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The Washington State Auditor's Office Report on the Port of Seattle

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Port of Seattle Performance Audit



- Overarching Recommendations
 - Appoint a chief procurement officer
 - Revise the delegation of authority to the CEO
- Some Major Findings
 - Failure to enforce contract terms
 - “Informal” project management
 - Lax recordkeeping
 - Altered invoices and “steered” contracts





Recommendation I: Chief Procurement Officer

- The Port does not have adequate segregation of duties related to procurement actions
- Relatively low-level project and construction managers—who work directly on a day-to-day basis with contractors—can award and amend contracts, approve change orders, and allow contractors to ignore contract requirements
- This resulted in inconsistent and lax contract management
- Highly vulnerable to fraud and abuse—no controls to prevent or detect bribes, kickbacks, or illegal gratuity fraud schemes



Recommendation II: Delegations of Authority

- Resolution 3181 delegates authority from the elected Commission to the Port CEO
- Numerous “redelegations” grant varying levels of spending authority to project managers, construction managers, engineers, and so forth
- Both 3181 and the various redelegations are confusing and unclear and are subject to varying interpretations by the Port





Recommendation II— Delegations of Authority

- E.g.: Resolution 3181 contains a provision requiring Commission approval of changes greater than \$50,000 or 15% of the contract value
- When we brought numerous examples of deviations from this requirement to the Port's attention, they asserted that this provision *only* applies to "individual work contract authorizations" and not to "project-wide authorizations"
- The Port was unable to identify *any* "individual work contract authorizations"
- Under the Port's interpretation, once the Commission approves a major project (such as the \$720 million 3rd runway) Port managers have carte blanche authority to spend money up to the authorization ceiling



Recommendation II— Delegations of Authority

- Further, redelegations from the CEO to lower-level managers limit spending authority to \$100,000 or below
- When we brought examples of deviations from *this* requirement to the Port's attention, they asserted that the redelegations do not apply to "project-wide authorizations"
- Thus, a low level manager who appears to have limited spending authority can—under the POS interpretation—actually approved multi-million contracts and change orders





The Port Failed to Enforce Important Contract Terms

- Certain key contract terms are essential to sound and prudent construction management
 - Construction Schedule submissions and updates (time = money)
 - Liquidated damages (time = money)
- The Port routinely allows contractors to ignore these key provisions
 - (underlying cause: no independent procurement officials in charge)
- We asked for cases where the Port had assessed liquidated damages. The Port was unable to provide a single example.
- Without construction schedules to depict the contractor's planned means and methods and schedule updates to measure actual performance, the Port is unable to defend



The Port Failed to Enforce Important Contract Terms

- Liquidated Damages:
 - We requested POS to provide examples when LDs had been assessed.
 - The Port was unable to provide a single example and instead provided letters
- Project CPM Schedules: construction schedules to depict the contractor's planned means and methods and schedule updates to measure actual performance, the Port is unable to defend itself against contractor claims for additional money due to delays.





The Port Failed to Enforce Important Contract Terms

- The Port's response:

"the Performance Auditor fails to acknowledge any validity in the widely-recognized partnering approach adopted by the Port's construction management staff ..."

"The Performance Auditor also faults the Port for failing ... to wield the contract like a cudgel to deter future noncompliance."

Note: A cudgel is "a short, thick stick used as a weapon; club." (Webster's)



The Port Employs "Informal" Project Management



seattlest

January 31, 2008

**New Port Of Seattle Rule:
No More Tummy Rubs**





The Port Employs “Informal” Project Management

- We found inconsistent and haphazard support for change order negotiations
- In some cases approved change order amounts were consistently identical to contractor-proposed amounts
- In some cases there was little or no support for change order negotiations
- In some cases, support for change order “negotiations” was showed the inappropriateness of relationships that had developed between Port consultants and its contractors



The Port Employs “Informal” Project Management

- Emails between a contractor and a Port consultant documented a change order “negotiation” as follows:
Port consultant (indicating that certain portions of the contractor’s proposal were okay):

“Still laughing at the rest... (actually you and SE do have something coming so lets figure that out via tummy rub in lieu of you all documenting what is undocumentable).”

Contractor reply:

*“Gee, you’re starting to wear me down on this. **NOT.** Let’s see, you countered with 50 for CB 136 and 4.5 for the ATS stuff. Total of 54.5. You’re getting closer, but not close enough. Total of 62 for the both of them. Write it up and we’re done.”*

Port consultant: *“If it starts with a ‘5’ we’re there.”*

- The change order was settled for \$59,999.





Lax Recordkeeping

Without a centralized procurement office maintaining official contract records, the

- Port's recordkeeping was inconsistent and haphazard, at best. Findings:
 - POS approved change orders without sufficient evidence of having evaluated proposed costs.
 - POS's failure to timely process change orders and poor change order documentation resulted in an overpayment of \$105,535.
 - POS failed to obtain an \$80,000 credit when original scope work was deleted, and POS wrongly issued a 329-day time extension for work that was never performed.
 - POS performed inadequate reviews of change-order proposals, resulting in overpayment of contractor markups.
 - POS project management information systems data were incomplete, outdated, and inaccurate when compared to project records.
 - POS requirements for Project Notebooks are not enforced, and requirements are inconsistent between POS divisions. Project Notebooks were missing, incomplete, not updated, and not easily accessible by stakeholders.
 - POS paid \$864,463 for an electronic construction document management system ("Livelink"), and the contract required POS contractors to use this system on specified projects, but neither POS nor its contractors have used the system as intended.



Altered Invoices and "Steered" Contracts

- Under the small works roster program, the Port can use limited competition for contracts up to \$200,000
- The Port failed to monitor the actual expenditures against contract award amount, and the contractor exceeded the \$200,000 ceiling
- The Port altered the contractor's invoices and then "steered" a new contract to the vendor to cover the cost overruns





Altered Invoices and "Steered" Contracts

BILLING ADDRESS:
 PORT OF SEATTLE CONSTRUCTION SERVICES
 [REDACTED]
 17900 INTERNATIONAL BLVD #420
 SEATAC, WA 98188

INVOICE #82470
 INVOICE DATE: 8/31/2004
 CLIENT CODE: PORTCO
 CUSTOMER REF : 2810
 JOB #03741E

SITE ADDRESS:
 SOUTH SATELLITE GATE 56
 SEATAC AIRPORT
 SEATAC, WA

WORK DESCRIPTION
 SWV-310364 *311608*
 WORK AUTHORIZATION ID #2810-*3679*
 PAY APP #3
 PROGRESS BILLING THROUGH 8/8/2004



Altered Invoices and "Steered" Contracts

BILLING ADDRESS:
 PORT OF SEATTLE CONSTRUCTION SERVICES
 [REDACTED]
 17900 INTERNATIONAL BLVD #420
 SEATAC, WA 98188

INVOICE #82464
 INVOICE DATE: 8/30/2004
 CLIENT CODE: PORTCO
 CUSTOMER REF : 2817
 JOB #03765-C

SITE ADDRESS:
 MES SOUTH SATELLITE
 SEATAC AIRPORT
 SEATAC, WA

WORK DESCRIPTION
 SWV-310620 *311608*
 WORK AUTHORIZATION ID #2817-*3684*
 PAY APP #2
 PROGRESS BILLING THROUGH 7/25/2004





Altered Invoices and “Steered” Contracts



- Port response to the PFR:
“While the Performance Auditor – by employing feigned intent to commit fraud – may have been able to make the program *look* as if a contract had been bid, the faked contract lacked the detail that a real contract – for which actual bidders were invited to submit bids – would have. Although copies are not included in the files, the small works roster program in fact keeps a record of its efforts to distribute the invitation.”
- Port provided as an example a different contract than the PFR had discussed

