



State of Ohio
Office of the Inspector General

THOMAS P. CHARLES, Inspector General

REPORT OF INVESTIGATION

FILE ID NUMBER: 2009069

AGENCY: Department of Public Safety/
Ohio State Highway Patrol

BASIS FOR INVESTIGATION: Department of Administrative Services Referral

ALLEGATIONS: Failure to Comply with EDGE Program
Rules and Policies;
Failure to Exercise Adequate Oversight;
Falsification of Records and Fraud;
Failure to Investigate Evidence of Criminal Conduct

INITIATED: March 25, 2009

DATE OF REPORT: January 14, 2010

EXECUTIVE SUMMARY

On June 25, 2008, the Ohio Department of Administrative Services Equal Opportunity Division (DAS EOD) issued an investigative report in which DAS requested an Ohio State Highway Patrol (OSHP) investigation based on “falsified ... reporting of EDGE payments” and “falsified pay requests to the Department of Public Safety.” Falsified EDGE (E~~n~~couraging D~~i~~versity, G~~r~~owth and E~~q~~uity) documents were submitted to the Department of Public Safety (DPS) by the Barry L. Brown Paving Company (Brown Paving) in November 2007, in order to receive the payment of \$239,855.44 on a project to prepare and pave a commercial driver’s license testing lot in Middletown, Ohio, Project PF-07071 (Project), for the OSHP.

On August 6, 2008, the DAS EOD investigative report was sent to the Director at DPS and the Executive Officer for the Patrol’s Office of Finance and Logistics, whose division was responsible for administrative oversight of the Project. DPS took no action, either criminal or civil, towards holding accountable the contractor who victimized both the EDGE vendor and the EDGE program itself. Based on DPS inaction relative to the DAS report of potential criminal conduct, this matter was referred to the Ohio Inspector General (OIG) by DAS EOD for investigation on February 17, 2009. The OIG initiated this investigation on March 25, 2009.

Problems associated with this contract came to the attention of DAS EOD in February 2008 when the DAS EOD computerized tracking system generated an automated e-mail that was sent to EDGE vendor Goolsby Trucking LLC (Goolsby Trucking) to confirm its receipt of \$14,000 for work performed on the Project. Upon receipt of this e-mail, Brian Goolsby, the owner of Goolsby Trucking, contacted the DAS EEO Program Manager, Todd McGonigle, and informed him that Goolsby Trucking had not received any payment, nor had performed any work on the Project.

Based on Goolsby’s response, DAS initiated an investigation of the matter. In its June 25, 2008, investigative report, DAS found that Brown Paving falsified pay requests and that DPS “... failed to gather, verify, and/or hold accountable Barry Brown Paving for the timely submission

of [EDGE] documents....” DAS recommended that an audit of all DPS EDGE projects be conducted. Although DPS personnel contended during interviews with the OIG that an audit was conducted, the findings of this audit were never reduced to writing, nor were the findings conveyed to DAS.

More significantly, the DAS report contains a recommendation that “DPS... forward all paperwork to State Highway Patrol for investigation.” Despite this recommendation and the obvious evidence of criminal activity (which included full knowledge of Chad Brown’s admission that he falsified documents), DPS administrative personnel chose not to initiate an investigation.

In the course of investigating this matter, the OIG confirmed the DAS EOD findings -- that the prime contractor on the Project, Brown Paving, falsified documents and made misrepresentations to state officials to conceal the fact that Brown Paving failed to utilize its designated EDGE vendor, Goolsby Trucking, and that Brown Paving collected payment for work that it attested was performed by Goolsby Trucking. Specifically, Brown Paving’s vice president, Chad Brown, submitted a falsified invoice for the payment of \$239,855.44 on November 5, 2007, indicating that Goolsby Trucking had been paid \$14,000 for hauling work and/or materials supplied on the Project. Chad Brown admitted, both in an e-mail to DPS and in his interview with the OIG, that he falsified documents in order to get paid on the Project.

On December 10, 2007, DPS issued a check in the amount of \$239,855.44 to Brown Paving on the Project. The request for payment was submitted by DPS on November 26, 2007, four days before the state-approved funding on the project would have expired. Even after Brown Paving received final payment, Chad Brown sent an e-mail to DPS indicating that Brown Paving had records documenting that Goolsby Trucking had performed work on the Project and had received its share of the final payment. In fact, no such records existed.

Our investigation found that DPS compounded Brown’s conduct by failing to enforce EDGE program documentation requirements and by failing to initiate a criminal investigation of this

matter, as requested by DAS. As late as February 27, 2008 -- 2½ months after DPS paid Brown Paving -- DPS requested records from Chad Brown to show that Goolsby Trucking had been paid, evidencing DPS' own awareness that EDGE requirements had not been met. DPS personnel later admitted in their interviews with the OIG that Brown Paving should not have been paid on December 10, 2007, due to this lack of proper documentation. DAS says as much in its investigative report: "It is determined by this Division [DAS EOD] that had DPS followed existing rules and regulations this possible fraud and non-payment to an EDGE subcontractor would not have occurred." DPS officials then further exacerbated the problems associated with this contract by failing to recognize potential criminal conduct after Chad Brown sent an e-mail to DPS, on March 5, 2008, in which he admitted to falsifying documents and proposed a scheme by which his falsification could be covered up.

We determined in this case that not only was no criminal investigation conducted, but no civil remedies were pursued. And, regardless of fault, Chad Brown's conduct, facilitated by DPS's failure to provide adequate oversight, resulted in the unremediated victimization of both an EDGE vendor and the EDGE program itself.

As a result of the false representations by Brown Paving and DPS' failure to properly investigate this matter, we make four findings of wrongful acts by Brown Paving and DPS employees. We have also made six recommendations, and have asked DPS and DAS to respond to this office within 60 days with a plan as to how the recommendations will be implemented. Finally, a copy of this report is being forwarded to the Franklin County Prosecutor's Office for determination as to whether or not the conduct of Brown Paving and/or Chad Brown merits criminal prosecution.

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I. BASIS FOR INVESTIGATION

On June 25, 2008, the Ohio Department of Administrative Services Equal Opportunity Division (DAS EOD) issued an investigative report to the Department of Public Safety (DPS) in which DAS requested a Highway Patrol investigation based on “falsified ... reporting of EDGE payments” and “falsified pay requests to the Department of Public Safety.” Because DPS took no action, the matter was directed by DAS to the Office of the Inspector General (OIG). Toward that end, on February 17, 2009, DAS sent a copy of its June 25, 2008, investigative report to the OIG. This 9-page report detailed a scheme by which a contractor, Barry L. Brown Paving Company (Brown Paving), hired by the Department of Public Safety (DPS), falsely reported that it had paid \$14,000 to its designated EDGE (Encouraging Diversity, Growth and Equity) vendor. This scheme was undertaken by Brown Paving to make it appear as if it had complied with its obligations under the EDGE program -- when, in fact, it had not -- in order to receive final payment on its contract to prepare and pave a commercial driver’s license testing lot in Middletown, Ohio, Project PF-07071 (Project), for the Ohio State Highway Patrol (OSHP). The DAS EOD report contained an e-mail authored by Brown Paving’s vice president that admitted that he had intentionally falsified documents and proposed a scheme to cover up this fact. Based on this DAS EOD report, the OIG initiated this investigation.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

We obtained and reviewed contract documents related to the DPS Project, including project records, and e-mail correspondence between and among DPS personnel, representatives of the prime contractor and subcontractor and DAS personnel. We also reviewed the DAS EOD Complaint Investigation Report on Barry Brown PF-07071, dated June 25, 2008 (Complaint # 200803). In addition, we conducted interviews of the DAS EEO Program Manager, the vice president of Brown Paving, and the EDGE vendor (Goolsby Trucking), the DPS facility planner and facility planner supervisor, Ohio State Highway Patrol (OSHP) personnel, and the DPS Chief Legal Counsel. We also reviewed Ohio Revised Code Section (ORC) 123.152 and Ohio Administrative Code (OAC) Chapter 123:2-16 on the EDGE program.

III. DISCUSSION

The purpose of the EDGE program is to assist socially and economically disadvantaged business enterprises by requiring state agencies to procure an established percentage of goods and services from EDGE-certified vendors. The EDGE program was originally created by Executive Order 2002-17T. EDGE was codified as statutory law in 2003.¹

OAC 123:2-16-08 requires the DAS director to “establish yearly contract dollar percentage procurement goals for each state agency for contracting with EDGE business enterprises.” The EDGE goal applicable to the Project was five percent. OAC 123:2-16-09(A) requires that “[e]ach state agency awarding a contract subject to the provisions of 123.152 of the Revised Code shall specify in the contract the EDGE participation goal for the subcontracts awarded to and materials and services purchased from the EDGE certified business enterprises.” OAC 123:2-16-09(B) states that “[a]ny contractor awarded a contract ... shall make a good faith effort to comply with the EDGE business enterprise participation goal established for the contract....” OAC 123:2-16-09(C) provides the means by which a contractor may seek the waiver of EDGE requirements if it has made good faith efforts to comply, but is unable to do so.

The prime contractor for this Project was Brown Paving, owned by Barry L. Brown. Two EDGE-certified subcontractors are also referenced in this report: L&L Carriers, owned by Frank Luckett, and Goolsby Trucking LLC, owned by Brian Goolsby. Brown Paving ultimately selected Goolsby Trucking as the EDGE vendor for the Project and reported this selection to DPS.

¹ ORC 123.152(B)(2)(b) requires DAS to “[e]stablish a system of certifying EDGE business enterprises based on a requirement that the business owner show both social and economic disadvantage.” Pursuant to this legislative mandate, the DAS promulgated OAC 123:2-16 which details the legal requirements of the EDGE program.

Allegation 1: Barry L. Brown Paving Company failed to comply with rules, policies and EDGE program requirements in Project PF-07071.

History of District 8 Commercial Driver's License Testing Lot Construction Contract

The Project was undertaken to construct a commercial driver's license testing lot at 3701 Tytus Road in Middletown (Butler County), Ohio, for DPS. The Project's cost was estimated at \$143,000 by DPS. The notice of invitation to bid on this project was originally published on April 20, 2007. The Project had a bid opening date of May 31, 2007. Four companies submitted bids; the lowest bidder was Brown Paving, whose total project bid was \$128,200. The Project was awarded to Brown Paving, which executed a contract with DPS on June 25, 2007. The EDGE component for the Project was announced as part of the public bid advertisement that was issued on May 22, 2007.

A preconstruction meeting was held on July 30, 2007, attended by representatives from DPS and Brown Paving. Construction commenced on August 12, 2007. Two change orders submitted during the course of the Project increased its total cost to \$239,855.44. On November 5, 2007, Brown Paving submitted an invoice in that amount to DPS for the Project. On November 12, 2007, Brown Paving sent an e-mail to DPS indicating that it had completed all elements of the Project at approximately the time the invoice of November 5, 2007, was submitted. DPS prepared a check in the amount of \$239,855.44 as payment in full to Brown Paving for its work on the Project on December 5, 2007. This check was transmitted to Brown Paving on December 10, 2007.

The DPS employee directly responsible for the day-to-day administration of the Project and the compliance with EDGE program requirements was Facility Planner Cheryl Helsel. Her immediate supervisor was N. Eric Rowland, Facility Planner Supervisor. At the time the Project was under way, Rowland reported to Administrative Assistant 4 Paul Hanson. Hanson, in turn, reported to OSHP Captain David Dicken, Executive Officer for the Patrol's Office of Finance and Logistics, whose division was responsible for administrative oversight of the Project. Dicken has since been promoted to Colonel, and is now Superintendent of OSHP.

EDGE Compliance Failures in District 8 CDL Testing Lot Construction Contract

Brown Paving made commitments before the Project began, and during its course, that it would use an EDGE vendor as a subcontractor, as required by the contract. After the completion of the Project, Brown represented that it had used and paid an EDGE vendor, as required by the contract.

Specifically, on June 5, 2007, Brown Paving submitted an EDGE Participation Certified Statement of Intent to Contract and Perform for the Project. (See Exhibit A.) This certified statement was signed by Brown Paving Vice President Chad Brown and states: “By signing below, the Bidder certifies that it intends to contract with the certified EDGE Business Enterprise for the portion of the contract ... related to this project contract and for the estimated cost below...” This certified statement named L&L Carriers, Inc. as the EDGE Business Enterprise and provided an estimated cost of the contract with L&L Carriers to be \$10,000 for trucking services. Accompanying this document was a Commitment to Participate in the EDGE Business Assistance Program. In this Commitment to Participate, Brown Paving selected Option A, which provides: “Bidder commits to *meet or exceed* the advertised EDGE Participation Goal of **5% of the Contract award amount** ...” (See Exhibit A, emphasis in original.)

On August 13, 2007, Chad Brown informed Helsel, DPS Facility Planner, that L&L Carriers was not available to perform the hauling work on the Project. In an e-mail on that date to Helsel, Chad Brown stated: “I just got another company lined up a couple of minutes ago so I think we should be able to get back up to the 5% again.” Helsel replied: “Please fax...over the EDGE paperwork on your new EDGE vendor...” Records establish that Brown never submitted the required paperwork. Chad Brown contacted Goolsby to confirm his willingness to serve as the Project EDGE vendor, and Goolsby agreed to perform the work.

On October 18, 2007, Brown Paving submitted a copy of the DAS form entitled “EDGE Participation/Demonstration of Good Faith.” In this document, Chad Brown indicated that he

had contacted two EDGE vendors on the Project: L&L Carriers and Goolsby Trucking. There is a specific reference in this document to a contact with Goolsby Trucking on August 12, 2007.

Evidence obtained in this investigation establishes that after the completion of the Project, Brown Paving continued to represent to DPS that it had complied with EDGE program requirements. Specifically, on November 5, 2007, Chad Brown submitted an invoice for payment on the Project. The total amount claimed due from DPS to Brown Paving in this invoice was \$239,855.44. On this invoice, Chad Brown stated: "EDGE Component - \$14,000; Goolsby Trucking, see attached EDGE Participation Form for details. Total EDGE Participation was 5.8%." (See Exhibit B.) On the same day, Chad Brown transmitted an e-mail to Helsel that stated: "Goolsby had some trucks down for repairs and couldn't actually do any hauling. L&L Carriers -- the original company I was going to use, was also unavailable at the time. To keep the project on schedule and meet the 5%, we just had some materials run through Goolsby, and they got a little markup." (See Exhibit C.)

Further, Chad Brown submitted an affidavit required to receive final payment on the Project on November 9, 2007. In that affidavit, Chad Brown states: "Affiant further certifies that all Subcontractors and Material Suppliers have been paid in full for all Work performed or materials furnished for the Project... except such amounts as will be paid from the estimate now due." (See Exhibit D.)

Based on these representations, DPS prepared a check in the amount of \$239,855.44 as payment in full to Brown Paving for its work on the Project on December 5, 2007. (See Exhibit E.) This check was transmitted to Brown Paving on December 10, 2007, when EDGE compliance and prevailing wage documents were still outstanding. According to Rowland, DPS should not have issued this check to Brown Paving because the company had not provided the proper documentation required by the EDGE program.

On February 27, 2008, Helsel sent an e-mail to Chad Brown that stated: "In looking through my records, I am not finding anything that tells me how much you paid Goolsby Trucking for the D8

Paving project. Could you please send that [sic] information to me?" In his February 27, 2008, response e-mail, Chad Brown replied: "I don't know off the top of my head, I'll have to look it up. My dad has a lot of the paperwork with him down in Florida, so he might have it there. I'll be back in the office this afternoon and will see if I can dig it up. Do you need Goolsby to fill out some kind of form? Or do you just need me to email you the amount?" (See Exhibit F.) In his interview, Chad Brown admitted that he was not being truthful when he sent this e-mail. Contrary to Chad Brown's assertions to Helsel, no EDGE vendor was used on the Project.

The evidence gathered in this investigation shows that despite Brown Paving's pre-performance and post-performance representations, no EDGE vendor was used on the Project. The DAS computerized tracking system sent an automated e-mail to Goolsby in February 2008 to verify his participation in the Project. On March 5, 2008, Brian Goolsby of Goolsby Trucking sent an e-mail in response to DAS EEO Program Manager McGonigle on the Project that stated as follows: "No sir I did not work on that job at all nor did I receive any money." (See Exhibit G.) Based on this, DAS initiated an investigation of this matter and issued an investigative report to DPS on June 25, 2008. (See Exhibit H.)

Ultimately, the evidence produced in this investigation demonstrates that Chad Brown admitted that no EDGE vendor was used on the Project. On March 5, 2008, Chad Brown sent an e-mail to Helsel in which he states:

"... I talked with Brian Goolsby the other day and he said he had gotten a call from someone in your office about his paperwork for the project, and he told them he did not have any because he did not work on it. This is all true... I can write [Goolsby] a check for the \$14,000 and have him write one to Ruff, the excavator on the job, and then have them refund that amount to me since they've already been paid. Then he can make some money on it, and you can have invoices or canceled checks or whatever else you need paperwork wise." (See Exhibit I.)

We found that the documentary record and the specific admission of Chad Brown clearly show that Brown Paving failed to comply with EDGE requirements,² and that the DAS investigative report accurately reflects this fact.

Accordingly, we find reasonable cause to believe that acts of wrongdoing occurred in these instances.

Allegation 2: The Department of Public Safety failed to adequately administer EDGE program requirements on the Project.

DPS advertised the Project for public bids on May 22, 2007. This advertisement identified the EDGE program goals for the DPS construction Project. DPS awarded the Project to Brown Paving on May 31, 2007. On June 5, 2007, Brown Paving submitted an EDGE Certified Statement of Intent to Contract and Perform. This Statement identified L&L Carriers, Inc. as the EDGE vendor. On August 12, 2007, the Project was underway.

On August 13, 2007, Chad Brown informed DPS that L&L Carriers was not available for the Project and that he had found another EDGE vendor, Goolsby Trucking. Helsel informed Chad Brown of the need to provide supplementary EDGE paperwork documenting the switch to Goolsby Trucking as the new EDGE vendor. However, evidence reveals that Chad Brown failed to supplement the records regarding his intention to use Goolsby and that Helsel failed to follow up on this requirement.

Only after DAS inquired about Chad Brown's falsification did Helsel take any action regarding EDGE requirements. This did not take place until February 2008. The lack of DPS oversight of EDGE requirements in this matter is best summarized by Helsel's concession in her February 27, 2007, e-mail to Chad Brown in which Helsel admonishes Chad Brown that Brown still had not

² At no time from the inception of the Project has the prime contractor, Brown Paving, sought a waiver from EDGE compliance pursuant to OAC 123:2-16-09(C).

provided required EDGE documentation. (See Exhibit F). This comment was made more than two months after final payment was issued to Brown Paving on the DPS Project.

Even Chad Brown's November 5, 2007, e-mail should have triggered inquiry and action by DPS. In that e-mail, Brown informed Helsel that Goolsby Trucking had not performed any hauling work on the project, but instead had only procured materials for the project and received a mark-up for that effort. (See Exhibit C). This change represents a substantial deviation from Brown Paving's original description of the work to be performed by the EDGE vendor. (See Exhibit A.) DPS issued payment in this matter before Brown Paving supplied the required EDGE documentation. As explained by Rowland, OSHP wanted to ensure that the project for the June 6, 2007, purchase order would be completed prior to November 30, 2007, so the SFY 2007 funds did not lapse.³ Thus, on or about November 26, 2007, OSHP requested that a State of Ohio check payable to Brown Paving be issued and requested that it be held pending receipt of outstanding documentation from Brown Paving. However, the records obtained in this case reveal that the check was erroneously mailed to Brown Paving prior to receipt of the required EDGE documentation.

On August 6, 2008, DAS sent a copy of its report (dated June 25, 2008) to DPS. In this report, DAS states: "It is determined by this Division that had DPS followed existing rules and regulations this possible fraud and non-payment to an EDGE subcontractor would not have occurred." (See Exhibit H, page 4). Also in this report, DAS finds that: "[the] Department of Public Safety failed to gather, verify, and/or hold accountable Barry Brown Paving for the timely submission of documents and allowed the project to proceed without the required documents and/or commitments being met." (See Exhibit H, page 7.) According to DAS EOD, the failure to enforce EDGE compliance is not unique to DPS.

As a result of these findings, DAS recommended that DPS personnel receive EDGE program training, audit 10% of all EDGE projects and then report the audit results to DAS. (See Exhibit

³ For this Project, there were multiple purchase orders that crossed state fiscal years (SFY) 2007 and 2008. The appropriation for the purchase order that totaled \$128,200.00, issued on June 6, 2007 (during SFY 2007), would expire on November 30, 2007 (during SFY 2008).

H, page 8.) Rowland said in his sworn interview that an audit was undertaken in this matter, but admitted that no report was done. No documents or records support the assertion that an audit was done, and, to date, no audit findings have been reported to DAS. Furthermore, according to DAS, no EDGE training has taken place. These failures to take remedial steps to address its EDGE program shortcomings serves to compound DPS's failure to adequately monitor EDGE requirements.

The fourth recommendation of the DAS EOD report was that DAS "debar [Brown Paving from] bidding or being awarded future contracts with the State of Ohio." (See Exhibit H, page 8.) Though DAS represents that debarment proceedings are underway, to date the debarment of Brown Paving has not occurred.

Accordingly, we find reasonable cause to believe that acts of wrongdoing occurred in these instances.

Allegation 3: Brown Paving falsified records that it submitted to the Department of Public Safety in order to receive payment on project PF-07071.

Chad Brown, in a March 5, 2008, e-mail to DPS, admitted that he knowingly submitted false records to indicate EDGE compliance, when, in fact, there was no such compliance. (See Exhibit I.) His excuse was that the need to utilize EDGE contractor Goolsby Trucking and pay it in compliance with Brown Paving's legal requirements under the EDGE program "must have slipped my mind."

Further, Chad Brown proposed a scheme to cover up his misrepresentations and fraud. In the same e-mail to Helsel dated March 5, 2008, Chad Brown offered to provide falsified documents in an effort to conceal his fraud and assuage DPS regarding EDGE requirements. (See Exhibit I.) All of this was corroborated by Chad Brown in his sworn interview with the OIG. Further, Goolsby stated that after this scheme to defraud was uncovered, Chad Brown tried to persuade

Goolsby to falsely represent to DPS that he had provided \$14,000 in materials for the Project. To his credit, Goolsby strongly rejected this proposal.

On December 8, 2009, Rowland was interviewed by the OIG regarding this matter. Rowland was shown Brown Paving's invoice to DPS, Chad Brown's e-mails, and Chad Brown's affidavit, all of which contain representations by Chad Brown that either EDGE requirements were met and/or that an EDGE vendor was utilized. Rowland acknowledged that both Brown Paving's invoice and the e-mails sent by Chad Brown were untruthful and deceptive. With regard to Brown's proposed scheme to cover up the fraud, Rowland said that this would have been "illegal." He characterized Brown's proposal as an attempt "...to sweep it under the rug"

Our investigation found that Brown falsified documents and committed fraud. We also note that our findings are in accord with the findings of the DAS investigative report.

Accordingly, we find reasonable cause to believe that acts of wrongdoing occurred in these instances.

Allegation 4: The Department of Public Safety failed to act on a request by the Department of Administrative Services for a State Highway Patrol investigation of criminal conduct.

On March 5, 2008, DPS Facility Planner Cheryl Helsel received an e-mail from Chad Brown in which he admitted to falsifying Project documents and proposed a fraudulent scheme to cover up this falsification. (See Exhibit I.) Helsel informed her immediate supervisor, Eric Rowland, of this e-mail. Rowland also briefed then-Captain David Dicken.

Following the briefing, Dicken authored an inter-office communication (IOC), dated March 12, 2008, to former OSHP Superintendent Colonel Richard H. Collins. (See Exhibit J.) In the IOC, Dicken references the Chad Brown e-mail and also opines that Chad Brown committed intentional misrepresentation. In a sworn interview with the OIG regarding Chad Brown's conduct, Dicken stated that he believed a criminal investigation was warranted. Notwithstanding

this belief, Dicken's IOC contains no recommendation or request to Collins for criminal investigation by OSHP. Instead, Dicken informs Collins that a "full review" by DPS legal had been requested for a determination on "what action the Division should take."

The OIG reviewed existing DPS policies in an effort to identify a protocol for initiating criminal investigations by OSHP. We discovered that no policy exists which addresses protocols for initiating investigations in response to criminal allegations or complaints involving non-DPS employees. However, the DPS policy which addresses initiating criminal investigations relative to DPS employees is instructive.⁴ (See Exhibit K.) Relative to decision making and the course of action involving criminal investigations involving non-emergency matters, it appears that current policy requires strict deference to DPS administrators and/or legal, rather than the OSHP criminal investigative division. It appears that Dicken's request for legal review in this matter is consistent with departmental practice relative to criminal complaints involving DPS employees.

In his interview with the OIG, Dicken stated that he subsequently discussed his March 12, 2008, IOC with Lt. Colonel William Costas, who directed him to discuss the matter with Jim Dinsmore, the Assistant Attorney General (AAG) for OSHP. Costas said in his interview with this office that, in the one brief conversation he had on the topic with Dicken, Dicken characterized the matter as a contract dispute, not a potential criminal case. Costas' account of this interaction is independently corroborated by OSHP Major Robert Booker, Commander of the Office of Investigative Services. In his sworn interview, Booker said that he had asked Costas about the paving case after learning that the OIG was looking into it, and Costas replied that he had been originally told by Dicken that it involved a contract issue between a contractor and a subcontractor.

DAS EOD issued an investigative report in this matter, dated June 25, 2008, following an investigation which included discussion with Rowland, Helsel, and Dicken. On August 6, 2008, DAS officially sent a copy of this report to DPS. The report details the criminal conduct perpetrated by Brown Paving upon the state of Ohio and also criticizes the EDGE oversight by

⁴ We note that, while we have attached the latest revision (12/17/2009) of DPS Policy 100.01, the relevant provisions of this policy were in effect during the time period examined in this investigation.

DPS on the Project. Specifically, the report sets forth the following: “It is determined by this Division [DAS EOD] that had DPS followed existing rules and regulations this possible fraud and non-payment to an EDGE subcontractor would not have occurred.” (See Exhibit H, page 4.)

Moreover, the DAS report recommends that: “DPS forward all paperwork to State Highway Patrol for investigation.” (See Exhibit H, page 8.) The cover letter with the DAS report reveals that the letter was directed to DPS then-Director Henry Guzman. (See Exhibit L.) Dicken acknowledged receiving and reviewing the DAS report.

In an IOC dated July 31, 2008, Dicken provided information to OSHP Major Peyton Watts, of OSHP Finance and Logistics, on the subject “EDGE Audit Summary-Barry L. Brown Paving.” In response to the DAS EOD recommendation that “DPS forward all paperwork to State Highway Patrol for investigation,” Dicken wrote: “The third and fourth recommendations are likely irrelevant -- we previously discussed the case [with] Mr. Jim Dinsmore for consideration of criminal charges and were advised the matter was likely administrative rather than criminal.” (See Exhibit M.) Dicken said in his interview with the OIG that it was his meeting with Dinsmore that changed his opinion as to the necessity of a criminal investigation, which was later reflected in Dicken’s July 31, 2008, IOC to Watts.

In Dinsmore’s interview with the OIG, he contradicts Dicken’s characterization of their conversation on the subject and the advice he rendered. According to Dinsmore, Dicken presented the matter as misrepresentation concerning EDGE compliance, and at no point did Dicken mention potential criminal conduct. Dinsmore’s recollection is supported by an e-mail Dicken sent to Dinsmore on March 24, 2008. (See Exhibit N.) Dinsmore added that Dicken specifically indicated that DAS was looking into the EDGE issues. Dinsmore said that he suggested to Dicken to wait to receive the results of the DAS EOD investigation before making a final determination on its course of action. Dinsmore added that he never was provided with the results of DAS action or the DAS EOD investigation report or findings. No one from the Attorney General’s office was included on the distribution list for the report. (See Exhibit L.)

Dinsmore stated that he was not provided with nor made aware of the evidence of falsification of documents in the Project. He offered that if he had been aware of such evidence, he would have referred the matter to Booker and/or the county prosecutor for criminal investigation and possible prosecution. He said that his role as the AAG assigned to DPS was to offer advice on civil matters only and that he specifically refrained from addressing criminal matters to avoid conflicts with potential civil litigation involving the same factual allegations.

Joshua Engel, DPS Chief Legal Counsel, stated under oath that the decision not to investigate Chad Brown's falsification of documents in the Project was made by Collins. Specifically, in his interview, Engel stated: "My recollection of the meeting was that Colonel Collins and Lt. Colonel Costas were aware of the situation. They said they had received advice from James Dinsmore, their Assistant Attorney General... They indicated to me that they did not think it would be appropriate to pursue this as a criminal matter but would be better handled as a civil matter...." Engel said that his only role in the decision-making process was to advise as to whether or not Collins' decision not to pursue a criminal investigation was an abuse of discretion. This appears to be significantly less involvement than the "full review" by DPS legal called for by Dicken in his March 12, 2008, IOC. (See Exhibit J.)

In his interview, Engel suggested Costas attended the meeting wherein Collins made the decision. Engel also offered that both Collins and Costas were in accord with this decision. Both Collins and Costas said they did not attend any such meeting, nor were they involved with this decision. No evidence was offered or obtained in this investigation that either documents Collins or Costas as having any role in the decision not to pursue a criminal investigation, or that any meeting in fact took place.

Engel's representation, that the decision was made by Collins and Costas, likewise appears inconsistent with Dicken's July 31, 2008, IOC to Watts in which Dicken outlines the decision not to initiate a criminal investigation without any reference to participation by Collins, Costas, or the OSHP investigative division. Moreover, the timing and content of Dicken's IOC belies the notion that anyone other than Dicken and DPS legal determined the course of action in this

case. The DAS EOD report was officially sent to DPS on August 6, 2008.⁵ Dicken's July 31, 2008, IOC reflects a decisive posture opposing a DAS recommendation for an OSHP investigation six days before the final DAS report of findings and recommendations was sent to DPS. There is an unbroken line between the posture reflected in this IOC and that offered in the then-Director Guzman's October 3, 2008, letter that ultimately memorializes the decision not to investigate. (See Exhibit O.)

Engel further asserted that OSHP personnel often called upon Dinsmore as to how to proceed in criminal investigations, even in some DUI cases. This is at odds with Dinsmore's description of his role as the assistant attorney general assigned to DPS. Ultimately, Engel conceded that the proper channel for addressing issues associated with a potential criminal investigation was to present the matter to Booker and/or seek the advice of the county prosecutor with jurisdiction over any subsequent criminal case.

Collins stated under oath that he never met with Engel about the District 8 CDL testing lot paving project. He stated that he did not make a decision about whether to initiate a criminal investigation because it was never presented to him as a potential criminal matter. Collins' representation is consistent with two IOC's authored by Dicken which underscore that the matter had been referred to DPS Legal Services for determination.

Further, Collins said that he was never made aware of any advice offered by Dinsmore concerning this issue. He recalls receiving Dicken's March 12, 2008, inter-office communication (Exhibit J) and having a conversation with Dicken about the issue. Collins stated that the conversation with Dicken centered on a problem with a contractor not using an EDGE vendor. Collins stated that he perceived the IOC communication as informational only, and that it did not appear that the matter was presented to him for a decision. Collins' view is not inconsistent with the IOC, which contains no request for action on his part, but, rather, submits the matter to DPS legal for determination of what action OSHP should take. Regardless,

⁵ Information obtained in this investigation reveals that DAS EOD previewed the content of its report with Dicken and his staff before the report was sent to DPS on August 6, 2008.

the IOC sufficiently reports the intentional misrepresentations by Chad Brown in a manner to at least warrant further inquiry or follow-up on Collins' part.

Collins also said that he was not provided with a copy of the June 25, 2008, DAS EOD report on this matter, or made aware of the DAS recommendation that the OSHP investigate the matter. This recollection is corroborated by the cover letter to the DAS EOD report that lists the persons to whom the report was distributed. The only OSHP officer that is listed as receiving the report is Dicken. (See Exhibit L.)

Collins offered that had he been made aware of the DAS EOD recommendation that the OSHP investigate this matter, he would have initiated an investigation. He stated that the proper procedure for such matters was to refer them to Booker, who was responsible for initiating and overseeing criminal investigations of this nature. He also said that when a state department referred a matter to the OSHP for investigation, it was the OSHP's practice during his tenure as Superintendent to open an investigation. Further, Collins said that his understanding of the role of AAG Dinsmore was to provide legal advice on civil, not criminal, matters. On criminal issues, the prosecuting attorney was to be consulted. Collins could not recall any instance in his tenure as Superintendent when Dinsmore was consulted on a criminal investigation.

The thrust of Engel's statement is that the decision not to investigate was made only by Collins and Costas, with their decision predicated on Dinsmore's advice. However, the viability of Engel's position is undermined by the weight of evidence obtained in this matter. This position is in direct conflict with Dicken's request for a decision by DPS legal in his March 12, 2008, IOC. It also stands in contrast to DPS protocol requiring deference to DPS legal services for decision making concerning the initiation of investigations. Furthermore, it appears from the evidence that no one other than Engel and Dicken had received the DAS EOD report. It is untenable that Collins, Costas, and/or Dinsmore participated in a decision not to pursue a criminal investigation, as suggested by Engel, without the benefit of also having the findings and recommendations contained in the DAS EOD report. And, Engel's reliance on Dinsmore is not

only at odds both with Dinmore's role and Dinsmore's recollection, but also seems unlikely given that Engel did not recall conferring with Dinsmore.

Major Watts said in his sworn interview that he was briefed about the EDGE violations on two occasions by Dicken. Watts stated that the only documents provided to him on the matter were Dicken's IOC to Collins dated March 12, 2008, Dicken's IOC to Watts dated July 31, 2008, and the June 25, 2008, DAS EOD investigative report. Watts said that he provided an update to Collins on the matter, but could not say when he did so. He could not recall any other meetings or conversations about the matter.

Watts characterized his involvement in the matter as minimal, based on the fact that he began his tenure as the Finance and Logistics Major in April 2008. He stated that he felt no compulsion to act on the matter because, in his view, it had been addressed by Dicken and Dinsmore. Watts said that until the date of his interview (December 18, 2009), he had not had the benefit of reviewing the falsified invoice submitted to DPS by Chad Brown and deceptive e-mails Brown wrote to Helsel to conceal his falsification. After he was shown these documents, he stated that based on what he knows today, he would present the matter to Booker for criminal investigation.

Major Booker, who heads the criminal investigation branch of OSHP, said in his sworn interview that he was not made aware of potential criminal conduct in this matter until after the OIG opened an investigation. Specifically, no one at OSHP or DPS ever provided Booker with Chad Brown's falsified invoice or deceptive e-mails. Further, no one at OSHP or DPS ever provided Booker with the June 25, 2008, DAS EOD investigative report in which DAS recommends an OSHP investigation of Chad Brown's criminal conduct in this matter. Having the benefit of reviewing the documents during his interview with the OIG, Booker stated that had these documents been presented to him, he would have initiated a criminal investigation.

In spite of the evidence of potential criminal activity available to DPS, then-Director Guzman, in an October 3, 2008, letter to Darryl Peal, DAS State EEO Coordinator, wrote: "The complaint investigation has been reviewed by the department's Chief Legal Counsel. It is our opinion that

while civil remedies may be appropriate, an additional criminal investigation is not warranted by the State Highway Patrol.” (See Exhibit O.) This letter was DPS’s official response to the DAS EOD investigative report.

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E-mails obtained in this investigation establish that the October 3, 2008, Guzman letter was drafted by Dicken and Engel. (See Exhibits P and Q.) The e-mails indicate that drafting started on September 17, 2008, and concluded with a final on September 19, 2008. No other DPS or OSHP staff were included or copied in the drafting process. In light of Dicken’s and Engel’s recent statements to this office, identifying Collins and Costas as the deciding forces behind derailing an investigation, it is notable that neither Collins nor Costas were included or even copied. Moreover, as the Guzman letter specifically expresses, the decision not to investigate was predicated on a review by “the department’s Chief Legal Counsel.”

In his interview conducted on December 29, 2009, Guzman was shown the falsified invoice and deceptive e-mails sent by Chad Brown. He stated that he could not condone Chad Brown’s actions and that the matter should have been referred to the OSHP for criminal investigation. He recalled being briefed on the matter; however, he could not recall which, if any, of these documents were shown to him during the course of this briefing.

By failing to further investigate this matter, despite the considerable documentary evidence of criminal activity already in its possession, DPS compounded the failure of Brown Trucking to comply with EDGE program obligations and rewarded Chad Brown’s deceit and misrepresentation. EDGE vendor Brian Goolsby was deprived of an EDGE program benefit by virtue of Chad Brown’s fraud and DPS’ administrative failures.

Goolsby stated that the EDGE program constitutes an important part of his small trucking business. This unfortunate affair first came to light as the result of his honesty in refusing to participate in a deceptive scheme designed to undermine EDGE requirements. Goolsby would have made between \$1,000 and \$2,000 net profit on this project if Brown Paving and DPS would

have followed EDGE program requirements. Chad Brown admitted this fact in his sworn interview.

Accordingly, we find reasonable cause to believe that acts of wrongdoing occurred in these instances.

IV. CONCLUSION

This OIG investigation was set into motion by an investigative report issued by DAS that found evidence of falsification of EDGE program documents and potential fraud. The failure of DPS to adhere to EDGE program rules and guidelines resulted in Brown Paving being improperly paid based on falsified documents. It also resulted in a qualified EDGE vendor, Goolsby Trucking, being deprived of the opportunity to work. This failure to follow EDGE program requirements, if continued, may serve to encourage other prime contractors to cut corners on their EDGE obligations. It may also serve to discourage qualified EDGE vendors from participating in the program, thereby diminishing its reach and frustrating its purposes.

At best, the failure of DPS to pursue the potential criminal activity of Chad Brown demonstrates a disregard for both the letter and spirit of the EDGE program. At worst, its actions and omissions facilitated potentially criminal conduct that seriously undermines the EDGE program and principles upon which it was built.

In the administration of the Project, DPS elevated rushing to spend money before appropriations expired over compliance with EDGE program requirements. In this case, the decision not to investigate made by DPS administrators, in effect, deflected unflattering scrutiny of DPS failures and precluded appropriate law enforcement participation by the criminal investigative branch of the OSHP. Actions taken in this matter also had the net effect of suppressing any potential prosecutorial review or action.

V. RECOMMENDATIONS

Based on the results of our investigation, the OIG makes the following recommendations and further requests that DPS and DAS respond to this office within 60 days with a plan as to how the recommendations will be implemented:

1. DPS should work with DAS EOD to design training for all personnel involved in contract administration on how to effectively implement and comply with the requirements of the EDGE program. This training should be specifically aimed at avoiding the EDGE program administration errors revealed by this investigation.
2. DPS should work with DAS EOD to develop an agency-specific EDGE compliance protocol to document compliance with each step of the EDGE program process.
3. DPS should internally review the actions of all involved employees to determine whether their conduct warrants further administrative action.
4. DPS should develop and implement written policies and procedures that require the referral of all allegations of criminal conduct to the criminal investigative branch of the OSHP.
5. DAS should take the necessary steps to complete the debarment of Brown Paving. DAS should also ensure procedures are in place to debar contractors who defraud or attempt to defraud the State of Ohio.
6. DAS EOD should audit DPS EDGE program compliance for all projects and report those findings to the OIG; and, to the extent that there are EDGE compliance audit findings relative to other state agencies, DAS EOD should also report those findings to this office.

VI. REFERRAL

In light of the findings of this investigation, a copy of this report is being forwarded to the Franklin County Prosecutor's Office for determination as to whether or not the conduct of Brown Paving and/or Chad Brown merits criminal prosecution.