

State of New York
Office of the Inspector General



Investigation into the Contract Fraud of
Contractor Glenn LeClaire and Office of
General Services Engineer-in-Charge John Hall

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Catherine Leahy Scott
Inspector General

STAFF FOR THIS INVESTIGATION AND REPORT

SPENCER FREEDMAN
Executive Deputy Inspector General

MICHELE HOST
Chief Counsel

AUDREY MAIELLO CUNNINGHAM
Deputy Inspector General

BERNARD COSENZA
Deputy Inspector General for Investigations

SHERRY AMAREL
Deputy Chief Investigator

JONATHAN MASTERS
Investigative Attorney

ANA PENN
Investigator

STEPHEN DEL GIACCO
Director of Investigative Reporting (Albany)

FELISA HOCHHEISER
Director of Investigative Reporting (New York City)
Special Counsel

EXECUTIVE SUMMARY

The New York State Office of General Services' (OGS) Design and Construction Unit reported to the Inspector General and the State Comptroller that "questionable documentation" had been discovered in records submitted by LeClaire-Fleming Mechanical Contractors, Inc., to OGS on emergency contracts performed between April 2006 and June 2008. OGS's Design and Construction Unit found numerous instances in which LeClaire-Fleming billed OGS for work purportedly performed by its employees on two different projects on the same dates, and inflated times and labor hours beyond those listed in project records and inconsistent with log-in and log-out times reported at project sites, among other things.

The Inspector General and State Comptroller, assisted by an independent auditor retained by OGS, commenced an investigation of 16 contracts performed by LeClaire-Fleming for OGS from March 2006 to March 2009. The investigation found that LeClaire-Fleming and its principal, Glenn LeClaire, submitted numerous false documents to OGS in order to obtain payment of more than \$419,000 based on misrepresentations in these fraudulent documents. The documents purportedly represented LeClaire-Fleming's costs on the contracts, for which reimbursement was sought and, in large part, payment was received.

The Inspector General and State Comptroller referred the findings to the New York State Attorney General, and on June 26, 2013, Glenn LeClaire was arrested. On May 9, 2014, LeClaire pleaded guilty to Grand Larceny in the Fourth Degree. On June 6, 2014, LeClaire was sentenced to five years of probation, during which he will be barred from contracting with New York State, and ordered to pay \$123,711.54 in restitution and forfeiture of \$295,775.38. All restitution and forfeiture has been paid.

On August 12, 2013, former OGS Engineer-in-Charge John Hall was charged with participating in a scheme to defraud the state by approving fraudulent expense reports submitted to OGS on the contracts in exchange for benefits from LeClaire, including the receipt of construction and home improvement equipment and materials. On February 21, 2014, Hall pleaded guilty to Defrauding the Government and Bribe Receiving in the Third Degree. On May 5, 2014, Hall was sentenced to six months in jail and five years of probation, and ordered to pay restitution of \$52,285, which has occurred. Hall retired from OGS in 2011.

BACKGROUND

A. The New York State Office of General Services and Emergency Contracts

OGS routinely bids and awards millions of dollars in construction projects on behalf of state agencies to maintain and improve existing facilities or build new structures. Pursuant to provisions of the State Finance Law and State Comptroller guidelines, OGS awards most projects to the lowest responsible bidder following a competitive bidding process. This process generally requires the formal solicitation of contractors and their submission of "fixed price" proposals. Fixed price contracts obligate the contractor to perform the work for a set price regardless of costs actually incurred on the project.

In addition to planned contractual needs, OGS also is required to meet urgent and unforeseen occurrences at state facilities (i.e. a rupture in an underground pipe or a boiler explosion) by awarding emergency contracts. Due to the immediacy of the situation, a rapid bidding process is employed. For this purpose, OGS maintains a list of contractors who have completed applications and been pre-approved to bid on emergency work, which includes their trade specializations and the geographical area in which they seek work. OGS pre-approval is based on documentation describing the contractors' ownership, experience, staffing resources, equipment, and licenses held, among other items. On a rotating basis, OGS informally solicits bids from contractors on the list, sometimes by facsimile or telephone. OGS informs the winning bidder with a "Notice to Proceed," and that contractor is required to commence work within four hours of receipt.

Unlike fixed price contracts, emergency contracts generally are awarded on a cost-plus basis. A cost-plus payment is used for emergency contracts because the full scope of the project is often unknown at the outset. In cost-plus situations, the contractor is paid for the actual and documented cost of labor, materials, equipment, and other allowable expenses incurred on the project, plus a fixed or percentage markup for contract administration, overhead, and profit.

For each project, contractors are required to maintain a daily record of labor, material and equipment expenses incurred on OGS-provided forms. In order to receive payment,

contractors submit periodic payment applications to OGS. The primary document submitted with an application is the "Contractor Expense and Fee Summary" which lists the contractor's and subcontractors' total costs in that payment period. The contractor is required to insert the markup and calculate the total amount requested from OGS. The form also requires the contractor to attest to the validity of the submission.

Payment applications contain a number of documents supporting the Contractor Expense and Fee Summary, including: (i) a Payroll Report listing the employees utilized on a project, their total hours, labor rate, and pay during the period being billed; (ii) a Labor Rate Worksheet which includes the labor wage rate for each labor classification (from the New York State Department of Labor), benefits, payroll taxes, and insurance (including federal and state unemployment insurance); (iii) a Material Expense Report which records the quantity and cost of materials used on the project; and (iv) an Equipment Expense Report which describes the type of equipment used, rate, hours of deployment, and associated costs.

These documents, in turn, are supported by the project "daily sheets," which include Daily Labor Reports and Daily Material and Equipment Reports, as well as all invoices of material and equipment suppliers, which are also attached to the payment application. Daily Labor Reports are to be completed each day by the contractor during the project and list the employee name, labor classification (operator, plumber, laborer, etc.), and hours worked, among other things. Similarly, Daily Material and Equipment Reports are to be completed by the contractor and list the specific equipment, hours of operation, and quantity of material utilized each day on the job site. OGS requires the contractor or his representative to sign an "On-Site Certification" attesting to the accuracy of the representations made in these forms.

All completed reports must be submitted daily for review and verification by the OGS Engineer-in-Charge, who then forwards the reports to the OGS regional office, which in turn submits them to OGS central office in Albany. Final payment applications also must include the State Comptroller's Bureau of State Expenditures certifications for the prime and subcontractor(s) which require the contractor and all subcontractor(s) to certify that employees on the project were paid the prevailing wage and supplements.

B. LeClaire-Fleming Mechanical Contractors

LeClaire-Fleming is a general contractor located in Rochester and Sodus, specializing in heating, ventilation, air conditioning, plumbing, and excavation work in the western counties of the state. The president and owner of this corporation during the period of this investigation was Glenn H. LeClaire.¹ LeClaire-Fleming commenced business in 1976 and, after incorporating in New York State in 1988, sought and was awarded its first contract with OGS in 1989. In the ensuing years, LeClaire-Fleming performed 86 projects for OGS totaling almost \$10 million. The instant investigation reviewed 16 projects awarded by OGS to LeClaire-Fleming between March 2006 and March 2009 totaling \$3,716,116.

INVESTIGATION REVEALS FRAUDULENT BILLING BY LECLAIRE-FLEMING ON 16 STATE CONTRACTS

An investigative team consisting of Inspector General investigators, members of the State Comptroller's Investigations Unit, and OGS's independent auditor analyzed all records maintained by OGS regarding the 16 LeClaire-Fleming projects under review. The team also obtained thousands of pages of contract-related documents from subcontractors and material and equipment suppliers allegedly utilized by LeClaire-Fleming on the OGS projects. Records for bank accounts held by Glenn LeClaire and LeClaire-Fleming also were obtained. The investigative team conducted interviews of more than 30 individuals, including LeClaire-Fleming employees, subcontractors and material and equipment suppliers, and OGS employees.

The evidence revealed that LeClaire-Fleming and Glenn LeClaire between 2006-2009 submitted numerous fraudulent documents to OGS on emergency contracts seeking reimbursement for expenses not actually incurred or for expenses that were improperly inflated. The investigative team determined that LeClaire-Fleming and Glenn LeClaire engaged in a number of schemes to facilitate this fraud. Specifically:

¹ The subjects of this investigation were LeClaire-Fleming Mechanical Contractors, Inc. and owner/operator Glenn LeClaire. A distinct splinter entity, LeClaire-Fleming Plumbing & Heating Services, Inc., owned and operated by George Fleming, was formed around 1998 and incorporated in 2005. During the relevant period of this investigation, George Fleming was not an owner or officer of LeClaire-Fleming Mechanical Contractors and neither George Fleming nor LeClaire-Fleming Plumbing & Heating Services is implicated in this matter.

- Submission of invoices that were entirely fictitious or listed costs inflated beyond the original invoice;
- Billing of labor hours billed on multiple projects for work seemingly conducted simultaneously;
- Excessive billing of labor hours overbilled;
- Inflated equipment costs inflated and double-billing on different payment applications that was charged by both LeClaire-Fleming and a subcontractor working on a project; and
- Claiming charges for unemployment insurance taxes well beyond that required.

In total, the investigative team found that LeClaire-Fleming and Glenn LeClaire, through these schemes, fraudulently sought more than \$419,000 in improper reimbursements from OGS related to these 16 contracts.

A. LeClaire-Fleming Fraudulently Created Invoices or Inappropriately Altered Invoices

One scheme repeatedly employed by LeClaire involved either the creation of fictitious invoices from purported subcontractors or suppliers, or the alteration of actual invoices to inflate the reimbursement sought. The investigative team uncovered numerous instances of these types of fraud by comparing the documents submitted by LeClaire-Fleming to OGS that purportedly represented expenses incurred with documents investigators obtained by subpoena directly from the subcontractors, suppliers, and others memorializing the true costs. This examination revealed \$163,352 in fraudulent and unsupported billing by LeClaire.

B. LeClaire-Fleming Double-Billed and Over-Billed for Equipment

The investigative team determined that, in multiple instances, LeClaire submitted payment applications to OGS that included duplicate and inflated invoices for the cost of equipment used on emergency contracts. LeClaire's duplicate charges for the same equipment resulted in improper reimbursements totaling more than \$8,500, while equipment overcharges exceeded \$20,000.

For example, on a 2006 emergency contract at a correctional facility, LeClaire ordered materials from a supplier of boiler parts, billed OGS more than \$8,000 for the items and received reimbursement. Months later, LeClaire submitted another payment application, again seeking

reimbursement for the same boiler parts. OGS failed to notice the duplication and processed the payment again, netting LeClaire \$8,390.23 in fraudulent reimbursements. In another example, LeClaire claimed to have rented a bulldozer for several-weeks use on a correctional facility emergency contract and billed OGS more than \$3,000. However, one of the weekly invoices LeClaire submitted was found to be fraudulent – a mere copy of an earlier invoice. Based on this information, OGS withheld reimbursement of over \$1,000, the value of the weekly rental.

LeClaire also inflated the value of equipment used on projects. OGS requires contractors who utilize self-owned and rental equipment on emergency contracts to calculate their total equipment expenses. For self-owned equipment, this calculation includes determining the type and “Blue Book” value for operation of the equipment, as well as the monthly rate, hours on site, the hourly or billing rate, and the actual operating hours. A contractor is paid a certain percentage of the monthly on-site rate based on the number of days the equipment is on site, as well as for the hourly operating costs, based on the actual hours that piece of equipment was in operation while on site. Blue Book values are available from an on-line database and updated semi-annually. Contractors must utilize the appropriate value period, the period when the equipment was utilized on-site, when calculating their expenses. LeClaire, in at least 11 payment applications to OGS totaling more than \$10,000, inflated the monthly on-site rate and/or hourly operating rate for equipment used on a project. On one project, LeClaire inflated the monthly rate and hourly operating cost of a backhoe, fraudulently seeking over \$2,000 from OGS. In another, LeClaire sought over \$4,600 in fraudulently inflated billing for equipment monthly rates and hourly operating costs. LeClaire even attempted to receive over \$11,000 in reimbursement costs for utilizing equipment he purported to own, but does not.

C. Fraudulent Labor Hour Overcharges by LeClaire-Fleming

The investigative team established that LeClaire-Fleming, in yet another scheme, defrauded the state of thousands of dollars by repeatedly overcharging OGS for labor.

As noted, contractors are required to keep a daily record of labor, material, and equipment utilized on emergency projects. Regarding labor, contractors must complete and certify Daily Labor Reports listing all employees used on a project, the employees’ labor classifications and hours worked. These reports are submitted with payment applications which

also include the Contractor Expense and Fee Summary in which the contractor further is required to certify “that all work has been performed . . . as included in this Expense and Fee Summary.”

The evidence shows that Glenn LeClaire, in more than 70 instances, filed fraudulent documents claiming that he and his employees supposedly worked on two, and sometimes three, projects at the same date and time, wrongfully billing OGS for at least \$14,985.85.

D. LeClaire-Fleming Made Fraudulent Submissions for Claimed Labor on Projects

The investigative team found over \$8,500 in discrepancies in LeClaire-Fleming’s certified payrolls on state projects. New York State Labor Law and rules and regulations of the New York State Department of Labor require certain record keeping on public work contracts to ensure that wages and supplements paid to laborers, workers, and mechanics are not less than the current prevailing rate schedule for the locality where the work is performed. The investigative team found at least one instance in which Glenn LeClaire charged the state for work supposedly performed on an OGS emergency contract even before the deadline date to accept bid proposals. In other instances, the investigative team found that Glenn LeClaire improperly billed the state more than \$5,100 for time his employees were in transit to and from job sites.²

E. Other Inappropriate Billing by LeClaire-Fleming

1. Fraudulent Change Order on an OGS Fixed Price Contract

The investigative team discovered a fraudulent “change order” valued at nearly \$4,000 submitted by LeClaire on a fixed price contract. As noted, fixed price contracts require the contractor to perform the project work for the bid amount, regardless of costs actually incurred. However, based upon unanticipated circumstances, OGS may determine that the scope or time of a project has increased. When this occurs, a change order is appropriate. A change order instructs the contractor to engage in additional work not contemplated in the original project scope and allows the contractor to be paid for the associated labor, materials and equipment

² Although OGS’s Instructions to Contractor directive does not contain direct language either barring reimbursement for travel by the contractor’s employees to and from the project site, neither does it contain language allowing for such travel. OGS is currently addressing this issue by implementing a directive entitled “Emergency Payment Guideposts” to limit reimbursement of travel to certain situations, all requiring prior approval and distinct recording.

costs, including subcontractor costs. Before commencing additional work, a “Contractor’s Proposal” must be completed by the contractor listing the proposed labor, materials, equipment, and subcontractors to be utilized and the cost of each. Supporting documentation, such as invoices and quotes for material and equipment suppliers, is to be included in the contractor’s signed submission to OGS. In this change order, the investigative team found two fraudulent invoices: one indicating work by a subcontractor when the person actually worked for LeClaire as a paid employee; and another for use of a subcontractor’s equipment that was actually owned by LeClaire-Fleming. Based on these fraudulent invoices, OGS paid LeClaire-Fleming \$3,841.

2. Fraudulent Billings for Payroll Taxes for Federal and State Unemployment Insurance

The investigative team determined that Glenn LeClaire defrauded the state of more than \$12,000 by fraudulently overcharging for payroll taxes for unemployment insurance for LeClaire-Fleming’s employees.

On emergency contracts, OGS reimburses documented labor expenses. To determine their labor expenses, contractors complete Labor Rate Worksheets and calculate the hourly cost for each employee under their applicable work classification. After listing the DOL hourly prevailing wage and benefit rates for each classification and adding applicable taxes and insurance, including state and federal unemployment insurance and workers’ compensation insurance, the hourly wage cost is determined. Once calculated, the contractor can submit these labor expenses with payment applications for reimbursement and markup.

A contractor must pay unemployment taxes to New York State and the federal government up to a certain wage threshold each year for each employee. In turn, unemployment insurance benefits are paid from these employer contributions. New York State requires that the first \$8,500 of each employee’s annual compensation be taxed at a rate specific to each employer. From 2006 through 2010, this rate increased yearly from 7.7 percent to 9.9 percent for LeClaire-Fleming. The federal government applies an (adjusted) 0.8 percent tax rate to each employee’s first \$7,000 in wages annually. Currently, these calculations result in LeClaire-Fleming payments of \$841.50 for each employee per year in New York State unemployment taxes and \$56 (per employee per year) in federal unemployment taxes. Once these threshold amounts have been reached, no further payments for unemployment taxes are collected. The

Labor Rate Worksheet notes that federal unemployment taxes are due “up to a maximum of \$56 per employee per year.” For New York unemployment taxes, the form notes that the tax is applicable “up to the 1st \$8,500 of base salary paid per employee per year.”

In violation of these requirements, LeClaire-Fleming and Glenn LeClaire on all 13 emergency contracts reviewed in this investigation billed the state for unemployment taxes for *every* hour their employees worked during each year, rather than only charging for unemployment insurance up to the maximum limit allowed under law and then ceasing such claims. After LeClaire-Fleming’s markup is considered, this overbilling totaled \$26,984.77, and resulted in LeClaire’s wrongful gain of at least \$12,627.79, as several payments were withheld pending the outcome of this investigation.

3. Non-Reimbursable Expenses: “Walking Boss” vs. “Working Boss”

LeClaire also improperly sought over \$64,000 from OGS in non-reimbursable expenses for his time as a project supervisor by misrepresenting himself as a “working boss.”

Under OGS emergency contract provisions, a contractor may not be reimbursed for time the “Contractor’s Designated Representative” is directly employed on site. Only hours for foremen, workers, and other employees below the rank of the designated representative are reimbursable as separate expenses. According to the contract, “Job coordination, supervision, project management, etc.” are considered part of a contractor’s administrative overhead costs that are accounted for in the percentage markup. In construction jargon, a “working boss” – a supervisor who actually performs labor on a project – receives compensation for actual work performed on an OGS emergency contract, while a “walking boss” – a company official who merely supervises – does not. Thus, a working boss’s time is a reimbursable expense; a walking boss’s time is considered overhead and non-reimbursable.

LeClaire reported to OGS that he personally worked on 13 emergency contracts examined by the investigative team and sought payment for his purported hours. This claim is reflected in the Daily Labor Reports and the Labor Expense Reports he certified on each project. For his supposed labor, LeClaire billed OGS and received reimbursement, with markup, of \$54,582.60. However, according to the testimony of OGS Engineers-in-Charge, employees, and subcontractors, when LeClaire was actually on site for these projects, it was as a “walking boss,”

not a “working boss.” Therefore, his time was not reimbursable. Moreover, on at least one project, LeClaire was not even present on site, but nonetheless billed OGS for his time. Indeed, on at least three emergency contract projects, LeClaire requested reimbursement for supposed labor hours totaling \$1,973.41, when he or his employee, based on LeClaire’s own description of the work being performed that day, was doing paperwork – a non-reimbursable expense.

In particular, the investigation also revealed that LeClaire billed OGS more than \$7,950 for time he claimed to have worked on site on an emergency contract at the Department of Corrections and Community Supervision’s (DOCCS) Collins Correctional Facility in 2006 and 2007, but was never present on the job. LeClaire claimed his on-site work hours in Daily Labor Reports he submitted to OGS. However, Collins Correctional Facility, like all correctional facilities in the state, maintains log books listing the name and sign-in and sign-out times of all visitors, including contractors. An examination of the relevant log books at Collins Correctional Facility reveals no mention of LeClaire during the period of the contract. Serious discrepancies also were found in the claimed and actual attendance of eight other LeClaire-Fleming employees.

4. LeClaire Inflated Contract Markups

The investigation found that LeClaire-Fleming repeatedly used a markup higher than the emergency contract allowed, resulting in wrongful payments that totaled more than \$1,800.

In one instance, LeClaire-Fleming was awarded an emergency contract for work at DOCCS’s Willard Drug Treatment Campus in 2006 with a 4 percent markup. Over a 21-month period, LeClaire submitted six payment applications on this project, the first and second of which listed his markup as 4.75 percent. OGS failed to notice the incorrect rate on the latter application and paid LeClaire-Fleming the improper amount. On the third payment application, LeClaire improperly included a 12 percent markup, and this too was paid. A fourth application, filed almost eight months later, also included an incorrect markup of 12 percent, but it was detected by OGS and adjusted downward.

5. Glenn LeClaire Claimed Former Partner Employed on Three Emergency Contracts

Glenn LeClaire filed false labor reports with OGS on three projects by certifying that a particular employee’s services were utilized at Willard Drug Treatment Campus, Elmira

Correctional Facility, and Collins Correctional Facility. The billings for the employee totaled \$13,352.33. However, in testimony to the investigative team, the employee declared that he had never been to Willard Drug Treatment Campus or Elmira Correctional Facility, and did not work at Collins Correctional Facility in 2008, the period of the project at issue. Based on this testimony, LeClaire's billing for those claimed services is fraudulent.

Summary of Fraud by LeClaire-Fleming

The chart below summarizes the major categories of fraud committed and the dollar value of the wrongful payments sought and received by LeClaire-Fleming.

LECLAIRE-FLEMING TOTAL FRAUD SUMMARY			
Category	Amount Received by LeClaire-Fleming	Amount Requested by LeClaire-Fleming but Held by OGS Pending Investigation	Total Value of Fraud
Invoices fraudulently created by LeClaire or altered to inflate the true invoice	\$64,633.81	\$98,718.24	\$163,352.05*
Labor hours charged to OGS on two and sometimes three projects for work seemingly conducted simultaneously	\$10,705.69	\$1,844.91	\$12,550.60
Labor hours over-billed to OGS and in conflict with Certified Payroll reports, other certified reports, labor rates and maximum hours, correctional facility logbooks, EIC reports and toll receipts, among others	\$47,445.10	\$124,222.96	\$171,668.06**
Project equipment expenses over-billed and double-billed on different payment applications and charged by both LeClaire-Fleming and a subcontractor working on a project	\$25,479.87	\$6,468.72	\$31,948.59
Charges related to Federal and State Unemployment Insurance taxes well beyond the required maximum percentage of the wages paid	\$13,649.65	\$13,335.12	\$26,984.77

Other miscellaneous expenses including inappropriate billing for non-reimbursable items	\$8,485.33	\$4,103.41	\$12,588.74
TOTAL =	\$170,399.45	\$248,693.36	\$419,092.81

Criminal Conduct by OGS Engineer-in-Charge John Hall

The Inspector General and State Comptroller referred the findings to the New York State Attorney General. Subsequent investigation revealed criminal conduct by OGS Engineer-in-Charge John Hall from approximately July 2006 to approximately February 2009. In his official capacity, Hall was responsible for reviewing and approving contractors' expense reports submitted to OGS for labor and equipment costs incurred on OGS emergency service projects. Hall solicited and obtained construction and home improvement-related equipment and items for his personal use, including radiant heating materials for his home, from LeClaire, whose work on OGS projects Hall oversaw. In exchange for these benefits, Hall signed off on LeClaire's fraudulent expense reports.

FINDINGS

The Inspector General and State Comptroller found that LeClaire-Fleming Mechanical Contractors, Inc. and principal Glenn LeClaire submitted numerous false documents to OGS and sought payment for over \$419,000 based on misrepresentations in these fraudulent documents. The false documents purportedly represented cost incurred by LeClaire-Fleming during the course of 13 OGS emergency contracts and three fixed price contracts, primarily at New York State correctional facilities, during the period March 2006 to March 2009.

On June 7, 2012, the Inspector General and State Comptroller referred the findings to the New York State Attorney General's Office for consideration of criminal prosecution and civil action seeking recovery of fraudulently received proceeds. On June 26, 2013, Glenn LeClaire was arrested by the Attorney General's Office. On May 9, 2014, LeClaire pleaded guilty to Grand Larceny in the Fourth Degree and was sentenced to five years of probation, during which he will be barred from contracting with New York State, and ordered to pay \$123,711.54 in

restitution and forfeiture of \$295,775.38. On June 6, 2014, LeClaire was sentenced to the terms above. All restitution and forfeiture has been paid.

On August 12, 2013, former OGS Engineer in Charge John Hall was charged with participating in a scheme to defraud the state by approving fraudulent expense reports submitted to OGS on the aforementioned contracts in exchange for benefits, including the receipt of construction and home improvement equipment and materials. On February 21, 2014, Hall pleaded guilty to Defrauding the Government and Bribe Receiving in the Third Degree. On May 5, 2014, Hall was sentenced to six months in jail and five years of probation, and ordered to pay restitution of \$52,285.