

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF TRANSPORTATION
FILE ID NO.: 2011-138
DATE OF REPORT: February 2, 2012

The Office of the Ohio Inspector General..... The State Watchdog

“Safeguarding integrity in state government”

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STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER: 2011-138

SUBJECT NAME: Joe L. Yee

POSITION: Transportation Engineer 1

AGENCY: Ohio Department of Transportation (ODOT)

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Failure to comply with requirements of ODOT's purchasing protocols.
Failure to obtain annual fire protection system inspections.

INITIATED: July 15, 2011

DATE OF REPORT: February 2, 2012

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On July 7, 2011, the Office of the Ohio Inspector General received a complaint from the Ohio Department of Transportation (ODOT) Office of Investigative Services alleging Joe Yee, a District 5 Transportation Engineer 1, failed to follow ODOT policies and procedures which would require Yee to obtain competitive bids for purchases made using a payment card and in excess of \$1,000.¹ The complainant also alleged Yee failed to obtain the required annual fire protection system inspections at District 5 offices during the past 18 months. These allegations were investigated jointly by the Office of the Ohio Inspector General and the Ohio State Highway Patrol Office of Investigative Services.

BACKGROUND

ODOT is organized into 12 districts responsible for managing daily ODOT activities for the counties within each district. In each county, ODOT has a county garage with employees responsible for maintaining state highways within that county. Purchases are initiated by either the county garage or district office employee with purchasing authority. In the case of District 5, located in Jacksontown,² purchasing authority was provided to facilities office employees who were required to purchase items in order to complete their daily duties. In District 5, Transportation Engineer 1 Joe Yee was authorized to make purchases using either a voucher or a payment card. Although authorized to make purchases using both vouchers and payment cards, this investigation only focuses on Yee's payment card usage.

Ohio Revised Code (O.R.C.) §125.05 (A) authorizes ODOT to make purchases of \$25,000 or less without the use of competitive bidding. However, this Section also requires ODOT to adopt written purchasing procedures consistent with those of the Ohio Department of Administrative Services. To comply with O.R.C. §125.05(A), the ODOT Office of Finance and Forecasting established a Purchasing and Contract Administration Manual for ODOT employees to follow when making a purchase using a voucher or payment card.

¹ A payment card is bank issued credit card extending the credit of the state and authorized for use by a state employee.

² ODOT District 5 includes Coshocton, Fairfield, Guernsey, Knox, Licking, Muskingum, and Perry counties.

Non-contract Purchases

Effective July 1, 2009, Ohio Department of Transportation Quote Guidelines (Quote Guidelines) (**Exhibit 1**) were issued as supplemental guidance to the Purchasing and Contract Administration Manual for ODOT personnel with direct purchasing authority and who were required to obtain quotes. The manual provided the following table summarizing the requirements for making non-contract purchases using direct purchase authority:

Direct Purchasing Quote Requirements/Payment Types*		
Quote Levels		
Dollar Amount	# Quotes Required	Payment Types Permitted
\$0 to \$500.00	1 Quote	Debit voucher, payment card or EDI**
\$500.01 to \$1,000.00	1 Quote	Purchase order, payment card or EDI
\$1,000.01 to \$2,500.00	2 Quotes	Purchase order, EDI, or approval from District/central office payment card administrator
\$2,500.01 to \$335,000.00	3 Quotes	Purchase order or EDI
Vendor Limits		
\$50,000.00 per vendor for supplies and personal services if non-contract or non-Controlling Board purchase		
\$75,000.00 per vendor for real estate leases		

*This chart reflects the requirements in effect at the time of the investigation. As of December 9, 2011, ODOT revised direct purchasing quote requirements.

**The chart references EDI, payments made using Electronic Data Interchange. The EDI system remits payments to vendors using bank wire transfers or debits.

Source: ODOT May 2008 Purchasing Contract Administration Training Manual

In order to make a purchase in excess of \$1,000, the Quote Guidelines required the purchaser to obtain a minimum of two quotes using the ODOT quote request form. This form documented the equipment specifications, the vendor receiving the quote request, the quote request date, the response due date, and where the response was to be sent. Once the quote request form was prepared, the purchaser was required to send it via email, facsimile, or certified U.S. mail to vendors selected by the purchaser based on past experience, personal knowledge, listings in the phone book, or on the Internet.

The Quote Guidelines required ODOT-approved vendors to respond by completing the original quote request form, responding on company letterhead, or submitting an online pricelist

reflecting the date and vendor website name. Vendors were required to sign and date all quotes. Upon receipt, quotes were forwarded to the ODOT district fiscal office for review and approval prior to the purchase.

Fiscal officers were required to review the quotes and determine their validity, verify the required number of quotes was obtained, ensure like items were quoted by the vendors, and once approved, maintain the quotes and related documentation in their files. If the quotes did not meet these requirements or if an insufficient number of valid quotes were obtained, the quotes were returned to the purchaser with direction to solicit new quotes.

Sole Source Purchases

One exception to obtaining a specific number of quotes based on the purchase price was sole source purchases. The Quote Guidelines defined sole source as “a purchase made without competition, when competition is otherwise required, based on a determination that there is only one Vendor who can meet the Department’s requirements. Although a vendor may have been identified in the past as a sole source vendor, for a particular commodity or service, it is now necessary to quote sole source vendors each fiscal year, to ensure that no other vendors can provide the service or commodity.” **(Exhibit 1)**

Payment Card Purchases

ODOT payment cardholders were permitted to purchase from vendors on the Ohio Office of Budget and Management’s vendor service for purchases valued up to \$2,500 per transaction. Prior to making a payment card purchase, the cardholder was required to enter solicited quote information in the voucher payment card system for supervisory review and approval by the ODOT district fiscal office to verify that the quotes were in compliance with the quote guidelines. Once reviewed and approved, the cardholder was notified that he or she could purchase the requested item. Once purchased, the cardholder forwarded the supporting documentation to the ODOT district fiscal office for processing, and the charge was submitted for payment by the Ohio Office of Budget and Management.

Fire Protection System Inspections

Ohio Revised Code §3737.82 requires the fire marshal to adopt a state fire code consisting of rules setting the minimum standards for "... safeguarding life and property from fire and explosion... ". The Ohio State Fire Marshal adopted such rules which are contained in Ohio Administrative Code §1301:7-7. Section 1301:7-7-09 provides guidance for maintenance and inspection of fire protection systems, specifies documents required to be maintained supporting completed inspections, and sets forth steps to be taken when the fire protection system is deemed inoperable. Two vendors operated the fire suppression systems at the District 5 offices located in Jacksontown. SimplexGrinnell LP was responsible for providing the security and alarm systems which interacted with the fire suppression system. S.A. Comunale Co. Inc. was responsible for performing annual and quarterly inspections.

INVESTIGATIVE SUMMARY

Basis for Investigation

On July 7, 2011, investigators from the Office of the Ohio Inspector General and the Ohio State Highway Patrol met with ODOT Investigative Services to discuss the allegations involving District 5 Transportation Engineer Joe Yee. Yee's job responsibilities included maintaining the water, fire, and security systems for district buildings, and Yee was permitted to purchase goods and services as needed to fulfill his job responsibilities. ODOT Investigative Services received an allegation that Yee had not obtained the required number of quotes prior to making a payment card purchase. During the review of quote information for payment card purchases, the District 5 fiscal office determined Yee charged a \$2,271.86 purchase on June 10, 2011, without obtaining the two quotes required.

However, rather than entering the solicited quote information into the voucher payment card system for supervisory review prior to making the purchase, it was not until five days after the purchase was made, on June 15, 2011, that the District 5 fiscal office asked Yee to provide the required quote information per ODOT's Quote Guidelines

Contrary to the assertion by the District 5 fiscal office that Yee did not obtain the two required quotes, Yee's supervisor requested and reviewed Yee's files related to this purchase. Upon review by Yee's supervisor, three quotes were discovered in Yee's files. Quotes were obtained from Peterson Thermal Equipment Co. dated May 4, 2011, OTP Industrial Solutions dated May 5, 2011, and Approved Component and Systems Inc. dated May 5, 2011. **(Exhibit 2)** Despite obtaining three quotes, on June 29, 2011, almost two months after the fact, Yee entered his response in the voucher payment card system that Peterson Thermal Equipment Co. was the sole distributor for Aurora Pump Company in central Ohio. **(Exhibit 3)** ODOT Investigative Services determined further investigation was warranted to resolve why Yee identified Peterson Thermal Equipment Co. as a sole source provider but still went through the process of obtaining three quotes.

While one would expect the quotes of three competitors to be sent from three different fax numbers, further review of the quotes identified that two of the three quotes were sent from the same fax number belonging to Peterson Thermal Equipment Co.

Sole Source or Competitive Bids

On June 10, 2011, Yee was asked about the circumstances surrounding the Aurora pump purchase, and stated a back-up pump was needed, so he solicited quotes from two vendors, Approved Components and Systems Inc. and Peterson Thermal Equipment Co. using his desk phone. Yee said he also contacted a third vendor, OTP Industrial Solutions, but could not recall whether he requested a quote.

Yee's desk phone records from ODOT were reviewed for the period April 1, 2011, through July 19, 2011, to identify any calls made to Peterson Thermal Equipment, OTP Industrial Solutions, and Approved Components and Systems Inc.

<i>Date of Call</i>	<i>Time Call Started</i>	<i>Number Called</i>	<i>Vendor</i>	<i>Duration (minutes)</i>
05/04/11	2:26:46 PM	(614) 294-6851	Peterson Thermal Equipment	6.4
05/05/11	10:18:51 AM	(614) 294-6851	Peterson Thermal Equipment	2.9
05/06/11	11:23:07 AM	(614) 294-6851	Peterson Thermal Equipment	2.8
05/06/11	11:29:27 AM	(614) 294-6851	Peterson Thermal Equipment	2.2
06/15/11	9:12:16 AM	(614) 294-6851	Peterson Thermal Equipment	1.2
06/20/11	1:45:57 PM	(614) 294-6851	Peterson Thermal Equipment	0.9
06/20/11	2:05:54 PM	(614) 342-6123	OTP Industrial Solutions	2.0

The review of Yee's desk phone records found that no outgoing calls were made to Approved Components and Systems Inc. for the period of April 1, 2011, through July 19, 2011. All quotes for the Aurora pump were dated May 4, 2011, and May 5, 2011. Yee's assertion that he spoke with either OTP Industrial Solutions or Approved Components and Systems Inc. is not substantiated by his desk phone records. However, during the same period, Yee contacted Peterson Thermal Equipment Co. numerous times, as shown by the above phone records.

Yee stated he solicited three quotes because, although he purchased from Peterson Thermal Equipment Co. in the past, he forgot that they were the sole source provider of the Aurora Pump. After soliciting the other quotes, Yee realized they were not necessary.

Steve McNutt and Ray Peterson of Peterson Thermal Equipment Co., a distributor and dealer for various lines of equipment, were interviewed about the June 10, 2011, ODOT purchase of an Aurora pump. McNutt confirmed the quote located in Yee's file was the one he submitted at Yee's request. (**Exhibit 2**) McNutt confirmed he talked with Yee on the telephone and faxed the quote to him, but could not recall whether or not Yee requested he provide quotes from other vendors. However, McNutt thought Yee mentioned he needed more than one quote.

McNutt and Peterson were also questioned about Approved Components and Systems Inc. and OTP Industrial Solutions. McNutt and Peterson were aware of both competitors, but could not recall whether they contacted either vendor to provide a quote for Yee. McNutt and Peterson were shown the Approved Components and Systems Inc. quote faxed from the number

belonging to Peterson Thermal Equipment Co. (**Exhibit 2**) Although competitors, and unrelated companies, Peterson stated he frequently worked with Approved Components and Systems Inc. and had a stack of their letterhead at his office. When he received approval from Approved Components and Systems Inc., Peterson would submit quotes reflecting a total of Approved Components and Systems Inc.'s cost plus 3 percent.

On July 18, 2011, Approved Components and Systems Inc. owner Steve Garcia was interviewed and was shown a quote submitted to ODOT on his letterhead. Garcia stated it was not his quote, he did not authorize the quote, and the quote was prepared by Peterson Thermal Equipment Co. (**Exhibit 2**) When asked how he knew that, Garcia stated he recognized the fax number as Peterson Thermal Equipment Co.'s. Garcia said he had no contact with ODOT District 5 employee Joe Yee, did not know who Yee was, had never spoken with him, and had not contacted Yee to quote equipment.

On July 26, 2011, Garcia contacted Peterson Thermal Equipment Co. at the request of the investigators to obtain additional information about the Approved Components and Systems Inc. quote. Garcia learned that McNutt submitted the Approved Components and Systems Inc. quote to ODOT and was told this was not the only time Peterson Thermal Equipment Co. had submitted bids without Garcia's knowledge.

On June 30, 2011, ODOT Investigative Services contacted OTP Industrial Solutions' Sales Representative Scott Accountius who stated that Steve McNutt, a "...business acquaintance of mine from Peterson Thermal, who is the authorized distributor for the Aurora Pump Company, asked me to provide a price to Mr. Yee to satisfy a requirement that Mr. Yee have more than one price for this equipment. Peterson Thermal provided me with a price, that I added my profit margin to, and the contact information for me to send the quote to." (**Exhibit 4**)

On July 15, 2011, Accountius was again interviewed about the quote submitted to ODOT. Accountius stated OTP Industrial Solutions sells a variety of water pumps, but is not a distributor of Aurora pumps.

Additionally, Accountius acknowledged he had a little chance at winning the quote since Peterson Thermal Equipment Co. was the sole distributor in the area. However, Accountius added a sufficient margin to cover his costs in case he did win the quote. Although McNutt did not explain his involvement in ODOT's bid process, Accountius understood McNutt was asking for a "courtesy quote."³ Accountius told the investigators he submitted a quote, knowing he was going to lose, but that his effort would help advertise his company's name to ODOT.

In an interview, ODOT Transportation Engineer Yee acknowledged that the practice of one vendor directing the submission of multiple quotes from different vendors could prevent ODOT from obtaining the lowest and best price. Yee was asked if he specifically requested a vendor to provide three quotes, and responded, "Could it happen? Yes," and "Did I do it? Possibly." Yee did not recall how many times that occurred.

On July 11, 2011, Yee stated he was aware of ODOT policies requiring that he obtain quotes prior to making a purchase and the use of the ODOT quote form. Additionally, Yee stated he attended training on ODOT purchasing policies related to payment cards when the card was assigned to him and additional trainings at the district offices. He said he received a Purchasing and Contract Administration Manual containing purchasing guidelines, and periodic emails updating him on ODOT purchasing policy and procedural changes. A review of Yee's ODOT training record confirmed Yee attended a class on fraud and ethics on May 20, 2009, and a training covering purchasing and contract administration on May 15, 2008.

Despite Yee's knowledge of ODOT purchasing policies and his attendance at ODOT trainings, a review of Yee's payment card purchases for fiscal years 2008 through 2011 revealed Yee made 15 purchases requiring him to obtain two or more quotes. Yet, Yee only obtained the required number of quotes on two of those purchases. Yee admitted that for a December 30, 2009, charge, he did not obtain the required second quote. (**Exhibit 5**)

³ A "courtesy quote" is a quote submitted by one company at the request of another company with the knowledge the company submitting the quote will not win.

A review of available district facilities office records identified pump replacements in 1999 and 2007 which were purchased from Peterson Thermal Equipment Co. These records revealed that Yee identified Peterson Thermal Equipment Co. as a sole supplier for the 1999 purchase but that he solicited three quotes for the 2007 purchase.

An ODOT District 5 facilities office representative obtained the pump specifications and determined another brand of pump could have been purchased that met the required specifications. However, using a different brand would have required piping modifications. **(Exhibit 6)**

Accordingly, we find reasonable cause to believe a wrongful act or omission occurred in this instance.

Fire Suppression System

ODOT District 5 representatives also notified ODOT Investigative Services that District 5's offices, located in Jacksontown, had a fire suppression system that had been inoperable for more than two years and had not been inspected. On July 11, 2011, investigators from the Office of the Ohio Inspector General and the Ohio State Highway Patrol interviewed employees from ODOT District 5 to gain an understanding of the issues with the fire suppression system.

According to the facilities department administrative assistant, Yee was responsible for identifying and purchasing parts or equipment to maintain the fire suppression system, scheduling the required inspections, and maintaining documentation supporting when the maintenance checks and inspections on the fire suppression system occurred. Moreover, according to the acting district facilities manager, in March 2011, Yee told him the ODOT District 5 facilities office's fire suppression system was inoperable because the parts to repair the existing pump were obsolete. Yee was instructed to purchase and install the replacement pump, and to obtain the mandatory inspections as required by Ohio Administrative Code §1301:7-7-09(A)(6).

Shortly after the pump was purchased and the required inspections were requested, the Ohio State Fire Marshal notified ODOT the building could be shut down until the system was repaired. ODOT negotiated with the State Fire Marshal for a 30-day reprieve in order to restore fire suppression system operations. As part of the agreement, the State Fire Marshal placed the building on fire watch⁴ until the pump was replaced and requested access to recent fire suppression system inspection records. ODOT was unable to locate the suppression system inspection records. However, when searching for the records, the District 5 facilities office representative stated they realized the Fairfield County ODOT garage's fire suppression system inspections were not current as well.

On May 20, 2011, State Fire Marshal's Office inspectors completed a follow-up inspection and determined the fire suppression system was operational. However, there were three remaining violations, including the failure to maintain fire inspection records. The State Fire Marshal's Office stated these continuing violations were scheduled for a follow-up visit in 2012.

Yee was questioned about the inoperable fire suppression system. He stated the pump for the District 5 facilities office was inoperable because the parts needed to repair the pump were obsolete. As such, the pump and the fire suppression system were inoperable. Even though Ohio Administrative Code §1301:7-7-09(A)(6) and National Fire Protection Association Rule 25 Chapter 5 §5.1 (**Exhibit 7**) required regular inspections, Yee said the pump had not been inspected for approximately 1 ½ years as Yee believed it was SA Comunale Co. Inc.'s responsibility to notify him when the inspections were to be completed. However, Yee stated it was his job responsibility to make sure the inspection occurred and that the last six or seven inspections were maintained on the fire inspection tags.

Yee provided the fire inspection tags indicating the last inspection performed by SA Comunale Co. Inc. was on July 24, 2008 (**Exhibit 8**). Prior to July 24, 2008, regular inspections were conducted. Yee stated the inspections had not been performed because the pump manufacturer recommended they avoid running the pump more than necessary because replacement parts were

⁴ Ohio Administrative Code §1301:7-7-09(A)(7) defines a fire watch as "one approved means for notification of the fire department and their only duty shall be to perform constant patrols of the protected premises and keep watch for fires."

no longer available for those parts requiring repair. Yee believed the inspections involved running the pump. Because the manufacturer's representative stated ODOT should avoid running the pump more than necessary, Yee decided to avoid the required inspections.

Accordingly, we find reasonable cause to believe a wrongful act or omission occurred in this instance.

CONCLUSION

Yee failed to comply with ODOT policies and procedures for payment card purchases. Allowing one vendor to orchestrate the issuance of multiple quotes gave the illusion that competition was occurring in an open market between independent and unrelated companies, when in fact it was not. This was in violation of the procedures established in the ODOT Quote Guidelines issued in October 2009.

Yee also failed to maintain an operable fire suppression system for District 5 offices contrary to Ohio Administrative Code §1301:7-7-09. Moreover, Yee failed to obtain the required fire suppression system inspections for ODOT District 5 facilities office and the Fairfield County ODOT garage, and failed to schedule and maintain records supporting such inspections had occurred.

RECOMMENDATIONS

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

1. Revise the sole source provider policies so that purchasers, where reasonable, demonstrate a good faith effort to consider alternatives to sole source purchases. In instances in which different manufacturers have equipment that might reasonably meet the project specification with reasonable modifications, purchasers should consider the cost-benefit of such purchases.

2. Internally review the actions of all employees involved in this report to determine whether their conduct and practice warrants further administrative action or training.
3. Require the fiscal officer's continued review of quotes to determine whether sufficient documentation exists to support the lack of vendor response and to substantiate that the required number of quotes was obtained prior to approving the purchase and the charge for payment.
4. Solicit quotes reflecting the equipment specifications, layout configuration, and avoiding brand-specific requests in order to obtain the lowest and best price as required by O.R.C. §125.05.
5. Provide annual training to payment cardholders discussing ODOT policies, procedures, and instances of policy and procedure noncompliance. This training should include examples of related policies or procedures that should have been followed in order to ensure payment cardholders are aware of and understand ODOT payment card policies and procedures.
6. Revise the responsibilities of ODOT building maintenance personnel to include inspection requirements for fire protection and security systems, and to require as part of the existing quality assurance review process that the reviewer verify the required inspections occurred.
7. Maintain records supporting annual and quarterly fire inspections as required by Ohio Administrative Code §1301:7-07-09.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Transportation
FILE ID #: 2011-138

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
February 2, 2012

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