



INSPECTOR GENERAL REPORT

2005-02-0058

December 29, 2006

INDOT DESIGN FIRM SELECTION

Indiana Inspector General David O. Thomas, after an investigation by Special Agent Alan McElroy, the State Board of Accounts, and Staff Attorney Amanda Schaeffer, reports as follows:

This case deals with the procedure previously used by the Indiana Department of Transportation (INDOT) in the selection of private design and engineering firms to formulate designs for state road construction projects.

I.

This matter was first brought to the attention of the Office of Inspector General (OIG) by INDOT. This investigation was conducted by the OIG with assistance from the State Board of Accounts, beginning in 2005 and continuing through 2006.

Prior to the investigation, INDOT had an established method for selecting private engineering firms to formulate designs for state road construction projects. The “Consulting Services Unit” was a division created within INDOT to conduct this selection process. The first step was to identify the project and the project’s specialized needs. A Public Notice of Professional Services Bulletin (PSB) was then released, announcing the available projects to the design firm community. Statements of interest and proposals were then submitted by consulting firms to INDOT. Next, a Selections Committee (the Committee) within INDOT evaluated the proposals using an elaborate grading system. Each firm was given a letter grade score and the top three candidates were placed on the “PSB short list,” this being the Committee’s top three choices for each project. Once the Committee had completed the selection process, the “PSB short list” was completed and approved by the INDOT Commissioner.

The INDOT projects at issue here were in PSB 04-13. The investigation revealed that the Committee met and made their initial design firm selections on July 28, 2004. The INDOT Consultant Service Manager (CSM) then prepared the “PSB short list” document on July 29, 2004 and transmitted the document to an INDOT Deputy Commissioner and Chief Engineer. Both individuals signed off on the selections memorandum on July 29, 2004 and August 2, 2004, respectively. *See Exhibit A, attached (two pages).* This signed and dated “PSB short list” memorandum was then immediately delivered to Commissioner Nicol for approval.

However, this document was not approved by the Commissioner until November 4, 2004. On that date the Commissioner directed the CSM to make changes to this PSB 04-13 short-list memorandum. Specifically, the Commissioner directed the CSM to change some of the firms that had earlier been selected by the Committee and also to record the date of these new November 4, 2004 selections by the Commissioner to the earlier date of July 29, 2004, the date of the CSM recommendations.

The Commissioner then signed the document and wrote on the document the date of his signature as “10/29/04”, although the actual date he signed the PSB document was the later date of November 4, 2004. *See Exhibit A, attached.*

The Commissioner in this process changed the original Committee’s selections regarding eleven (11) private design firms.

INDOT employees interviewed by the OIG admitted that previous changes in past CSM recommendations had been made by INDOT Commissioners, but that it was unusual for a Commissioner to change this many firms. Regarding the fact that some of the ultimate design firms awarded contracts by the Commissioner’s changes were not listed in the earlier CSM recommendations in PSB 04-13, INDOT employees admitted this was also unusual.

With this information, the investigation next sought the reason for the Commissioner’s changes and whether there was a correlation between the timing of the changes being within two days after the 2004 elections which changed administrations in the Office of Governor, and consequently INDOT leadership.

The results of this investigation were submitted to the Marion County Prosecuting Attorney's Office which conducted with OIG assistance an enhanced state-wide investigation of design firms to determine if information could be obtained regarding the motive for these changes in PSB 041-13. However, this evidence was not collected. The OIG concurred with the Marion Prosecutor's Office in declining to proceed with prosecution. The OIG also advanced an ethics complaint against the former INDOT Commissioner, filed on November 10, 2005, alleging a violation of the political activity ethics rule in 40 IAC 2-1-7.1, re-codified in the Indiana Code of Ethics as 42 IAC 1-5-4. This resulted in a finding of an ethics violation by the Indiana Ethics Commission and a fine of five thousand dollars (\$5000) against the Commissioner issued on June 8, 2006. Final payment of the fine was made by the Commissioner on August 3, 2006.

II.

The OIG asserts jurisdiction over this case under IC 4-2-7-2(b), which states that the OIG is responsible for addressing fraud, waste, abuse, and wrongdoing in state agencies.

III.

In addition to submitting this investigation for prosecutorial review and obtaining an ethics violation determination and fine, the OIG made an earlier recommendation to INDOT regarding future INDOT procedures involving the selection of private design and consultant firms for state construction projects

when the Commissioner wishes to change the selections made by Committee.
Following this recommendation and prior to the conclusion of the OIG
investigation, INDOT committed this rule to writing in September of 2005, a copy
of which is attached as Exhibit B.

Dated this 29th day of December, 2006.



David O. Thomas, Inspector General