were required, and when competitive sealed bids were required. To ensure compliance with these and other applicable ORC Sections, ODOT adopted a Purchasing and Contract Administration manual, policies, and procedures for purchasers to follow when making purchases for items not on contract or available through another state agency.

This investigation reviewed the transactions involving selected vendors and their affiliated companies, related quote processes, support documentation, and actions taken by both ODOT employees and vendors to determine whether these transactions were executed in accordance with ODOT's purchasing policies and procedures. During ODOT employee interviews, the following significant admissions of conduct contrary to ODOT policies and procedures were revealed:

- Employees stated they requested, were offered, and accepted multiple quotes from sales representatives for Ace Truck Equipment, A&A Safety, Rath Builders Supply, or Southeastern Equipment.
- To hide certain practices from the Quality Assurance Review process and district fiscal officers, employees accepted multiple quotes from the same vendor fax number and removed the fax number from select pages to conceal the fact that all of the quotes came from the same location.
- Employees solicited and accepted quotes from vendors who had reached the \$50,000 annual purchasing limit to meet the required number of quotes per ODOT policies and procedures. In some instances, purchases were made from vendors who had reached or exceeded this limit.
- ODOT employees were aware of the relationships between certain vendors and their identified affiliated companies and accepted quotes because the vendors had separate tax

identification numbers. However, the employees did not notify their supervisors they were accepting multiple quotes from a vendor's sales representative.

- ODOT employees instructed Ace Truck Equipment sales representatives to submit another quote or to invoice ODOT using an affiliate because the winning vendor had reached the \$50,000 annual purchasing limit.
- Though trained and instructed not to accept vendor gratuities, ODOT employees admitted to accepting meals and clothing from vendors doing business with ODOT.

ODOT is comprised of 12 decentralized district offices that process and maintain records distinct to each district office. Review of the records identified the following significant issues:

- Inconsistencies in record keeping between the 12 ODOT district offices and whether records were being maintained in accordance with ODOT's records retention schedule.
- Failures to enter quote information in its entirety into the Automated Purchasing or Voucher Payment Card Systems for supervisory review and approval.
- Failures to document whether goods were received and entered into the appropriate inventory system.
- Sharing of ODOT payment card numbers with vendors and their affiliated vendors.
- Sharing of ODOT payment card numbers among vendor employees which, in some cases, resulted in unauthorized charges to ODOT payment cards. The charges were subsequently refunded.

To ensure compliance with ODOT's policies and procedures, ODOT had implemented Quality Assurance Reviews (QAR). During the time period covering this investigation, the frequency of reviews and follow-ups increased significantly to identify and correct instances of noncompliance.

Increased reviews had the effect of reducing the instances and types of noncompliance identified and also prevented vendors from continuing to engage in the patterns of conduct identified in this investigation. While these reviews and trainings had a positive impact, QAR results were not shared with other districts which could have potentially prevented future occurrences.

While ODOT has implemented and revised additional policies and procedures as a result of the ODOT District 12 investigation, this report contains recommendations for consideration in the areas of quotes, training, monitoring, annual purchasing limit, vendors, equipment, nepotism, and ODOT policies and procedures.

Ohio Department of Transportation

As required by Ohio Revised Code (ORC) §5513.03, ODOT adopted policies and procedures identifying purchasing authority, establishing how purchases can be made, and specifying the notices to be provided to solicited vendors. These policies and procedures are based in part on the purchasing guidance contained in ORC §5513.01, §127.16, and §125.05. The following sections summarize the results of a review by the Office of the Ohio Inspector General of these policies and procedures.

Quote Review

ODOT adopted a Purchasing and Contract Administration manual granting purchasers the ability to buy items not available from identified agencies or existing awarded contracts using direct purchasing authority. When using direct purchase authority, the purchaser was required to obtain two quotes using the letterhead quote form [\(Exhibit 11\)](#) for purchases in excess of \$1,000 and less than \$2,500 and three quotes for purchases in excess of \$2,500 and less than \$50,000. This manual required purchasers who were obtaining quotes to submit to vendors, on a letterhead quote form, the following information: equipment specifications; contact information of the solicited vendor; the requestor's contact information; the quote request date; and the response due date. Additional direction was provided on equipment specifications, use of brand-specific requests, and confidentiality of the quote information.

Once the letterhead quote form was completed, the purchaser was to send the quote request form directly to the solicited vendors. The solicited vendor was asked to document its quoted price for the specified equipment, the date the quote was prepared, the quote's expiration date, and sign the form authorizing the quote's submission to ODOT. [\(Exhibit 4\)](#) In addition, ODOT adopted Policy 18-007 which required quotes in excess of \$500 to be in writing and that sole source vendor purchases should be "clearly documented and justified." [\(Exhibit 40\)](#)

ODOT District 3 Transportation Manager Phil Shafer, ODOT District 5 Acting Facilities Manager Keith Raines, ODOT District 7 Storekeeper David Goffena, ODOT District 10 Equipment Manager Thomas McNabb, and ODOT District 11 Equipment Manager Howard Carpenter made the following admissions during interviews²⁸ to determine whether ODOT policies and procedures were being followed:

| | Admission | ODOT Employee |
|---------------------------|---|---------------------------------------|
| Quote Solicitation | Confirmed Ace Truck Equipment and A&A Safety’s sales representatives’ statement that ODOT employees requested and accepted multiple quotes from one sales representative in multiple instances. | Carpenter, McNabb, Shafer, and Raines |
| | Stated Ace Truck Equipment and A&A Safety representatives offered to provide them with multiple quotes for multiple instances. | Carpenter and Raines |
| | Admitted to contacting one individual on multiple instances to obtain quotes for Rath Builders Supply and Fort Defiance Construction and Supply. | Goffena |
| | Admitted to accepting multiple vendor quotes from Southeastern Equipment sales representative. | Carpenter and Raines |
| | Admitted to sharing a quote obtained for a District 3 purchase for use as a third quote for a District 11 purchase. | Carpenter and Shafer |
| | Knew A&A Safety was submitting quotes on behalf of another vendor in multiple instances. | Carpenter |
| | Accepted a third required quote after the contract had already been awarded. In these instances, the vendor was requested to submit a high quote knowing that they would not win the purchase. | Goffena |
| | Admitted instructing a vendor that it was acceptable to have the manufacturer of the equipment provide a quote for the same item that the local dealer was submitting a quote. | Raines |
| | Knew that Ace Truck Equipment and its affiliated companies were owned or controlled by the same people. | McNabb |
| | Admitted to accepting a high, losing quote from a vendor to steer the purchase to a preferred vendor. | Goffena |
| | Admitted to manipulating the quote process and the purchase in a specific manner because he wanted to purchase the equipment from Pengwyn. | Raines |
| | Admitted to soliciting or accepting quotes from vendors who had reached the \$50,000 annual purchasing limit in multiple instances. | Raines and McNabb |
| | Instructed Ace Truck Equipment sales representatives to invoice ODOT using an Ace Truck Equipment-affiliated company because the winning vendor had reached the \$50,000 limit. | Carpenter and McNabb |
| | Admitted to sharing non-Ace Truck Equipment affiliate quotes with Ace Truck Equipment sales representative because of his preference for dealing with Darren Founds and Ace Truck Equipment. | Carpenter |

²⁸ These admissions were made during the following interviews: District 3 Transportation Manager 3 Phil Shafer on July 16, 2009; District 11 Equipment Superintendent Howard Carpenter on July 23, 2009; District 10 Equipment Manager Thomas McNabb on August 3, 2009; H. Keith Raines on August 26, 2009; and District 7 Storekeeper 2 David Goffena on February 1, 2010.

| | Admission | ODOT Employee |
|-----------------------|--|---------------------------------------|
| Quote Delivery | Stated quotes were delivered in several different manners. Methods described by the ODOT employees included facsimile, hand-delivered, or via the mail. | Carpenter, McNabb, Shafer, and Raines |
| | Confirmed he directed A&A Safety sales representative on the delivery of multiple quotes to conceal that the quotes were provided by the same A&A Safety sales representative. | McNabb |
| | Admitted to removing fax time stamps from multiple quotes to conceal from the district fiscal office and Quality Assurance Review team, when applicable, that quotes were submitted from the same fax number by the same individual. | Carpenter, McNabb, and Raines |
| | Admitted to using old quotes, copying the letterhead, and creating quotes to meet purchasing guidelines. | Carpenter |

In a statement made on September 8, 2009, McNabb revised his previous admission that he requested three quotes from A&A Safety sales representatives. In his revised statement, he indicated that he contacted A&A Safety and competing vendors separately and did not request A&A Safety to provide three quotes. McNabb also retracted his previous admissions about covering up a fax number to conceal where the fax originated. McNabb instead stated that he could not explain how it happened and that he was just trying to get ODOT the products needed to get the job done.

During an interview conducted on July 16, 2009, Shafer stated it was his understanding that ODOT could purchase products and services from subsidiaries and related firms as long as the companies had separate tax identification numbers. This statement was repeated by Carpenter in a July 23, 2009, interview; Goffena in a February 1, 2010, interview; Raines in an August 26, 2009, interview; and McNabb in an August 3, 2009, interview. However, no evidence has been found to support these employees' claims that they notified their supervisors or fiscal officers or whether they knew that all the affiliated company quotes, though they had separate tax identification numbers, were submitted by one sales representative. During the investigation via interviews, the Office of the Ohio Inspector General was unable to locate a written policy or procedure permitting such a practice.

During interviews conducted on January 20, 2009, and on June 30, 2011, Management Analyst 2 Chris Moore stated he verbally complained to his supervisors four or five years prior to the investigation that he believed the practice allowing purchasers to solicit competing quotes from affiliated vendors as long as they had separate tax identification numbers was improper. Moore

stated he made these verbal complaints to ODOT District 5 Fiscal Officer John Kalis, Labor Relations Officer Colleen Ryan, then Highway Management Administrator Julie Brogan, and the Deputy Director Chris Engel.

During an interview conducted on July 11, 2011, District 5 Fiscal Officer John Kalis stated that he reported to one of his supervisors, either Chuck Schulz or Bill Marland, Chris Moore's assertion that Ace Truck Equipment and its affiliated companies were one company and were preventing competition.²⁹ Kalis stated that he did not report every transaction where this occurred and that he never received guidance from upper management on how to address the complaint.

When asked what steps he took when he questioned the relationship of Ace Truck Body and Ace Truck Equipment on requisition number 18344 dated September 3, 2003, and requisition number 40774 dated January 22, 2004, Kalis explained that he questioned the relationship between the two vendors because of their names. Raines responded to Kalis' question that the vendors had separate tax identification numbers. Kalis stated that guidance was provided to him that if the tax identification numbers were different, then the vendors were considered separate. As such, he accepted Raines' explanation and did not pursue it further. Kalis stated once this issue came to light, he did not share his concerns with anyone else.

In an interview conducted on June 30, 2011, Business Human Resource Administrator Colleen Ryan stated Moore did bring concerns to her in 2006 or 2007 involving Keith Raines' relationship with Southeastern Equipment which were subsequently forwarded to ODOT Chief of Investigations Les Reel. Reel was unable to verify that a formal complaint was made, but indicated this could have been made in passing with no supporting documentation. However, Southeastern Equipment's provision of gratuities to ODOT employees was included as part of the ODOT District 12 investigation released on October 16, 2008.

²⁹ In Keith Raines' interview, he stated that former ODOT employee Bill Marland had instructed that if the vendors had separate tax identification numbers, they were separate companies and competitive quotes could be obtained from each company.

Investigators reviewed interview notes and available support documentation for purchases made using direct purchase authority and identified the following instances of noncompliance with ODOT policies and procedures and Ohio Revised Code Sections including, but not limited to, ORC §125.05, §126.17, and §5513.01.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in the following instances:

| Instances of Wrongdoing or Omissions by ODOT Employees | |
|---|--|
| Quote Solicitation | Contacting one vendor to request three quotes instead of independently soliciting quotes. |
| | Failing to use the letterhead quote request form. (Exhibit 11) |
| | Failing to document the quote request date and due date. |
| | Failing to provide detailed specifications. |
| | Requesting verbal quotes from vendors when the letterhead quote form was to be used by the purchaser. |
| | Requesting quotes for brand-specific equipment when other brands are available. |
| | Requesting quotes from vendors who have reached, or would reach or exceed, the \$50,000 annual purchasing limit with that purchase. |
| | Failing to rebid the item when the purchaser did not obtain the required number of quotes. |
| | Requesting quotes from vendors whose business is unrelated to the quoted items. (Exhibit 41) |
| | When soliciting quotes, directing vendors providing quotes to a third-party vendor to purchase the specified item. (Exhibit 42) |
| | Requesting additional quotes after the quote request due date or after the purchase was made. |
| Quote Information | Contacting vendors and requesting submission of a quote from an affiliated vendor because the vendor had reached or exceeded the \$50,000 annual purchasing limit. |
| | Only offering one of the vendors quoting the ability to perform additional reviews of the requested equipment and resubmit its quote. |
| | Contacting, sharing, and using another district purchaser’s quotes to meet the three-quote requirement. (Exhibit 7) (Exhibit 43) |
| | Failing to document explanations supporting emergency purchases and why the vendor was the sole source for the item being purchased. |
| Quote Delivery | Failing to document when quotes were received, and when responses were not received. |
| | Accepting quotes faxed for a vendor from a different vendor’s fax number. (Exhibit 44) |
| | Accepting quotes purportedly from different vendors sent from the same fax number. |
| | Accepting quotes purportedly from different vendors, yet each quote lists the same sales representative for each quote submitted. (Exhibit 45) |
| | Accepting verbal quotes. |
| | Failing to ensure quotes were signed, dated, and sent from the originating company. |
| | Removing fax stamp header information to conceal the fax origination. |
| | Accepting quotes from both the local dealer for an equipment line and the manufacturer. (Exhibit 46) |
| Directing vendors to submit quotes in a specific manner. | |

| Instances of Wrongdoing or Omissions by ODOT Employees (Continued) | |
|--|--|
| Quote Awarding | Failing to review competing quotes for legitimacy because ODOT purchaser had predetermined who was going to win the quote. |
| | Considering for award quotes faxed from two different business locations for the same vendor. |
| | Accepting and considering quotes dated and received after the response due date. |
| | Considering quotes submitted for the same amount without documenting why one vendor was selected over another. |
| | Considering a quote submitted for more than one purchase. |
| | Considering quotes with different specifications or insufficient specifications to complete a comparison of similar or like items. |

As a result of Office of the Ohio Inspector General Report of Investigation 2007-100, released October 16, 2008, involving ODOT District 12 bidding practices, ODOT issued Quote Guidelines, effective July 1, 2009, [\(Exhibit 4\)](#) as supplemental guidance to the Purchasing and Contract Administration manual for purchasers using direct purchase authority and provided direction on how purchasers should solicit quotes to purchase goods and services. The Quote Guidelines mandated the use of the letterhead quote request form and provided guidance on equipment specifications documentation, acceptable quote responses, non-responsive quotes, selecting the winning quote, and the level of supervisory review required when making such purchases.

The Quote Guidelines also required the purchaser to forward the solicited quotes to the district fiscal office for review and approval before making the purchase to determine the quotes' validity, whether the required number of quotes was obtained, and that like items were quoted by the vendors. If the quotes did not meet these requirements, or an insufficient number of valid quotes were obtained, the Quote Guidelines required the quotes to be returned to the purchaser with directions to solicit new quotes for the item being purchased.

Quality Assurance Reviews of transactions conducted after the issuance of this manual to determine whether ODOT employees were complying with ODOT policies and procedures identified recurring noncompliance.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in the following instances:

| Instances of Wrongdoing or Omissions by ODOT Employees | |
|---|--|
| Quote Solicitation | Failing to use the letterhead quote request form. |
| | Failing to document the quote request date and due date. |
| | Inconsistent and unclear equipment specifications. |
| | Requesting and accepting verbal quotes. |
| | Failing to obtain the required number of quotes. |
| | Requesting quotes after the purchase was made. |
| | Soliciting quotes from vendors when items being purchased are available on contract. |
| | Failing to obtain quotes for items thought to be on contract when either they were not or the contract had expired. |
| Quote Information | Failing to document the purchase was from a sole source vendor and the explanation why the vendor was determined to be the sole source supplier. |
| | Failing to document when quotes were received and that a response was not received. |
| Quote Delivery and Award | Accepting and considering quotes which were not for like items. |
| | Failing to ensure quotes were signed and dated by the vendor. |
| | Accepting and considering quotes dated and received after the response due date. |
| | Considering expired quotes when selecting the winning vendor. |

On December 9, 2011, ODOT issued Standard Procedure No. 210-00, increasing the monetary thresholds when more than one quote is required. The minimum threshold when quotes were required to be obtained was increased from \$1,000 to \$2,500 and the purchaser was permitted to obtain only one verbal quote.³⁰ This procedure did not exempt purchases from being considered in the calculation of the \$50,000 annual purchase limit and required supervisory approval before making the purchase.

During an interview conducted on March 12, 2012, the ODOT District 11 facilities and equipment manager indicated that ODOT employees were asking vendors to recommend other vendors whom they could solicit quotes when they did not know of any other vendors who would sell the product being purchased. Additionally, the manager stated the county garage requested a specific brand of arrow board be purchased when there might be alternatives which

³⁰ Previous guidance required the use of the letterhead quote form and did not authorize the acceptance of verbal quotes.

met the required specifications. These actions further supported the need for refresher training on applicable ODOT policies and procedures.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in this instance.

Quote Record Keeping

Upon receipt of vendor quotes, each district had a different process for providing the required support documentation to the fiscal office for generating a purchase order. ODOT’s records retention schedule requires these documents, including requisitions, purchase orders, and quotes, be maintained for the current fiscal year plus four fiscal years.³¹

During interviews of certain ODOT employees, the following district practices for entering information into ODOT’s Appropriation Accounting System to create the purchase order requisition were identified:

| District | Who Obtained the Quotes | Who Maintained the Quotes | Who Created the Requisition | What was Used to Create the Requisition |
|----------|-------------------------|---|-----------------------------|---|
| 3 | Purchaser | Original - Fiscal Office Copy - Purchaser | Fiscal Office or Purchaser | Original quotes |
| 5 | Purchaser | Purchaser | Fiscal Office | Purchase Order Requisition Form generated and submitted by purchaser to the Fiscal Office |
| 7 and 11 | Purchaser | Fiscal Office | Fiscal Office or Purchaser | Original quotes |
| 8 | Purchaser | Fiscal Office | Fiscal Office | Email with information and original quotes |
| 10 | Purchaser | Purchaser | Purchaser | Original quotes |

During an interview conducted on August 26, 2009, ODOT District 5 Acting Facilities Manager Keith Raines stated he had forwarded all quotes to auditing for review, until ODOT District 5 Fiscal Officer John Kalis instructed him in approximately 2001 to maintain the quotes in his office, and claimed Kalis rarely reviewed them. During an interview conducted on July 11,

³¹ Per Ohio Department of Administrative Services Records Retention Schedule Series Number 770-2514 titled Requisitions, Purchase Orders & Quotes.

2011, Kalis confirmed that Raines maintained the quotes and Kalis did not see the actual quotes obtained. Kalis also explained his staff created the requisition in the Automated Purchasing System based on the information provided by Raines and other purchasers and they did not verify the accuracy of the information on the purchase order request form.

During an interview conducted on August 3, 2009, ODOT District 10 Equipment Manager Tom McNabb stated copies of the quotes were kept in his office and the District 10 fiscal officer never saw them. However, McNabb explained these practices changed after the release of the Office of the Ohio Inspector General Report of Investigation 2007-100 on October 16, 2008.

During the current investigation, ODOT quotes, original purchase orders, payment card charge slips, and invoices well within the time-frame of ODOT's record retention schedule could not be located and records were maintained for varying lengths of time. For example, ODOT District 11 Fiscal Officer Larry Patterson responded on July 13, 2009, that he was unable to locate the fiscal year 2006 records, but located the requested records for fiscal years 2004, 2005, 2007, 2008, and 2009. When asked why the fiscal year 2006 records were not available, Patterson stated he thought the documents may have been accidentally thrown away or destroyed. At the time of the investigation's request for ODOT's fiscal records, ODOT District 11 should have had retained, per ODOT's record retention schedule, records for fiscal years 2005 to the present day.

By permitting each ODOT district to determine who was responsible for maintaining original quote records, ODOT created a system which did not allow for easy retrieval of requested records and limited the districts' ability to verify records were maintained in accordance with its records retention schedule. As a result of the inconsistency in districts' records storage, ODOT failed to maintain quotes and associated support documentation in accordance with its records retention schedule.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in this instance.

Effective July 1, 2009, ODOT issued new Quote Guidelines to standardize its procedures involving the gathering, approving, and maintaining of quotes. These procedures require the purchaser to submit the quotes to the district fiscal office for approval before making the purchase. The original quotes obtained are then maintained by the district fiscal office with other documents supporting the purchase. By implementing these procedures, ODOT eliminated the inconsistencies of document storage, and developed a system to permit easy retrieval of documents.

Quotes and ODOT's Automated Purchasing System

Depending upon the ODOT district, the purchaser provided a completed purchase order requisition form, sent an email, or forwarded the quotes with the required information to the district fiscal office which then entered the required information into the Automated Purchasing System (APS) to generate a purchase order requisition. The district fiscal office, or in some instances the purchaser, entered the quote information into the internal comments screen for the purchase order requisition for review and approval by the district fiscal officer. To assist their employees in entering required information into APS, ODOT developed manuals detailing the process to be followed and defining the data to be entered into each requisition's computer screen. Once the information was entered, the requisition was available for immediate supervisory approval.

APS' electronic requisition consists of a minimum of six screens documenting vendor information, applicable accounting codes, items to be purchased, relevant descriptions, internal comments, and supervisory approval. Additional guidance and examples of information for the items to be purchased, descriptions, and comments to be entered into the system were included in a requisition manual. ODOT manuals stated that for the comments screen, the employee entering the information should list the quotes obtained, provide sole source justification, and include an explanation as to why the payment card was not used. These manuals require that all quotes awarded to or submitted by the selected vendors, or an explanation justifying the vendor as a sole source should be entered in the requisition internal comments screen for supervisory review.

During an interview conducted on August 26, 2009, ODOT District 5 Acting Facilities Manager Keith Raines stated that ODOT District 5 Fiscal Officer John Kalis' review of quotes entered into ODOT's Automated Purchasing System was limited to the summary information and the single page summaries Raines prepared. Raines stated that the original quotes were available for Kalis' review, but he did not ask to review them often.

During an interview conducted on July 11, 2011, Kalis confirmed he did not review quotes prior to spring of 2009 unless he was requested to do so during the Central Office Quality Assurance Review. Kalis also stated that it was the account clerks' responsibilities to verify the winning vendor's name and who were the competing vendors. Kalis stated the remaining responsibility to comply with ODOT policies and procedures belonged to the purchaser. An interview with Kalis' staff confirmed the only information they received was the purchase order request form completed and provided by the purchaser.

During an interview conducted on August 3, 2009, ODOT District 10 Equipment Manager Tom McNabb stated that prior to the ODOT District 12 investigation being released, the District 10 fiscal officer never reviewed the quotes he maintained. Instead, the fiscal officer and his predecessors relied upon the information entered into the Automated Purchasing System to verify that the quotes were obtained.

The investigation identified the following noncompliance during a review of the internal comment entries recorded in the Automated Purchasing System:

- Quote information was either entered in its entirety; only a portion of the quote information was entered; the winning vendor's quote information was not entered; or no quotes were entered.
- Little or no explanation was entered supporting the justification of the vendor as a sole source; why the bid specifications were not met; why the lowest quote was not selected; and why the item was an emergency purchase.
- Questions requesting clarification of vendor relationships from supervisors or ODOT's Central Office were unanswered.

During an interview conducted on August 17, 2011, ODOT District 5 Fiscal Office Management Analyst 1 Amanda Wellman explained that for a period of time, she only entered the losing quotes in the internal comments screen instead of all the quotes. This practice has been changed in accordance with the new policies, and purchasers are required to enter all of the quotes submitted in the internal comments screen.

By not requiring specific minimum information be entered and relying only upon the information entered into the Automated Purchasing System, ODOT district and Central Office supervisors reviewing the electronic data made uninformed decisions in determining whether the purchase was processed in accordance with ODOT policies and procedures. This lack of sufficient information resulted in approval of purchases contrary to ODOT policies and procedures.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in this instance.

On November 29, 2011, ODOT's Office of Accounting developed a Requisition Entry Guide defining the type of information to be included in each of the electronic data screens. The guide listed the following information to be entered in the Automated Purchasing System internal comments screen: Quote information, sole source explanation, approvals from the Ohio Department of Administrative Services/ Office of Technology and the reason for holding or rejecting the requisition.

Current ODOT procedures also require that the quotes be submitted to the district fiscal office for review and approval prior to generating a requisition and making the purchase. If this process had been implemented prior to July 1, 2009, and had relevant quote information been entered into the requisition's internal comments screen, supervisors and the district fiscal office would have likely identified the instances in which an owner of multiple companies submitted competitive quotes, resulting in a lack of competition.

Payment Cards

ODOT participates in the State of Ohio's payment card program encouraging cardholders to purchase equipment, materials, and supplies costing less than \$1,000 per transaction and up to \$2,500 to reduce ODOT's payment processing costs. Prior to making a purchase, the cardholder determines whether the cost of the equipment or supplies will exceed \$1,000. If so, the cardholder is required to obtain at least two quotes. If the anticipated cost exceeds \$2,500, the payment card cannot be used.

Each district determines which positions or employees are assigned payment cards. As such, certain positions in one ODOT district may be assigned payment cards though another district may not have assigned a card to that comparable position. Because of their autonomy, each district can assign payment cards to ODOT employees as they deem appropriate.

When making a payment card purchase, ODOT purchasing policies and procedures directed employees to first obtain the required number of quotes, purchase the item, and then enter the quote information into the payment card computer system for supervisory review and payment processing. Once the purchase is made, the cardholder completes either a manual or electronic log, records on the invoice that the goods were received, documents the assigned inventory or equipment number, and forwards the invoice and charge slip to the district fiscal office to approve and process for payment.

ODOT's Purchasing and Contract Administration manual provides guidance on allowable purchases, how to make purchases, how to secure the payment card, documentation requirements, and defines what information is to be recorded in the comments screen. The manual also requires support documentation for the purchase, including quotes, be maintained manually or electronically and require inventory numbers for purchases over a specified limit be entered into the comments screen. Since February 2003, the manual required the listing of quotes and backup justification for emergency and non-contract purchases be entered into the comments screen. [\(Exhibit 2\)](#)

The investigation identified instances in which A&A Safety forwarded an ODOT purchase request and the ODOT purchaser's payment card number via facsimile and email to another

vendor, Bain, who then processed the charge. By permitting vendors to retain and share ODOT payment card information, ODOT’s risk increases significantly that the payment card number could be stolen, resulting in unauthorized charges.

During an interview conducted on August 17, 2011, ODOT District 5 Fiscal Office Management Analyst 1 Amanda Wellman stated that prior to the change in policies and procedures in 2009, the Fiscal Office employee processing payment card transactions would only request the support documentation for a purchase after the purchase had been made. This interview also confirmed the supporting quotes were maintained by the purchaser and not the fiscal office prior to 2009.

The investigation’s review of available hard copy and electronic support documentation for payment card purchases identified instances of noncompliance with ODOT policies and procedures and applicable ORC sections.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in the following instances:

| Instances of Wrongdoing or Omissions by ODOT Employees | |
|--|--|
| Purchasing | Failing to enter quotes obtained into the payment card system comments screen. |
| | Splitting purchases on two different invoices to avoid quote threshold requirements. (Exhibit 47) |
| | Vendors’ incorrectly charging purchases belonging to another customer to an ODOT payment card because the vendor maintained the purchaser’s payment card number on file. |
| | Failing to maintain documentation supporting the item purchased and quotes solicited. |
| | Failing to provide justification/explanations for sole source or emergency purchases. |
| | Failure to document the goods or services were received and entered into inventory. |
| Payment Card Security | Failing to redact credit card numbers and expiration dates to prevent potential theft of the numbers. |
| | Vendors maintaining ODOT purchaser payment cards on file. |
| | Sharing of ODOT purchaser payment card numbers between vendors. |

Failing to provide uniform guidance to employees purchasing goods and services resulted in confusion and in employees not complying with required policies and procedures. In September 2010, ODOT issued an updated Payment Card Manual providing detailed guidance on purchase requirements, separation of duties, safeguarding payment card information, obtaining credits, and the specific documents to be maintained. Additionally, ODOT payment card purchasers were also required to follow ODOT’s 2008 Purchasing and Contract Administration Manual which did

not include detailed guidance contained in the 2010 Payment Card Manual or earlier versions. Obligating ODOT purchasers to refer to separate sources of policies and procedures to execute purchasing responsibilities created confusion.

After the issuance of the 2010 Payment Card Manual in September 2010, Quality Assurance Reviews conducted by ODOT personnel conducting Quality Assurance Reviews determined noncompliance continued to occur.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in the following instances:

| Instances of Wrongdoing or Omissions by ODOT Employees |
|--|
| Purchasing |
| Failing to enter quotes obtained in their entirety into the payment card system comments screen. |
| Splitting purchases on two different invoices to avoid quote threshold requirements. |
| Purchases made from one vendor were processed and charged to ODOT by a subsidiary vendor. |
| Failing to provide justification/explanations for sole source purchases. |
| Failing to complete the payment card labels identifying sole source purchases, MBE purchases, and phone calls. |
| Payment Card Security |
| Failing to redact credit card numbers and expiration dates to prevent potential theft of the numbers. |

Nepotism

Nepotism is defined as showing favoritism to vendors, employees, or coworkers when making business decisions based on a family relationship. The Ohio Department of Administrative Services issued a directive effective September 1, 2009, stating public officials and employees are prohibited from authorizing or using the authority of his or her position to secure the authorization or benefit for individuals related by blood, marriage, or a significant relationship such as a business association. This directive states such benefits include employment, promotion, and it applies to both hiring and supervision of employees.

ODOT has implemented policies to address nepotism in the hiring, promoting, and transferring processes and requires the completion of the Supplemental Nepotism Statement. **(Exhibit 48)** However, ODOT policies do not address a spouse approving or supervising the activities of his

or her spouse or immediate family member. The investigation identified an instance in District 3 and an instance in District 7 where one spouse approved his or her spouse's purchases or reviewed his or her spouse made purchases in accordance with ODOT policies and procedures. As of the date of this report, the employees responsible for approving these transactions and practices have left their ODOT employment.

Internal controls such as supervisory approvals are used to ensure ODOT policies and procedures are followed by the purchasers. Because both the purchaser and approver were ODOT employees, their vested interest in the transaction was inconsequential; however, this practice gives the appearance to the public that a conflict of interest, preferential treatment, or improper influence might exist.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that an appearance of impropriety may have occurred in this instance.

In September 2010, ODOT issued a Payment Card manual stating "... that no immediate family member may approve, receive, or document a purchase initiated by, or on behalf of, another immediate family member." However, this specific guidance is not referenced or included in the Purchasing and Contract Administration or Quote Guidelines manuals. Failing to include uniform and consistent procedures in all ODOT- issued guidelines referred to by employees can result in confusion and result in the employees not complying with required policies and procedures.

Receipt of Goods Purchased

ODOT's Purchasing and Contract Administration manual requires purchasers using direct purchase authority to: verify goods are received, ensure purchases meet specifications, and obtain the appropriate documentation prior to submitting the invoice for payment. ODOT policies and procedures also state consumable inventory items, fleet equipment purchases, and attachments to fleet equipment not permanently affixed must be entered into the Equipment Management System regardless of the cost³² and assigned a stock number. [\(Exhibit 49\)](#)

³² Prior to May 1, 2010, ODOT procedures permitted the exclusion of maintenance and traffic items less than \$10 per unit and garage items less than \$5 per unit from the inventory.

According to ODOT personnel, the Equipment Management System and the Automated Purchasing System are unable to transfer information between the two computer systems. As such, an ODOT employee has to manually compare the invoiced items to items received in the Equipment Management System prior to processing the invoice for payment.

The investigation determined the invoices documented the goods were received, but often failed to document the related inventory, stock, or receiving number. Investigators were unable to locate goods purchased from two selected vendors which were required to be entered as received in the Equipment Management System. Discussion with ODOT personnel revealed that when an item was going to be installed on a piece of equipment or was going to be used within a few days, the item typically was not recorded as received in the Equipment Management System.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in this instance.

In the Office of the Ohio Inspector General's ODOT District 12 investigative report, a recommendation was made for ODOT to implement the segregation of receiving and inventory duties and to synchronize the purchasing and inventory databases. ODOT has revised its practices to segregate purchasing, receiving, and inventory duties among its personnel. ODOT purchasers are currently required to document on the invoice an inventory stock, equipment, or receiving number on the invoice prior to submitting the invoice to the district fiscal office for payment. Prior to processing the invoice for payment, the district fiscal office is required to verify the items purchased were entered into inventory. Due to the incompatibility of ODOT's accounting and inventory systems, ODOT is unable to electronically synchronize purchases and inventory.

Maintaining Vendors List

Before ODOT can issue a payment, the vendor must be included in the Ohio Administrative Knowledge System (OAKS)³³ vendor master file maintained by Ohio Shared Services.³⁴ This file is electronically sent to ODOT to update the vendor master file in the Appropriation Accounting System which is used by the Automated Purchasing System to generate purchase orders. The investigation identified the following during a review of payments issued by ODOT:

- The vendor master file address history in OAKS incorrectly lists Ace Truck Body's address, which is located in Grove City, with the same address as Ace Truck Equipment located in Zanesville.
- The vendor master file maintained by Ohio Shared Services and ODOT do not identify affiliated vendors³⁵ for each vendor who submits quotes to ODOT. However, ODOT does have an internal computer system that is used to track affiliated vendors for prequalified contract bidders.
- ODOT employees accepted quotes from a vendor, Petro Pascal Inc., as recently as February 20, 2007, which were not included in the vendor master file and had ceased to exist in 1991. [\(Exhibit 39\)](#)
- OAKS permitted the issuance of a payment to Equipment Salvage Inc. on November 3, 2008; however, the company had been dissolved on April 23, 2008.

By failing to update its internal vendor master file and notifying Ohio Shared Services of inaccuracies found in the vendor master file, ODOT employees accepted quotes from vendors who did not exist.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in this instance.

³³ Prior to Ohio Shared Services maintaining the vendor master file, ODOT maintained its own internal master file.

³⁴ Ohio Shared Services is a division of the Ohio Office of Budget and Management which serves as a business processing center that processes common administrative transactions for state agencies and business vendors. Responsibilities include maintaining the state of Ohio vendor database.

³⁵ Affiliated vendors are those companies owned by the same individual but assigned separate tax identification numbers.

The ODOT District 12 investigative report issued by the Office of the Ohio Inspector General recommended ODOT require vendors receiving in excess of \$3,000 in aggregate ODOT business in a fiscal year to "... disclose their ownership or proprietary interests in any other business as a prerequisite to doing business with ODOT." In its response to this report, ODOT stated a vendor database and on-line quoting system was being developed for use by vendors and purchasers.

Discussions with current ODOT personnel indicated the contractor prequalification process for qualifying bidders requires the vendor to identify subsidiaries and affiliated companies and ODOT maintains a spreadsheet identifying known affiliated vendors for distribution to its purchasers. However, no other written procedures or computer systems exist to ensure vendors who were not a prequalified bidder notify ODOT of their subsidiaries and affiliated companies prior to submitting quotes. Additionally, an on-line quote system has not been developed for use by vendors and purchasers when making purchases using direct purchasing authority. Instead, an Excel quote form was developed for the purchaser to generate a quote request form, which is then sent to the vendors.

Annual Purchasing Limit

ORC §127.16(B) provides:

except as otherwise provided in this section, no state agency, using money that has been appropriated to it directly, shall: (1) Make any purchase from a particular supplier that would amount to fifty thousand dollars or more when combined with both the amount of all disbursements to the supplier during the fiscal year for purchases made by the agency and the amount of all outstanding encumbrances for purchases made by the agency from the supplier, unless the purchase is made by competitive selection or with the approval of the controlling board ...

During an interview conducted on July 16, 2009, Transportation Manager 3 Phil Shafer stated he checked to determine whether vendors had reached or were near the \$50,000 annual limit and he intentionally did not obtain quotes from vendors who were at this limit in order to meet the three-quote requirement.

During an interview conducted on July 23, 2009, ODOT District 11 Equipment Superintendent Howard Carpenter stated that in his district, it was the purchaser’s responsibility to check the vendor list and it was improper to intentionally obtain a quote from a company that reached this limit. Later in his interview, Carpenter admitted to obtaining quotes from one of the Ace Truck Equipment- affiliated companies which was at the time at the \$50,000 annual purchasing limit and was forced to award the quote to the second highest bid, which was also an Ace Truck Equipment-affiliated company.

ODOT District 5 Acting Facilities Manager Keith Raines stated during an August 26, 2009, interview that he had, on occasion, intentionally accepted quotes from vendors who exceeded the \$50,000 annual purchasing limit and knowing the quote was invalid in order to obtain the required number of quotes. Raines stated that he “tried never to do it, but it happened.”

Investigators examined a file obtained from ODOT’s Office of Finance for the selected vendors’ and their affiliated companies’ and corresponding voucher and payment card purchases for fiscal years 2002 through 2011, and identified the following instances in which the vendor or its affiliated companies exceeded the \$50,000 annual purchasing limit:

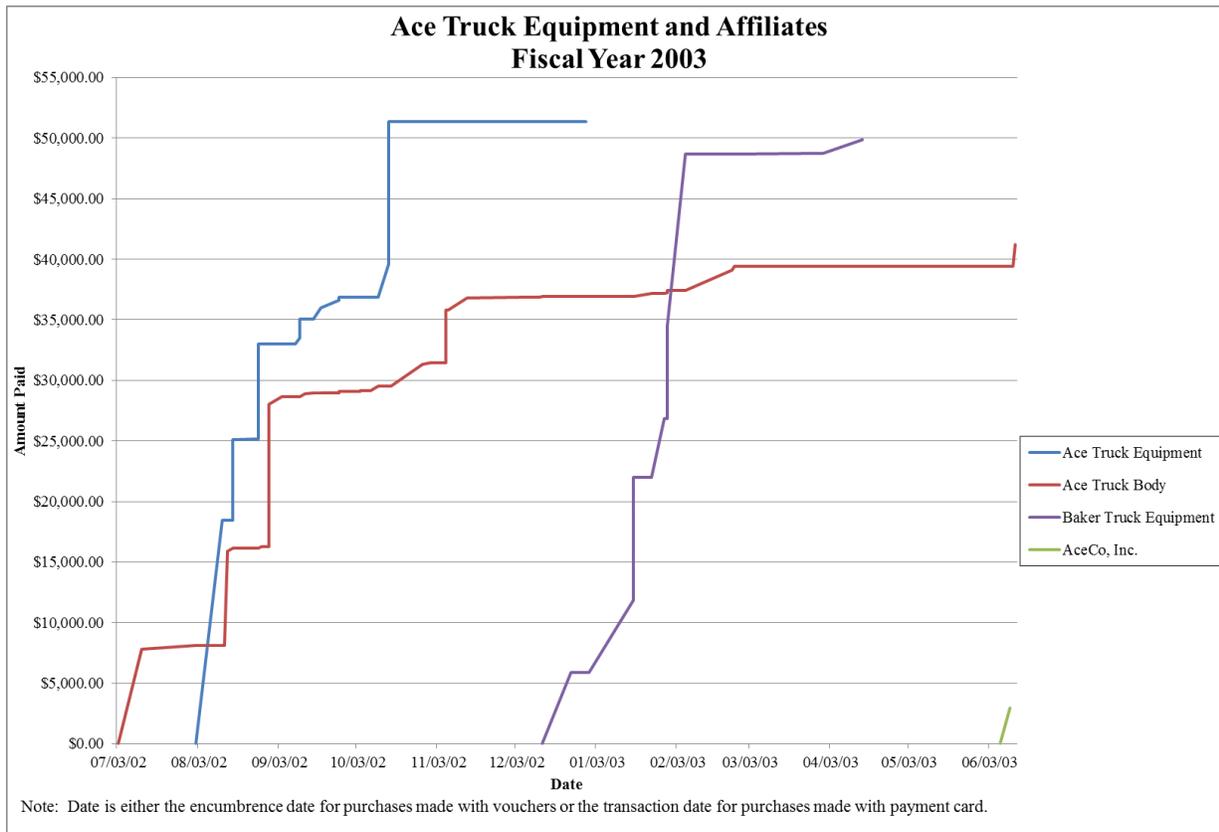
| Vendor | Fiscal Year | | | | | | | | | |
|------------------------|-------------|--------|--------|--------|--------|--------|--------|--------|--------|------|
| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| Ace Truck Equipment | 63,955 | 51,338 | 50,015 | | | | | | | |
| A&A Safety | | 62,538 | | 53,824 | 67,272 | 55,730 | 50,388 | 51,102 | | |
| Bain Enterprises | | | | | 50,129 | | | | | |
| Rath Builders Supply | 56,572 | | 50,885 | | 51,957 | 51,688 | | | | |
| Southeastern Equipment | | | 57,702 | 60,355 | 53,081 | 55,453 | 57,878 | 62,155 | 52,621 | |
| Pengwyn | 62,197 | | | | 52,905 | | | | | |

As evident in the table above, ODOT purchasers were not verifying and district fiscal officers were not monitoring whether a solicited vendor had reached or would exceed the \$50,000 annual purchase limit. However, in an interview conducted on July 11, 2011, ODOT District 5 Fiscal Officer John Kalis stated he periodically received emails from the Central Office identifying vendors who had reached this limit.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in this instance.

ODOT employees either solicited quotes from vendors exceeding their \$50,000 annual purchasing limit, or failed to review the vendor list which indicated whether a vendor reached its \$50,000 annual purchasing limit, or advised vendors who had reached their \$50,000 annual purchasing limit to submit a quote from one of their affiliated companies. This notification permitted vendors to use affiliated companies to submit quotes in an effort to receive business in excess of \$50,000.

The following chart shows an example of Ace Truck Equipment using its affiliated companies, Ace Truck Body, then Baker Truck Equipment and AceCo Inc. to maximize their business from ODOT and avoid the \$50,000 annual purchasing limit:



Effective July 1, 2009, ODOT Office of Accounting has been sending weekly updates to active payment card holders and district fiscal officers identifying the vendors at the \$50,000 annual purchasing limit. The ODOT Office of Accounting administrator stated a weekly listing is also currently being sent to purchasers identifying those vendors at \$48,000 or higher. The administrator added that purchasers are required to contact ODOT Central Office to determine whether the \$50,000 limit has been reached and to ascertain, prior to making the purchase, whether it would result in the vendor exceeding this annual limit. By implementing this practice and requiring employees to check this list prior to making a purchase, ODOT ensures that the annual spending limit per ORC §127.16 is not exceeded.

To assist the purchasers in ensuring they have complied with ODOT policies and procedures for the annual purchasing limit, the ODOT Office of Finance developed and distributed a checklist³⁶ for use by the districts. Conversations with the ODOT Office of Accounting administrator revealed while each district has its own version of the checklist, which is not mandatory, it is not always checked when using direct purchase authority to purchase goods or services.

Quality Assurance Reviews

In order to determine whether purchasers were complying with ODOT policies and procedures, ODOT implemented a Quality Assurance Review program in July 2000. Prior to 2008, this review typically occurred every one to two years and involved ODOT Central Office employees reviewing district records to determine compliance with policies and procedures. Quality Assurance Reviews (QAR) conducted during the period from July 1, 2002 through June 30, 2009, identified the following instances in which ODOT employees were not complying with its purchasing and contract administration policies:

- Failure to obtain the required number of quotes.
- Failure to reference the relevant contract in the Automated Purchasing System.
- Failure to include quotes and explanations for emergency and sole source purchases in the purchase order requisition's internal comments.

³⁶ This checklist identifies steps to be taken to ensure compliance with ODOT's policies and procedures. Such steps include whether the correct number of quotes per policy were received, whether the quotes were signed and dated, and whether the vendor had reached the \$50,000 annual spending limit.

- Soliciting quotes from vendors who had exceeded the \$50,000 annual purchasing limit.
- Soliciting quotes from known affiliated companies, thereby eliminating competition.

Upon completion of the review, a report was provided to the district office for its review. If significant noncompliance was identified, the district was required beginning in 2008 to submit a corrective action plan addressing those weaknesses. Also, the district was required to complete the steps to become compliant with ODOT policies and procedures. If the noncompliance has not been resolved after completing two corrective action plans, the specifics of the district's noncompliance issues are forwarded to the chief of staff for resolution.

Several of the QAR reports identified instances of noncompliance of purchasing and inventory policies and procedures. ODOT's Quality Assurance Review administrator stated the district participating in the review was aware of the areas being reviewed and the noncompliance identified. However, the particulars of the noncompliance and any best practices identified during the review were not shared with other districts which negated any potential reform of similar practices that might be evident in other districts.

Regarding the Office of the Ohio Inspector General ODOT District 12 investigation, ODOT stated that in order to be effective in addressing the recommendations and problems identified, "continued training, Quality Assurance Reviews and revisions to existing policies and procedures to create checks and balances will be necessary." Effective in 2009, ODOT's Division of Finance implemented a desk Quality Assurance Review to be completed by the district fiscal office every six months and a site review to be completed by the Central Office after three desk reviews to determine whether ODOT policies and procedures were followed. ODOT is currently reassessing the Quality Assurance Review process for several divisions, including, but not limited to, Construction Management, Engineering, and Planning.

A review of Quality Assurance Review reports for fiscal years 2010 and 2011 revealed an increase in compliance with ODOT purchasing and contract policies and procedures. During an interview conducted on July 11, 2011, ODOT District 5 Fiscal Office Management Analyst 1 confirmed it was possible while performing the desk Quality Assurance Review that her data entry information could have been selected for her to review. While this practice identifies and

allows for the correction of noncompliance issues in a timely manner, problems may be concealed when a district fiscal office employee reviews its own transactions for compliance with ODOT policies and procedures.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that an appearance of impropriety may have occurred in this instance.

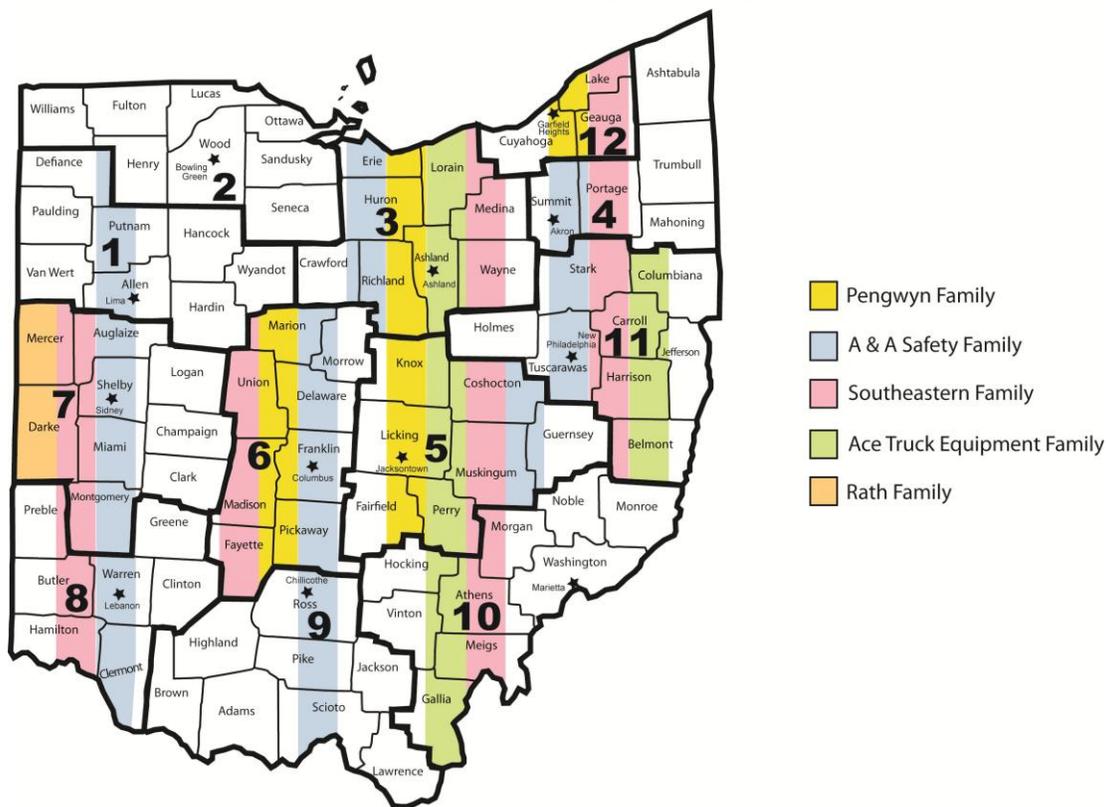
Communication of Investigative Results

The Office of Investigations is responsible for conducting investigations of ODOT employees who violate work rules, engage in illegal activities, and wrongdoing. An investigation into ODOT District 2 bid practices for quotes awarded in 2005 and 2006 was brought to the attention of the Office of the Ohio Inspector General. The investigation revealed former ODOT District 2 Facilities Manager John Gordon violated ODOT's bidding process by colluding with vendors to pre-determine who was going to be awarded the bid based on their location. The vendor contacted would either submit quotes or work with the other two vendors to submit quotes in order to fulfill the required number of quotes. This agreement between the ODOT employee and the vendors avoided competition.

During an interview, former ODOT District 2 Facilities Manager John Gordon admitted they engaged in these practices, were properly trained on the correct procedures to follow when obtaining quotes, and they modified the bid procedures to circumvent ODOT's policies and procedures in an effort to minimize the length of time waiting for the repairs to be completed. As a result of this investigation, the ODOT employee was placed on administrative leave and subsequently resigned.

The following chart identifies the districts where the selected vendors and their affiliated companies submitted competing quotes thereby reducing, or in some cases, avoiding competition:

**Ohio Department of Transportation
Case #2008332
Collusive Bidding Activity**



As evident in the above chart, District 2 did not have any identified instances in which vendors and their affiliated companies submitted competing quotes thereby reducing or eliminating competition. District 2's lack of instances may be the result of the sanctions imposed on the employee who failed to follow proper bidding procedures. Had the investigative results been shared with other ODOT districts and divisions, the issues identified throughout this investigative report may have been identified earlier, corrected, or prevented.

Training

ODOT provides training to its employees to assist them in completing their job responsibilities and ensure they understand current ODOT policies and procedures and relevant state and federal laws. Training records maintained for selected employees indicated training classes addressing policies and procedures for contracts, purchasing, safety issues, technology, equipment, and several other subjects were provided.

Transactions processed from July 1, 2001, through June 30, 2009, were subject to guidance contained in three different Purchasing and Contract Administration manuals issued in 1998, 2005, and 2008. When issued, ODOT trained the purchasers on the revised procedures. However, only two contract training classes conducted in 2002 and 2009 were provided to purchasers. No refresher trainings were offered to purchasers in the years in which a revised manual was not issued.

This investigation has identified and reported numerous instances from July 1, 2002, through June 30, 2009, in which ODOT employees failed to comply with ODOT policies and procedures. However, the investigation recognized when purchasers were trained on the policy and procedural provisions and were notified by the QAR team of noncompliance issues, the noncompliance instances decreased. This is illustrated in the chart that included the Ace Truck Equipment portion of this report reflecting an increased number of quotes awarded to 17 other competitors. This example emphasizes the need for ODOT to provide periodic policy and procedural refreshers to ensure its employees comply with ODOT policies and procedures.

ODOT recognized the need to revisit and retrain employees in its response to the Office of the Ohio Inspector General Report of Investigation 2007-100 which identified similar issues at ODOT District 12. In response to that investigation, the former director of ODOT drafted a letter dated December 16, 2008, stating that:

“... [ODOT leadership] was selected to be change agents...”

“... [ODOT created] a database that identifies vendors, their affiliates, parent companies and subsidiaries so that related vendors do not bid against each other...”

“... continued training, Quality Assurance Reviews and revisions to existing policies and procedures to create checks and balances will be necessary.”

“... ODOT continues to eliminate ‘a decade of improper business transactions’”

However, the results of this current investigation indicate that further effort needs to be focused in the area to eliminate “a decade of improper business transactions.”

Arm's Length Transactions

ODOT policies and procedures permit ODOT purchasers requesting quotes to provide vendors clarification on the requested specifications. Interviews conducted with sales representatives for Ace Truck Equipment, Ace Truck Body, and Kaffenbarger Truck Equipment revealed ODOT purchasers often contacted certain vendors when needed to assist them in developing requested equipment specifications. In some instances, all of the vendors being solicited for quotes were invited to meet and review ODOT's needs and, in some instances, the sales representative stated he or she was the only vendor present. In an interview conducted on July 16, 2009, Transportation Manager 3 Phil Shafer acknowledged the specifications which were reflected on quotes from Ace Truck Body and Fallsway Equipment Co. were provided by Ace Truck Equipment Sales Representative Darren Founds.

A review of emails between ODOT and selected vendors identified instances in which A&A Safety and other ODOT employees were sent draft specifications or operational guidelines to provide comments, additions, and to make corrections. In some instances, these requests were sent to one or two other vendors. However, the requests were only sent to the same small group of vendors.

During interviews, vendor sales representatives indicated that they often were asked to provide a quote on the equipment being purchased in which they assisted in developing the specifications. In the case of A&A Safety, President Bill Luttmner was providing input on striping removal guidelines, a service that A&A Safety offers. [\(Exhibit 50\)](#) Interviews with ODOT employees and vendor sales representatives revealed that requests for only one vendor to provide assistance in developing the specifications occurred; that vendors provided meals to ODOT employees while discussing these specifications; and in one instance, a vendor traveled to an ODOT employee's parents' residence for a home-cooked meal.

Vendors have an unfair advantage when they have the ability to provide input on ODOT quote specifications, on operational guidelines, and when they are submitting quotes to purchasers after providing specifications of the quote. Additionally, a perception exists that those vendors are

receiving preferential treatment in the bid process because they have obtained additional information that may not have been provided to their competitors.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that an appearance of impropriety may have occurred in this instance.

Receipt of Gratuities by ODOT Employees

During the course of this investigation, documentation supporting selected vendor expenditures and payments received by ODOT employees were reviewed to determine whether gratuities were provided by the selected vendors to ODOT employees in districts 1 – 11. The investigation reviewed expense reports from an A&A Safety sales representative which documented meal purchases for unidentified ODOT employees totaling \$1,757.20. Additionally, Ace Truck Equipment, A&A Safety, and Ace Truck Body sales representatives' expense reports documented meal purchases for state and local government employees totaling \$27,605.30. However, descriptions for the remaining \$25,848.10 of meal purchases were insufficient to identify the meal participants, and in some cases, whether the participants were state or local government employees.

A search of ODOT District 5 Transportation Manager Keith Raines' office discovered a memo dated December 13, 1996, from Raines to Southeastern Equipment ([Exhibit 51](#)) which revealed Raines was aware that ODOT had a policy that prohibited him from accepting gifts from vendors. However, in an interview conducted on August 26, 2009, Raines admitted to accepting meals from Southeastern, Pengwyn, Finton Equipment, and The McLean Company. In each case, Raines stated the value of the meals was inexpensive and he did not accept any other types of gratuities from vendors. Raines also admitted to visiting vendor James Kime's home and inviting Kime to his parent's home for meals on two occasions. Raines stressed that he believed the meals were incidental and that he bought "the best products for the money" from those firms.

Interviews with other ODOT district employees identified the following items were accepted from vendors:

- ODOT District 11: During an interview conducted on July 23, 2009, Transportation Manager Howard Carpenter admitted to accepting lunches, articles of clothing, two tickets to a minor league baseball game in Canton, and a jar of peanuts from Southeastern Equipment. Carpenter also stated he accepted free meals from Southeastern Equipment and that “I never thought anything about it” but stated he “didn’t make decisions based on that.” He also admitted during this interview to maybe accepting a dinner from Ace Truck Equipment Darren Founds and a sweatshirt, blanket, and mug from A&A Safety representatives.
- ODOT District 7: During an interview conducted July 16, 2009, Storekeeper 2 David Goffena stated that approximately 4 ½ years prior to his interview he was invited by Bain Industries owner Shelaugh O’Bryan to golf. Goffena stated he initially paid his greens fees but later learned that O’Bryan had canceled his credit card payment for the greens fees and charged them on her credit card.
- ODOT District 3: During an interview conducted on July 16, 2009, Transportation Manager Phil Shafer stated that he accepted meals from sales representatives from Ace Truck Equipment, Gledhill Road Equipment, Pengwyn, and Southeastern Equipment.

Accordingly, the Office of the Ohio Inspector General finds there is reasonable cause to believe that a wrongful act or omission occurred in this instance.

A review of ODOT training records revealed ODOT employees were provided fraud and ethics training on acceptable and unacceptable practices at least once every two years, including trainings held as recently as in 2009 and 2010. In addition, vendors were notified in ODOT’s April 23, 2009, standard terms and conditions ([Exhibit 52](#)), which was attached to awarded contracts and quotes, of their responsibility to comply with Ohio ethics and conflict of interest laws and Executive Order 2007-01S.

CONCLUSION

This investigation focused on five companies receiving payments from the Ohio Department of Transportation for purchases made using direct purchase authority in accordance with Ohio Revised Code §5513.01, §125.05, and §127.16. The five vendors under review sold truck bodies and parts; traffic control systems and equipment; heavy machinery equipment and parts; concrete pipe and other building supplies; and ice control equipment to ODOT. To receive payments totaling \$2,808,236.71, the winning vendor submitted to ODOT the lowest competing quote to purchase equipment, parts, or supplies costing in excess of \$1,000 during the period of July 1, 2001 through June 30, 2011.

ODOT policies and procedures adopted in accordance with ORC §5513.01 required its purchaser to obtain quotes for items costing more than \$1,000 when using direct purchase authority. ODOT purchasers were required to obtain two quotes for purchases in excess of \$1,000 but less than \$2,500 and three quotes for purchases in excess of \$2,500 but less than \$50,000. The quote requests sent by the purchasers to vendors were required to include the specifications of the item being purchased, the vendor being solicited for the quote, the purchaser/requestor's contact information, the request date, and the date the response was to be returned to ODOT. Vendors submitting quotes were required to respond to the requested specifications with a price for the requested item, an expiration date for the quote, and the name and signature of the individual submitting the quote to the requesting ODOT district or division. Upon receipt of the quotes, the ODOT purchaser evaluated the quotes and awarded the quote to the vendor submitting the lowest quote.

This investigation reviewed the conduct of the five vendors and their affiliated companies when providing assistance in developing specifications and submitting quotes. This report contains instances of conduct used by the vendors and their affiliated companies to circumvent or eliminate competition in an effort to steer ODOT business to them. Conduct included sales representatives entering into agreements to either not compete with each other or submit complementary quotes upon request; submitting competing quotes to ODOT from only the vendors and their affiliated companies; creating and submitting fabricated quotes; and directing competing vendors to submit quotes and in some instances, the quote amount to ODOT. This

conduct by the vendors was an effort to provide to ODOT the appearance that competition was occurring, when in reality competition was avoided. As a result of the conduct identified in this investigation, Vice President Bill Luttmmer entered a guilty plea on behalf of Quattro, Inc. to two felony counts on December 18, 2012. On the same date, current A & A Safety Sales Manager Timothy O'Brien entered a guilty plea to three misdemeanor counts for his participation.

During the period reviewed, ODOT purchasers confirmed policies and procedures existed. The selected purchasers stated during interviews that it was an acceptable ODOT practice to solicit quotes from affiliated vendors or subsidiaries provided the vendors had separate tax identification numbers. However, this practice did not condone ODOT purchasers' actions identified in this investigation where the ODOT employees requested and accepted from one vendor sales representative three vendor quotes to satisfy ODOT's policies requiring a specified number of quotes be obtained based on the estimated purchase price. In reality, this was done as a result of laziness by the ODOT employees, which is evidenced by the following quotes from ODOT employees obtained during this investigation:

- "It was easier and I got a good product and good service";
- This was "the easy way to do it," and it saved time;
- It saved them work while getting a good product, and, "make[s] things easier for me";
- They did so out of convenience, and "I got lax; I got lazy."

This investigation also identified numerous instances in which selected ODOT purchasers failed to comply with ODOT purchasing policies and procedures. Failure to follow these policies and the close relationship of these ODOT purchasers with the vendors created an environment which permitted the vendors to engage in unallowable practices. In response, ODOT purchasers dealt with vendors with whom they felt comfortable but did not ensure that ODOT received the best product for its money.

As a result of their admissions during their interviews with the Office of the Ohio Inspector General, ODOT completed a disciplinary review process which resulted in ODOT District 3 Transportation Manager 3 Phil Shafer retiring; termination of ODOT District 5 Acting Facilities

Manager Keith Raines, ODOT District 10 Equipment Manager Thomas McNabb, and ODOT District 11 Equipment Superintendent Howard Carpenter; and the suspension of District 7 Storekeeper 2 David Goffena for failure to follow ODOT purchasing policies and procedures.

Throughout this investigation, ODOT has implemented and revised its purchasing policies and procedures to reduce the instances of noncompliance identified in this report. However, ODOT's Quality Assurance Review results indicate that some of the compliance violations in this report continue to exist. In an effort to prevent vendors from engaging in the conduct identified in this investigation and to provide clarifying or additional guidance and information to ODOT employees to ensure quotes are obtained in a competitive environment, this report contains recommendations for policies and practices for quotes, training, monitoring, the annual purchasing limit, vendors, equipment, nepotism, and ODOT policies and procedures. Prior to and during this investigation, ODOT expanded the frequency of its Quality Assurance Reviews and required its districts and divisions to resolve noncompliance issues. As a result of this increased effort, the investigation noted a decline in identified noncompliance with ODOT policies and procedures and noted increased competition among vendors which prevented one vendor and its affiliated companies from engaging in practices to ensure they were awarded ODOT's business.

Purchasers and their supervisors serve as the first line of defense in determining whether the potential exists that the competitive quote process has been corrupted. The second line of defense is those employees in the fiscal office reviewing and approving the quotes solicited by the purchasers. A final, important defense is the expectations expressed by executive-, mid-, and lower-level management to ODOT employees emphasizing expectations to comply with established ODOT policies and procedures and to act in the taxpayers' best interest when making decisions. In addition to the bid corruption indicators identified in this report, purchasers, their supervisors, and district or divisional fiscal office employees should look for the following indicators requiring further review to determine whether bid corruption has occurred:

- Acceptance of quotes from vendors who were not solicited for a quote for purchases and contracts not publicly advertised;

- Wide disparities exist between quote amounts submitted by competitors;
- Submission of the same quote amount by multiple competing companies;
- Same competitors continuously submit bids against each other and one competitor is consistently awarded the bid or the winning bidder is rotated between these companies;
- Established bidding policies are not being followed;
- Consulting and developing quote specifications with a vendor when that vendor will be requested to submit a quote;
- Inadequate internal controls for soliciting quotes from interested bidders;
- Socializing between purchasers and vendors outside of normal work activities; and

Obtaining competitive quotes is not only required by ODOT purchasing policies, procedures, and the Ohio Revised Code; it is in the best interest of the taxpayers. By obtaining competitive quotes as required by ODOT policies and procedures adopted in accordance with the Ohio Revised Code, ODOT has established the framework to act as good stewards of taxpayers' dollars. Unfortunately, ODOT purchasers' failure to follow implemented policies and procedures provided a culture in which vendors could engage in the practice of feigning the appearance that competition was occurring. As a result, ODOT and Ohio taxpayers suffered a detriment as ODOT did not obtain the product for the lowest competitive price and instead paid a pre-determined price by the vendors. Continued use of the Quality Assurance Review process, considering the recommendations in this report, and complying with already established ODOT policies and procedures will assist ODOT's efforts to spend taxpayer dollars wisely.

RECOMMENDATIONS

The Office of the Ohio Inspector General makes the following recommendations and asks the Ohio Department of Transportation to respond within 60 days and submit a plan detailing how the recommendations will be implemented. The Ohio Department of Transportation should:

1. Internally review the actions of all employees involved in this report to determine whether their conduct and practice warrants further administrative action or training.

Quotes

2. Continue requiring the fiscal officer's review of quotes to determine the validity of quotes received; whether the required number of quotes were obtained; and the methods used to solicit, accept, and award quotes were compliant with ODOT's Quote Guidelines manual issued in October 2009 prior to approving purchases and charges for payment.
3. Continue the practice of developing generic specifications to avoid soliciting competitive quotes from a specific manufacturer, their dealers, or their distributors since the manufacturers provide discounts to their dealers and distributors potentially resulting in an unfair competitive advantage.
4. Revise the Quote Guidelines manual and ODOT purchasing policies and procedures to include reviews verifying the originating fax number and letterhead are for the identified vendor and that is where ODOT purchased the equipment.
5. Consider revising ODOT's policies and procedures to include additional steps taken when equipment is received from one vendor but is invoiced by another vendor. Steps to consider include verifying that ODOT actually received the goods purchased; that both vendors exist; determine the extent of the relationship between the two vendors; and document why the vendor initially awarded the quote did not receive the payment or deliver the goods.
6. Revise the Quote Guidelines manual and applicable ODOT policies and procedures to include the process for documenting the date and time of when vendor quotes are received via mail, facsimile, email, or hand-delivered to document the receipt order of quote responses. This will assist the purchaser and reviewer in determining who should be awarded the quote when two vendors submit the same quote amount.
7. Implement a process for quotes received for a specific piece of equipment or service to document on the quote the related purchase order or requisition number. Also, for those not used, indicate the quote was not used. This will reduce the chance of a quote

solicited for a certain piece of equipment or service being used for a subsequent purchase without the vendor's authorization or knowledge.

8. Continue requiring quotes obtained be sent to the fiscal office as required by the Quote Guidelines manual to ensure quotes are retained in accordance with ODOT's record retention schedule.
9. Require purchasers to use the direct purchasing authority checklist, previously distributed by the Office of Accounting, for each purchase made which quotes are required to be obtained to ensure the purchase is compliant with ODOT purchasing policies and procedures.

Training

10. Provide to purchasers, payment cardholders, and supervisors annual refresher trainings on current purchasing policies and procedures, revisions of those policies and procedures, and instances of noncompliance, which have occurred since the last training.
11. Conduct annual refresher trainings on fraud and ethics which include unallowable gifts and gratuities for all purchasers, approvers, and require attendees to sign an acknowledgement that they agree to comply with ODOT policies, procedures, and the Ohio Ethics law.

Monitoring

12. Email purchasers and payment cardholders each time a significant instance of policy or procedural noncompliance is identified as the result of a Quality Assurance Review or the closure of a pending investigation. These emails should be a coordinated effort between the Quality Assurance Review Division, Office of Investigative Services, and the relevant office or division. The email should be sent by individuals within the identified office or division who have responsibility for maintaining and updating the policies and procedures. The emails should include generic references to the parties, districts, and divisions involved with sufficient detail to permit the reader to identify what policies and procedures were not followed.

13. Continue conducting Quality Assurance Reviews in each of the districts and divisions to ensure compliance with significant ODOT policies and procedures and relevant authoritative guidance provided in grant agreements, code of federal regulations, Ohio Revised Code and the Ohio Administrative Code. Past history has shown the increased frequency of these reviews have reduced the number of instances of ODOT employees not complying with policies and procedures.

Policies and Procedures

14. Consider the benefits of standardizing purchasing procedures and documentation requirements for purchasers in all of the districts and divisions to follow to ensure uniform procedures are followed in order to comply with ODOT policies and procedures.

15. Implement and distribute policies addressing the involvement of ODOT vendors in developing specifications and prohibiting those who do assist in the specification development from submitting a competitive quote on those specifications. This should be done to prevent the perception that the vendor assisting with the specifications has additional or inside knowledge about the purchase that has not been shared with other competing vendors. When assistance is needed to develop the specifications, the purchaser should consider the benefit of having a meeting with all of the vendors being solicited to permit all vendors to participate in the drafting of the specifications.

16. Implement policies and procedures prohibiting vendors from influencing ODOT purchasers on whom they solicit for quotes for a minority purchase and for ODOT employees to avoid directing vendors being solicited for a quote to a specific manufacturer or dealer to purchase the specified item.

17. Update purchasing policies and procedures to incorporate guidance from Ohio Office of Budget and Management's Payment Card manual, the Quote Guidelines manual, and provide refresher trainings and/or emails of changes made to the policies and procedures.

18. Require purchasers, supervisors, and those with approval authority to complete an annual acknowledgement form documenting they have read and understand ODOT's purchasing policies and procedures.

Annual Purchasing Limit

19. Consider expanding the contractor prequalification computerized process to include an annual registration process for vendors submitting quotes to conduct business with ODOT. This information should be shared with the Office of Accounting and ODOT purchasers to ensure vendors and their affiliated companies and subsidiaries are not submitting competing quotes in an effort to circumvent the \$50,000 annual purchasing limit.
20. Continue the Division of Finance's current monitoring process for determining when vendors have exceeded the annual purchasing limit. When identified, the email should be sent to all purchasers notifying them that the vendor has reached the \$50,000 annual purchasing limit.
21. Review ODOT's internal accounting system and work with the Ohio Office of Budget and Management to determine whether the ability exists to assign vendor numbers and identify affiliated companies for merchant names reflected in the payment card system. If the ability exists, it is suggested the two agencies work together to develop a computerized report which would allow purchasers to have real-time access to total payments made using vouchers and payment cards to determine whether a vendor has reached or would exceed the annual \$50,000 annual purchasing limit.

Vendors

22. Consider annually notifying vendors conducting business with ODOT that they are prohibited from acting on behalf of ODOT as an agent to obtain or solicit multiple quotes; their responsibilities are as an ODOT vendor per ODOT's policies, procedures, and the standard terms and condition statements; that they agree to comply with Ohio Ethics laws; and to document their understanding and agreement that the vendors are required to acknowledge electronically or using a hard copy form that they have read and

understand the policies, procedures, terms, conditions, and applicable laws as it relates to them.

23. Consider for new or infrequently used vendors that the purchaser or approver should research and document that the vendor exists, sells the specified items, and determine whether the vendor is affiliated with an existing vendor which should be considered when calculating the vendors' \$50,000 annual purchasing limit.
24. Work with Ohio Shared Services and the Ohio Secretary of State to identify and remove vendors who no longer exist and correct known address errors in the vendor master file maintained by Ohio Shared Services.

Equipment

25. Consider the benefits of entering into contracts for frequently purchased items such as truck bodies, arrow boards, and ice control equipment to minimize district or divisional downtime while completing the quote process.
26. Consider creating a statewide list of vendors selling commonly used items not on contract and distributing those lists to ODOT purchasers as a starting point to identify vendors to contact for quotes. For items not included on this list, amend ODOT's policies to prohibit requesting vendors to provide other vendors for ODOT employees to solicit quotes, and instead require the ODOT purchasers to use the Internet or available industry resources to identify vendors to solicit quotes.
27. Continue requiring that a third party reviews items purchased and verifies the equipment and supplies have been entered into the Equipment Management System as received, prior to issuing payment to the vendor.

Nepotism

28. Revise ODOT's current practice to have statements of nepotism, which are currently updated at the time of hiring, transfer or promotion, completed annually. These statements should notify ODOT of changes in potential instances of nepotism and require

employees to notify ODOT management should their situation change during the year. When instances are identified, it is recommended information is shared with the appropriate divisions, such as purchasing and contracts to assist those divisions in ensuring conflicts do not occur.

29. Revise the nepotism policy to include prohibitions of ODOT employees supervising or being supervised by their spouses and family members; approving matters or having matters approved by their spouses and family members; and from reviewing actions for compliance with ODOT policies by their spouses and family members.

REFERRALS

The Office of the Ohio Inspector General will forward a copy of this report of this investigation for consideration to:

- 1) The Ohio Attorney General's Office, Antitrust Section, who is responsible for enforcing the state of Ohio's antitrust laws.
- 2) The Ohio Auditor of State as the agency responsible for the annual audit of the Ohio Department of Transportation.
- 3) The Ohio Office of Budget and Management as the agency who a) oversees Ohio Shared Services and maintains the State of Ohio payment card system and, b) oversees the Office of Internal Audit who conducts internal audits at the Ohio Department of Transportation.
- 4) The Ohio Ethics Commission as the agency responsible for ensuring state employees and vendors comply with the ethics laws contained in Ohio Revised Code Chapter 102.

[\(Click here for Exhibits 1-10 combined.\)](#)

[\(Click here for Exhibits 11-30 combined.\)](#)

[\(Click here for Exhibits 31-52 combined.\)](#)



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Transportation
FILE ID #: 2008-332

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

A handwritten signature in black ink, appearing to read "Jill Jones".

Jill Jones
KEEPER OF RECORDS

CERTIFIED
December 18, 2012

MAILING ADDRESS

OFFICE OF THE INSPECTOR GENERAL
JAMES A. RHODES STATE OFFICE TOWER
30 EAST BROAD STREET – SUITE 2940
COLUMBUS, OH 43215-3414

TELEPHONE

(614) 644-9110

IN STATE TOLL- FREE

(800) 686-1525

FAX

(614) 644-9504

E-MAIL

OIG_WATCHDOG@OIG.STATE.OH.US

INTERNET

WATCHDOG.OHIO.GOV