



Pennsylvania House of Representatives

Government Oversight Committee

FINAL REPORT ON INVESTIGATION 1-2020:

OFFICE OF STATE INSPECTOR GENERAL FIREARMS

PURCHASE

APRIL 6, 2021

House Government Oversight Committee



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Introduction

On March 16, 2020 the House Government Oversight Committee (Committee) received a joint referral from Majority Leader Bryan Cutler and Minority Leader Frank Dermody, requesting the Committee investigate recently reported information that the Office of the State Inspector General (OSIG) procured 145 Sig Sauer Model P320 firearms for use by their agents and the subsequent decision to not put the firearms in to service¹.

The Committee was tasked with conducting “an investigation of the facts surrounding the adherence to the procurement process in making this purchase. The committee shall report its findings and make recommendations to the General Assembly for possible legislative changes that it finds are warranted to ensure taxpayer dollars are utilized wisely and with accountability”.

The Committee’s investigation asked three fundamental questions about the procurement of the pistols:

- I. Did the OSIG adhere to an appropriate procurement process for the purchase of firearms?
- II. Was the decision made not to issue the firearms to OSIG agents after the firearms were purchased based on policy or the law?
- III. Have appropriate steps been taken to ensure that decisions which result in expenditures of taxpayer dollars have been vetted at the appropriate level given the nature of the expenditure?

The Committee’s analysis of these questions consisted of reviewing hundreds of pages of materials provided by OSIG related to the purchase of the firearms, the implementation of Act 29 of 2017 within OSIG, and interviews with key staff members within OSIG including the current

¹ Referral 1-2020 is attached as Appendix A to this report

State Inspector General Lucas Miller and former State Inspector General Judge Bruce Beemer.

The Committee would note it received the full cooperation of the leadership and staff of the OSIG and the Department of General Services (DGS) in its review. We also wish to thank Judge Beemer for voluntarily submitting to being interviewed and for his full cooperation.

Upon completing this review, the Committee has determined that OSIG completed an appropriate procurement process consistent with the law and best practices in consultation with the DGS. We have also determined that the decision to not issue the firearms was made based on policy rather than a determination that OSIG agents lacked the legal authority to carry firearms while on duty, and was made long after the firearms had been purchased. Finally, we have determined that while steps have been taken to recoup the costs of the firearms and related equipment, those costs have not yet been recovered and that process of selling these materials to appropriate agencies is ongoing.

Background

The OSIG was originally established in 1987 by executive order of the governor. Its mission was to deter, detect, prevent and eradicate fraud, waste, misconduct and abuse in the operations of all agencies under the Governor's jurisdiction². Each subsequent governor has chosen to maintain this executive order and office³.

Over the decades the scope of the work conducted by OSIG has increased significantly. Since 1994 the OSIG has been responsible for investigating and prosecuting fraud related to Pennsylvania's public assistance programs and conducting collection activities for the public

² Commonwealth of Pennsylvania Office of State Inspector General, Annual Report Fiscal Year 2016-17

³ McKelvey, Wallace, *Gov. Tom Wolf, right on cue, vetoes inspector general bill (and others)*, The Patriot News, October 28, 2016

benefits programs administered by the Pennsylvania Department of Human Services⁴. OSIG publications indicate the office has saved the Commonwealth more than \$75 million in recent years through investigations into applications for public benefits. These reports also indicate that OSIG has been a good investment for the Commonwealth, recovering nearly \$12 in savings for Pennsylvania for each dollar spent on investigations.

Interviews with current and former OSIG personnel indicate the agency was effective in spite of its lack of statutory authority. Prior to the enactment of Act 29 of 2017, OSIG's lack of statutory authority required the agency to work with the Pennsylvania State Police and local police departments in order to carry out its core functions. As it was working under an executive order, OSIG was not considered a criminal justice agency, and was therefore unable to make arrests, access criminal justice databases, subpoena materials, or execute search warrants in the course of its investigations. Without a statute establishing OSIG as a law enforcement agency, it effectively acted a private party in these matters— filing private criminal complaints to the same extent as a private citizen and relying on state and local law enforcement to file criminal charges.

During the 2015-16 Legislative Session, efforts began in the legislature to provide the OSIG with the statutory authority needed to fully carry out its mission. At the time, Pennsylvania was one of only six states in the nation which did not provide its Inspector General with law enforcement authority. During that session, the House and Senate passed House Bill 1618, legislation giving the OSIG subpoena powers and designating it as a limited law enforcement agency. Citing concerns about duplicating responsibilities currently held by the Office of Attorney General and Auditor General, Governor Wolf vetoed this legislation⁵.

⁴ Commonwealth of Pennsylvania Office of State Inspector General, Annual Report Fiscal Year 2016-17

⁵ McKelvey, Wallace, *Gov. Tom Wolf, right on cue, vetoes inspector general bill (and others)*, The Patriot News, October 28, 2016

GOC staff learned from interviews with legislative staffers involved in this process, following Governor Wolf's veto, the legislature began working with then Inspector General Beemer to draft legislation which would provide OSIG with the designation and powers he believed were needed to conduct its mission while addressing the concerns of the Wolf Administration. Those discussions led to the passage of Senate Bill 527 of 2017. Senate Bill 527 was signed into law by Governor Wolf and enacted as Act 29 of 2017⁶. Act 29 amended the Administrative Code of 1929 by adding a new Article V-A, establishing the Office of State Inspector General within statutory law.

In addition to enumerating the qualifications which an Inspector General must meet in order to be appointed, Act 29 granted OSIG limited criminal law enforcement powers. In a memorandum to staff on August 3, 2017, then Inspector General Beemer noted that some of the most significant changes from being designated as a law enforcement agency would be:

- The ability to subpoena documents, records and individuals;
- The use of search warrants in criminal investigations;
- The ability to information share with other law enforcement agencies;
- Filing criminal charges for violations of the Human Services Code of Pennsylvania related to the administration of public assistance programs, medical assistance, and the federal food assistance program⁷;
- The use of interview/custodial interrogation techniques.

⁶ Press Release, Aument, Ryan, State Inspector General Legislation Sent to Governor (July 10, 2017)

Implicit in the criminal complaint charging authority was the power of OSIG agents to make arrests for such violations where arrest of the subject is authorized and appropriate under the Pennsylvania Rules of Criminal Procedure⁸.

Examination

With the passage of Act 29, which became effective 60 days after the governor signed it on July 20, 2017, then Inspector General Beemer established an Act 29 working group within OSIG in order to fully implement the legislation. The group was comprised of OSIG's senior leaders and sought to identify and address the steps OSIG needed to complete in order to transition to a criminal justice agency with limited law enforcement powers. The group focused on identifying new responsibilities, the training of staff, the development of internal policies, the procurement of equipment, and addressing issues related to the two collective bargaining units within OSIG. The working group, which was chaired by then First Deputy Inspector General Lucas Miller, met on a regular basis to discuss and track the actions being taken to implement Act 29. Inspector General Beemer was not a regular participant in the meetings but was regularly briefed on the status of Act 29's implementation by Miller.

One of the major issues the group quickly began working on was the procurement of equipment OSIG might need to carry out its law enforcement responsibilities. The group operated under the understanding that, in order to protect agents working in the field and carrying out arrests, subpoenas and search warrants, agents should be equipped with firearms and related equipment

⁸ In Act 72 of 2019, the General Assembly amended Chapter 51 of Title 71, Part XXV regarding retirement for state employees. The amendment added OSIG agents and supervisors "charged with the enforcement of laws and who have, within the scope of their employment, the police power to enforce the laws under [Act 29]" to the definition of "enforcement officers" within that part. The amendment was made retroactive to September 18, 2017 which was the effective date of Act 29. The amendment placed OSIG agents and supervisors on par with other state law enforcement employees such as liquor control agents, Office of Attorney General special agents, waterway conservation and game commission officers and state parole agents for purposes of retirement benefits.

as well as other protective equipment. In an interview with former Inspector General Beemer, he indicated he agreed with this assessment. He directed that firearms procurement be one of the items addressed by the working group. Though Beemer could not recall any specific conversation with members of the legislature or the administration of Governor Wolf about arming agents, he assumed all parties were operating under this shared understanding. He observed “if you trust an agency with law enforcement power, carrying a firearm is part and parcel of completing its core functions”. He therefore included firearms procurement and related issues in his directive establishing the working group.

Because of a concern that some of the current OSIG agents who had never carried a firearm would not feel comfortable doing so, Beemer issued a memorandum to staff assuring them that they would not be required to carry a gun on duty and would not undergo firearms training if they chose not to do so. He assured his staff that their decision not to carry a firearm would not affect their employment status.

Because it lacked experience with agents carrying firearms, OSIG sought outside assistance to procure appropriate firearms and establish policies for their use. The working group consulted with experts in the Office of Attorney General (OAG) to identify the best equipment for agents and with DGS to fully understand and comply with the Commonwealth’s procurement processes.

To assist with this, the agency hired a retired OAG supervisory criminal agent who was well versed in the equipment needs of law enforcement and the policies governing their use. This part time employee was a member of the working group and worked as an initial liaison between OSIG, DGS, and OAG. He also conducted research on best practices in other jurisdictions and helped develop OSIG’s screening and training protocols for the arming of agents.

By December 2017, the working group determined that a semi-automatic pistol manufactured by Sig Sauer, model P320 best suited the needs of the agents. The OSIG then worked with DGS to initiate a process to procure 145 firearms and related equipment at the lowest possible cost. DGS advised OSIG that the procurement could be done through an “invitation for bids” process. Under that approach, an agency seeking to purchase specifically identified items, where the lowest purchase price offered by a qualified seller is the only deciding factor, may advertise its interest in receiving proposals and establish a period within which offers to sell may be made. In addition to general advertising of the procurement, documentation of general bidding requirements as well as the specifics of the particular solicitation are sent directly to a list of qualified bidders as determined by DGS.

The bidding process opened on January 11, 2018 and closed on January 25, 2018 (Solicitation No. 6100044618) and required that bidding be done electronically. After being advised by a vendor that the specific sub-model number the OSIG advertised did not match the description of the firearms OSIG sought, an addendum was issued on January 17, 2018 notifying potential bidders of the correct number.

At the close of bidding, it was determined that Firing Line, Inc. a Philadelphia licensed firearms dealer, had submitted the lowest bid of \$393 per weapon. A purchase order was issued on February 12, 2018 for 145 firearms, to be delivered by April 1, 2018. Though it was anticipated that all of the 145 firearms would be delivered in a single shipment soon after the signing of the purchase order, in fact, delivery was delayed while the vendor procured the remaining equipment from the manufacturer. The first batch of 20 pistols was delivered in late March or early April 2018. A single weapon was picked up by an OSIG staff member from the vendor on June 26, 2018. The balance of the purchase order was not received until it was shipped directly from the manufacturer in September of 2018. The seller invoiced OSIG for \$7,860 on March 29, 2018

which was paid on April 16 and for \$49,125 on August 28, 2018. The remaining payment was made on October 19, 2018 after the receipt of all firearms was completed.

Judge Beemer advised that sometime in May 2018, he “had a direct conversation with the head of the executive branch” during which he was told that the decision to equip OSIG agents with firearms was going to be “placed on hold” while the administration reviewed the need and the underlying legal authority. He said prior to that, he knew that his staff had met with DGS and the State Police to discuss issues. Arming agents was routinely part of the discussion and the meetings were attended by a representative attorney from the Governor’s Office of General Counsel. Though issuance of firearms was then on hold, the working group continued to meet and worked on other action items to implement the agencies new responsibilities.

Judge Beemer said that sometime later, in mid-2019, he was told by someone “at the highest level of a senior staffer in the Governor’s office” that the OSIG should not move forward with issuing firearms. Judge Beemer said he was surprised by the decision. He did not believe it was based on a legal determination that OSIG agents could not carry firearms but rather was a policy decision which, as an agency within the Executive Offices of the Governor, was subject to the Governor’s approval. He advised the workgroup of the directive and they began taking into account that agents would not be armed when formulating their policy, procedures and training recommendations.

Regardless of the decision, Judge Beemer expressed confidence that the new authority created by Act 29 would be “an enormous step forward” in carrying out the mission of the OSIG, though he believed it would be better served if agents were able to be armed.

Members of the work group advised that their approach shifted once it was decided that agents would not be armed. Beyond eliminating the need for establishment of policies and training

related to firearms, the practical ramifications, particularly regarding arrests and service of search warrants, were addressed. The consensus was that the agents would call upon other state or local law enforcement agencies to assist in those activities. In particular, they reached out to OAG to provide armed agents when needed and received assurance of assistance.

Records indicate that in early 2020, OSIG staff sought to return the firearms to the seller. The seller, however, declined to refund the purchase price. They then discussed ways to dispose of and recoup the expenditure with DGS.

Committee staff interviewed Kenneth Hess, DGS Deputy Secretary for Procurement. Mr. Hess detailed the standard process used when an agency wishes to dispose of property. He said the level of DGS's involvement depends on whether the agency wishes to recoup some of the costs. If not, DGS will dispose of the property and the proceeds will go to the state treasury. If the agency wishes to receive the proceeds, DGS will assist but the agency itself will have the responsibility to administer the sale.

Regardless of who buys the property, Mr. Hess explained that DGS is under a statutory obligation to get the "best available price" for Commonwealth property. In most instances, the first option is to determine whether another state agency may wish to have the property. If not, depending on what the items are, they may be offered to local governments. If there is more than one government entity interested, the item will be sold to the highest bidder. If there is no government entity interested, the items may be put on sale at a public auction.

When, as in this instance, the items in question are firearms, Mr. Hess stated that the starting point is when DGS is notified that an agency wishes to declare them as surplus. DGS will first

send an announcement to any state agency which has employees who are permitted to carry firearms in the course of their duties including the Pennsylvania National Guard (PNG)⁹.

If the solicitation of state agencies doesn't result in disposal of every item, DGS will offer them to local law enforcement agencies that are authorized to receive equipment under the Federal Equipment Surplus program. There are approximately 400 local agencies in Pennsylvania that are included on that list. Solicitation to local government law enforcement agencies usually remains open for 30 days. At the end of that period, if firearms remain, DGS would consult with the Governor's office about whether to offer the firearms to private federally licensed firearms dealers.

In this particular case, Mr. Hess advised the process of disposal started when OSIG declared the firearms surplus in August 2020. DGS began soliciting interest by other agencies but, because of the COVID pandemic, decided to allow additional time beyond thirty days for interested agencies to respond.

To date, of the 145 firearms purchases by OSIG, ten have been obtained by the Capitol Police and another 15 by Pennsylvania State Police. The remaining 120 firearms continue to be secured. Additionally, all of the ammunition purchased by OSIG has been procured by the Capitol Police.

As of the date of this report, DGS is working internally to identify all eligible law enforcement agencies in good standing who will be offered the opportunity to purchase the remaining firearms for their use. According to Mr. Hess, this process has been significantly delayed due to staffing challenges as well as the ongoing COVID-19 pandemic, but at this time this process is moving forward.

⁹ Mr. Hess explained that, even though the PNG receives most of its equipment from the Federal Government, the state is responsible for security of PNG facilities and therefore, firearms for that purpose are provided by the state.

Conclusion

The procurement of property by state agencies requires vigilance to ensure tax dollars are not spent unnecessarily and that the commonwealth's citizens receive the best value. The commonwealth's procurement process includes checks and balances to ensure expenditures are made through a process that promotes efficiency and guards against waste. Procurement requirements take into account various factors, including the total cost and the particular circumstances. The commonwealth's purchasing power is also reflected in statutes and regulations which promote purchases by agencies through contracts negotiated in advance by the Department of General Services with suppliers of commodities. The size of the procurement also dictates the level of review required by agency and other commonwealth officials.

All the evidence the committee has gathered in this case suggests that proper procedures were adhered to and OSIG was diligent in identifying its needs in transitioning to a statutorily created limited law enforcement agency. It is the opinion of this committee that former Inspector General Beemer and his staff at all times acted in good faith in concluding that the change in the law warranted the issuance of firearms to agents. They also followed proper procedures securing the firearms and related equipment at the best possible price.

Nonetheless, the committee contends that there are lessons to be learned. As we have noted, the law establishes criteria indicating the level of approval which must be achieved before making any purchase. In this instance, those were adequate. However, there are situations where a procurement implicates unique policy factors that would counsel against simply following the statutory requirements. Though obviously a somewhat rare set of circumstances, the decision to issue firearms to commonwealth employees in an agency within the executive offices of the governor would qualify as a "unique policy factor." Though here, it appears that members of the

Governor's Office of General Counsel were present when firearms procurement was discussed, that should have been made clear at the highest level.

In this case, though not all of the purchased firearms have yet been disposed of, DGS is in the process of doing so. It is the committee's hope that ultimately, that will be done with no net loss to the taxpayers.

Appendix A



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Date: March 16, 2019
To: The Majority and Minority Chairs and Members of the Government Oversight Committee
From: Majority Leader Bryan Cutler 
Minority Leader Frank Dermody 
Re: Committee Referral for Investigation

Under the provisions of House of Representatives Rule 45A, we hereby refer the following to the House Government Oversight Committee for their consideration and investigation.

Background

The Office of State Inspector General (OSIG) was originally established in 1987 by executive order of the governor. Its mission was to uncover waste, fraud and abuse in agencies under the jurisdiction of the governor. In 2017, the office was embedded in statute by enactment of Act 29 that year. In addition to expanding the powers of the OSIG, Act 29 designating it as a law enforcement and criminal justice agency. The inspector general was also given the authority to issue subpoenas, serve warrants and file criminal complaints.

It has recently been reported by Spotlight PA, a non-partisan government watchdog organization, that, following the expansion of its powers, the OSIG procured 145 Sig Sauer Model P320 pistols for use by OSIG Agents in the performance of their duties.

According to *Spotlight*, the procurement took place in January 2018 and delivery of the firearms as well as ammunition and other peripheral items took place in April of that year. The cost of the procurement was nearly \$160,000. According to a spokesperson for the OSIG, after the purchase the administration determined that the law did not support arming employees of the office. Thus, in spite of the outlay of tax dollars, the firearms have never been put into service and have remained in storage while the OSIG works with the Department of General Services to return or repurpose the firearms.

The cost of the firearms and accessories represents 4% of the OSIG's annual budget. That taxpayer money could be used by an agency to make a significant purchase before it was determined that the agency had the authority to use the product, if true, is problematic. The detailed legal rationale used to make the determination is unknown.

Reason for and Scope of the Referral

We are requesting the House Government Oversight Committee conduct an investigation of the facts surrounding the adherence to the procurement process in making this purchase. The committee shall report its findings and make recommendations to the General Assembly for possible legislative changes that it finds are warranted to ensure taxpayer dollars are utilized wisely and with accountability.