Report of:
THE SPECIAL INVESTIGATIVE TEAM

DECEMBER 3, 2008

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Submitted to:
THE SPECIAL INVESTIGATIVE COMMITTEE

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December 2, 2008

Dear President Creighton,

Ten months ago, we, as the special investigatory committee, laid out three objectives:

- that this investigatory team would work for the people of King County, not the Port of Seattle;
- that while our investigation would follow the direction provided by the state auditor's report and the commission, our investigation would follow the facts where they led;
- that despite our interest in getting this investigation done quickly, we would conduct this investigation thoroughly, so that no future port commission should have to do this.

Today, we report that we have secured these three objectives.

This was not a small endeavor. It took over ten months for the investigatory team, led by former U.S. Attorney Mike McKay, to review over 250,000 pages of documents, search over 300 gigabytes of electronic data and email, conduct over 70 interviews, and follow anonymous tips received from the investigation's fraud hotline. Mr. McKay's report fulfills the state auditor's recommendation to conduct a fraud assessment of construction and professional services contracting procedures and to investigate the findings in the performance audit. The proposed reforms fulfill the state auditor's recommendations to establish a fraud governance policy and to strengthen controls in areas deemed vulnerable to fraud. It gives us no pleasure to report that organization, auditing, investigatory and legal fees associated with this investigation will cost the port roughly $1.39 million, but we have conducted this investigation thoroughly, so that we can help ensure such an investigation will not be needed again.

While the investigatory team did not identify any embezzlement or personal gain, it found ten incidents of fraud in port contracting practices and exposed a culture that tolerated suppressing information from the elected commission.

While all of us have been working over the past months to increase the port's transparency and accountability, more change is still needed. That is why this investigation recommends additional reform measures and training programs and has encouraged the CEO to review these findings and take appropriate disciplinary action.

The investigatory committee's fraud hotline will remain operative for the next few months, and any new leads will be referred to those commissioners serving on the audit committee. In addition, we look forward to helping the CEO implement this report's recommendations.

With this letter we transmit the special investigatory team's report.

Sincerely,

Commissioner Bill Bryant
Chairman

Commissioner Gael Tarleton

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REPORT OF INVESTIGATION

I. Introduction and Background

A. Special Investigative Committee

1. Creation. On January 22, 2008, the Port of Seattle Commission (the "Commission") created the Special Investigative Committee (the "Committee") to undertake an investigation of the findings of the Washington State Auditor's 2007 Performance Audit (the "State Audit") of the Port of Seattle (the "Port") with respect to certain contracting policies, procedures, and practices at the Port being vulnerable to fraud or with respect to which fraud may have occurred.[1] Commissioners Bill Bryant and Gael Tarleton comprise the Committee.[2] Commissioner Bryant serves as Chair of the Committee. McKay Chadwell, PLLC serves as independent legal counsel to the Committee. FTI Consulting, Inc. and Keller & Associates serve as the independent fraud investigation team to assist the Committee.[3] Collectively, this group will be referred to as the Special Investigative Committee Team (the "Team").

2. Scope. The Committee was charged to focus its inquiry upon those findings of the State Audit suggesting:

a. Possible altering of invoices in circumvention of the Commission's authority and state law (1-E of the State Audit);

b. Possible awarding of contracts without competition or in circumvention of competition requirements (2-A, B, C, & D);

c. Possible circumvention of the Small Works Roster Program (2-F); Possible procurement violations and concealment of "unusual procurement" from the Commission (3-A); and,

d. Possible conflicts of interest of consultants regarding the award and administration of contracts (3-D).

e. The Committee was also authorized to recommend to the full Commission procedures to strengthen controls in areas deemed vulnerable to fraud and to recommend control mechanisms designed to deter, prevent and detect fraud.

3. Related Issues. While our report is focused on these specified areas, our investigation revealed additional issues regarding procurement practices within the Port that are important to a full understanding of the context in which the specified issues arose and that we wish to invite to the attention of the Committee and the Commission.

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[1] A copy of the motion creating the Special Investigative Committee is attached to this report.

[2] Commissioners Bryant and Tarleton joined the Port Commission in January 2008, after the period at issue in the State Audit (2004 to 2007).

[3] A biographical summary of Team members is attached to this Report.

B. Controlling Legal and Administrative Authority

1. Relevant Law.

To obtain an understanding of the provisions of law applicable to procurement actions by the Port, the Team reviewed relevant state and federal law provisions pertaining to major construction procurements, the Small Works Roster Program, and Professional Services Agreements (PSAs).

2. Internal Port Policies, Procedures, and Practices.

a. The Team obtained and reviewed Commission meeting minutes, internal audit reports, and relevant policy and procedure manuals, including those governing acquisition and purchases; delegations of authority; seaport and airport activities; human resources; records management; and ethics practices.

b. The Team also conducted interviews of key personnel to obtain an understanding of the practical day-to-day operation of the Port in these areas and the extent to which the written policies and procedures are followed.

3. Overview of State Laws and Port Policies.

a. The Port is a municipal corporation and is subject to provisions of Washington State law which require some degree of competition for almost all work and services that it procures.[4] The purpose of competition in public procurements is to prevent "fraud, collusion, and improvidence in the administration of public business." See AGO Opinion 17 (1984); Edwards v. Renton, 67 Wn.2d 598, 602, 409 P.2d 153 (1965).

b. Major Construction Procurement. Title 53 RCW applies to Port districts and requires that all "contracts for work" over $200,000 be competitively bid, unless an exception applies.[5] RCW 53.08.120; RCW 39.04.280. The competitive bid procedure provides that a formal advertisement must be published in a newspaper (of general circulation) at least 13 days before the bid date; the notice must call for sealed bids based upon plans and specifications on file at the Port; the contract shall be awarded to the lowest responsible bidder upon the plans and specifications on file; and, if all bids are unsatisfactory, the Port may reject all bids and re-advertise.[6]

c. Small Works Roster Contracts. For public works construction contracts of less than $200,000, the Small Works Roster may be used in lieu of competitive bids.

(1) Under this process, quotations are solicited from at least five Small Works Roster contractors. No formal advertisement is required. Prior to June 2008, Port districts were exempt from the requirement to notify all qualified contractors on the roster for projects between $100,000 and $200,000; however, effective June 12, 2008, Ports must comply with this requirement. See RCW 39.04.155.

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[4] The Port is subject to the provisions of Chapters 39.04, 39.12, and 39.80 RCW. See AGO 17 (1988) and AGO 14 (1978). As the Port is not a state agency, it has taken the position that the provisions of Chapter 39.29 RCW do not apply to it. See AGO 49-51 No. 188 (1949).

[5] These exceptions include single source of supply purchases; purchases involving special facilities or market conditions; purchases of insurance or bonds; and public works in the event of an emergency.

[6] See RCW 53.08.120 and .130.

(2) When using the Small Works Roster process, Port districts shall, whenever it would not violate the public interest, distribute the contracts equally among contractors, including minority contractors. RCW 53.08.120.

(3) The practice of breaking a project into units or accomplishing any project by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the Small Works Roster process. RCW 39.04.155(4).

d. Professional Services Agreements (PSAs). PSAs may be obtained for architectural/engineering services (Chapter 39.80 RCW) or other professional services (Chapter 39.29 RCW). As the Port has taken the position that it is not bound by the provisions of Chapter 39.29, the primary source of Port guidance for PSAs is PUR-2, the Port's internal policy. The Port policy for architectural/engineering services and other professional services are virtually identical; however, price may be considered in the selection of the latter consultants.

(1) Competition requirements are tied to the amount of the contract. For Category A/1 (no more than $50,000), any consultant may be selected, without interview; for Category B/2 (more than $50,000 but no more than $200,000), three consultants must be identified and interviewed; for Category C/3 (more than $200,000), there must be an advertisement in the Seattle Daily Journal of Commerce[7] and a formal RFQ/Interview process.

(2) Amendments to the PSA which bring the total amount above the category fee limit are permitted only if:

(a) The project scope of work is not being divided into smaller segments to avoid PUR-2, statutory, or delegation of authority procedures.

(b) The amended work is generally related or associated with the project scope used in the original consultant selection.

(c) The total amended contract amount is less than $30,000 above the category fee limit. Amended contract amounts greater than $30,000 must be reviewed by the legal department to ensure they comply with subparagraphs (1) and (2) above.

e. Resolution 3181. This Resolution was the "master policy direction" delegating authority from the Commission to the Chief Executive Officer (CEO). Exhibit A to the Resolution outlined the CEO's authority to enter into construction and consulting contracts, approve change orders on construction contracts, and amend consulting contracts. The Resolution also includes requirements for making reports to the Commission. The Resolution was supplemented by further delegations of authority at levels beneath the CEO.

4. Overview of Federal Law. The primary source for federal procurement regulations and procedures is the Federal Acquisition Regulation (FAR), which consists of title 48 of the Code of Federal Regulations. The key provision is that competition for and awarding of bids must be "full and open"[8] and the process must be competitive.[9] A governmental entity that receives federal grants must use the same policies and procedures it uses for procurements from

[7] In addition to the Seattle Daily Journal of Commerce, the Port may also advertise in additional newspapers.
[8] See FAR 6.101.
[9] Id. See also FAR 13.104 (simplified acquisition competition requirements).

its non-federal funds, so long as the procurements conform to applicable federal law and the standards identified in this section (i.e., "full and open competition"). See 28 CFR 66.36(b)(1) and (c)(1).

C. Conduct of the Investigation

1. Definition of Fraud. For the purposes of this investigation, fraud is defined as the intentional misrepresentation or concealment of material information, known to be false, with intent to deceive or mislead, with resulting damage. See Stiley v. Block, 130 Wn.2d 486 (1996); Pedersen v. Bibioff, 64 Wn. App. 710 (1992). The concept of fraud is distinct from that of embezzlement, which requires that an individual personally profit from his or her misconduct. Fraud includes the following elements:

a. A material misrepresentation or suppression of a material fact;[10]

b. Made with knowledge of its falsity;

c. Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed);

d. The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information;

e. The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, suffers damages as a result of his reliance on the false information.

2. The Team reviewed the State Audit, the work papers associated with the State Audit, and the Port's response to the State Audit. From this review, the Team identified the anomalies noted by the State Audit as potentially indicative of fraud and prioritized those items in accordance with the Commission's guidance. These items are addressed in this report.

3. The Team identified, requested, and reviewed documents in the possession of the Port pertaining to a selected sampling of procurement contracts, including major construction contracts, Small Works Roster Program contracts, and Professional Services Agreements (PSAs).

4. The Team identified a sampling of Port vendors for outside audits. The Team contacted these vendors, reviewed documents in the possession of those vendors, and conducted interviews of key vendor personnel, for those vendors who cooperated with our investigation. As several vendors chose not to cooperate with our investigation, we have been forced to reach our conclusions without the benefit of their input. These vendors are: Prime Electric, Corporate Recycling Services, MD Moore Co., Inc., J. Harper Contractors, JMR Trucking, City Transfer, Inc., and Terra Dynamics, Inc. Other vendors provided some cooperation, but at a level that was insufficient to permit our Team to conduct a complete review of their records. These vendors are: TTI, Tri-State Construction, Scarsella Brothers, Parsons and Gary Merlino Construction Company.

[10] Suppression of a material fact can be the basis of fraud only where there is a duty to provide the information in question. Where there is a duty to speak, suppression of a material fact is tantamount to an affirmative misrepresentation. See Simpson Timber Co. v. Palmberg Construction Co., 377 F.2d 380 (9th Cir. 1967); Oates v. Taylor, 31 Wn.2d 898 (1948).

5. The Team conducted over 75 interviews, including 44 individuals who are either current or former employees of the Port, 17 individuals who are either current or former vendors of the Port, and 11 other individuals with other ties to or knowledge of the Port.[11]

6. The Team reviewed over 250,000 pages of documents and searched over 300 gigabytes of electronic data, including email files.

7. The Team also established a Hotline, which was advertised throughout the community, both by the Team and by the Port leadership. This Hotline resulted in significant information both from employees of the Port and individuals outside of the Port.

[11] Some individuals were interviewed more than one time.

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II. Summary of the Findings. Our findings are addressed according to the degree of fraud or vulnerability to fraud we determined to be present related to particular findings, from the most significant to the least.

FINDINGS OF FRAUD

A. Findings Related to the Third Runway. There are four findings related to the Third Runway that constitute fraud, defined as the intentional misrepresentation or concealment of material information with intent to deceive or mislead and resulting damage.

1. A Port employee provided an internal Port estimate to a potential bidder (TTI) prior to the bid submission date, without notification to the public, any other prospective bidders, senior Port leadership, or the Commission. The act of providing this internal estimate to TTI demonstrated extremely poor judgment and raises the specter of collusive behavior between the potential bidder and the Port employee. The failure to inform senior Port leadership and the Commission that this internal estimate had been provided to TTI constitutes fraud.

2. A Port employee negotiated with TTI after receipt of TTI's bid, but prior to the award of the contract. These negotiations resulted in a misleading change order that falsely represented a $9.4 million reduction in the amount of TTI's bid, when the actual reduction was closer to $2 million, and constitutes fraud. This process also included an apparent attempt to cause the Commission to believe that TTI agreed to a contract amount that was within 10% of the Engineer's Estimate.

3. Senior Port staff provided a misleading notification memorandum to the Commission. Resolution 3181 requires that when the low bid on a project is greater than 10% above the Engineer's Estimate, the Commission must be notified prior to the award of the contract. The notification memorandum that was provided to the Commission not only failed to inform the Commission of the true facts surrounding the bid scenario, but also contained overtly misleading language intended to lull the Commission into taking no action as a result of the memorandum, and constitutes fraud.

4. A Port employee made large-dollar premature payments to TTI[12] that may have cost the Port many thousands of dollars in lost interest income.

[12] The Port employee has characterized these payments as "overpayments" to TTI. We have not been able to determine if payments in excess of the amount owed TTI were made; however, we have established that payments were made to TTI in advance of the date those payments were authorized. As a result, we refer to these payments as "premature;" however, we have not been able to rule out the possibility that there may also have been payments in excess of the amount owed to TTI under the contract.

This employee paid TTI "up-front" for material costs that were not due to be paid under the contract terms until the conclusion of the contract, as an inducement to convince TTI to sign a deductive change order. By engaging in this pattern of premature payments, the employee may have colluded with TTI in seeking payment for quantities of materials not yet delivered to the project by providing funds in advance of when they were owed. The employee may have also provided unlawful gifts of public funds in violation of the Washington state constitution. This premature payment of public funds constitutes fraud.

B. Findings Related to Small Works Roster Program Contracts. There were two findings related to the Small Works Roster Program that constitute fraud.

1. PCS personnel steered contracts to preferred vendors, often to pay for work that had already been performed, by using "expedited" procedures, requesting vendors to not submit bids on identified contracts, not notifying selected vendors on the Small Works Roster of contract opportunities, and opening additional contract opportunities when the "wrong" contractor won a contract. This behavior constitutes fraud.

2. PCS routinely breaks large-dollar projects into smaller "sub-contracts" to fit within the Small Works Roster Program $200,000 contract limit, which constitutes fraud.

C. Findings Related to Competition for Professional Services Agreements (PSAs). There were four findings related to PSAs that constituted fraud.

1. Port staff circumvented competition requirements by procuring services from preferred consultants by awarding consultant agreements at no-competition (Category A/1) or limited-competition (Category B/2) levels, then repeatedly amending those contracts to the maximum amount and awarding follow-on agreements to avoid the competition requirements of Port policies PUR-2 and Resolution 3181.

2. Port staff executed PSAs and amendments that exceeded the maximum amount allowed by PUR-2 and Resolution 3181.

3. A senior Port executive issued a no-competition $25,000 contract for damage assessment services under an emergency work exemption to PUR-2 following the Nisqually Earthquake. This contract was amended from $25,000 to over $1 million, most of which was for ongoing project management services related to subsequent repair work, which was a different scope of work and outside the "emergency" window.

4. PCS personnel violated PUR-2 by steering work to a preferred minority consultant (3A Industries) to artificially increase the volume of work that appeared to be awarded to minority owned businesses.

FINDINGS IN WHICH POLICIES OR LAWS WERE VIOLATED BUT FRAUD WAS NOT ESTABLISHED

D. Port employees engaged in invoice altering in both Small Works Roster Program contracts and Professional Services Agreements (PSAs).

1. Port employees altered over 80 invoices for work performed on PCS Small Works Roster contracts and Port PSAs to divert those invoices from the appropriate contracts and PSAs and apply them for payment under different contracts and PSAs with available funds.

2. PCS management encouraged "work-arounds" to avoid the requirement to bring contracts that exceeded the maximum small works contract values to the Commission for review. As a result of these "work-arounds," including invoice alterations, numerous small works contracts had actual billings (before alterations) in excess of the $200,000 maximum for Small Works Roster contracts allowed by Washington state law.

E. Port employees used an existing aviation service contract to pay consultants for "out of scope" work on the seaport, rather than competitively procuring new PSAs.

Three consultants worked at the seaport for an extended period of time on projects that were not within the scope of the Parsons' Program Management Support Consultant (PMSC) contract (for aviation work), but were billed through the PMSC contract. Based upon our analysis, vendors billed the Port over $655,000 for services rendered outside of the PMSC contract's scope of services; however, these billings were later adjusted to reclassify all out of scope charges to the proper accounts.

F. Port staff circumvented PUR-2 by procuring services from preferred consultants by using multiple contracts to split up the same scope of work at "less competition required" levels (contemporaneously).

A consultant received three separate limited-competition PSAs to broker the sale of three cranes. Our review of these PSAs revealed they involved the same scope of work and should have been procured through a single competitive PSA.

FINDINGS IN WHICH NEITHER VIOLATIONS OF LAW NOR FRAUD WERE ESTABLISHED
OR
WHERE THE CONCLUSIONS OF THE STATE AUDIT WERE NOT SUBSTANTIATED BY FACT

G. Parsons' PMSC Contract.

1. The State Audit concluded that the Port unnecessarily spent over $60 million by using the Parsons' Program Management Support Consultant contract to facilitate the Capital Improvement Program work at the airport. The State Audit alleged that Port staff allowed a consulting agreement awarded in 1998 to grow without competition from $3.5 million to more than $120 million. We found that Port documentation confirms this procurement was conducted with full competition, the duration and scope of the PSA was anticipated and disclosed to potential vendors during the original competitive procurement, and the Commission was fully apprised of the duration and scope of this work both prior to the procurement and on an annual basis thereafter.

2. The State Audit also alleged that the Port retroactively agreed to pay consultant markups of 1.5% that were not stipulated in the PMSC contract. Our investigation found that Port staff had, in fact, pre-approved these mark-ups.

H. Splitting of Third Runway Embankment Work.

The State Audit raised concerns regarding the Port's decision to conduct the Third Runway Embankment work using two separate contracts, rather than one combined contract. Our investigation revealed that the Port had legitimate reasons for procuring this work in two separate contracts.

I. Consulting Agreements Awarded Without Competition.

The State Audit alleged that Port employees awarded a $1.4 million consulting agreement to Hedlund Construction Management and a $2.7 million consulting agreement to Walsh Hedlund & Harlow without competition (3-D). Our investigation revealed that the $1.4 million consulting agreement with Hedlund Construction Management was competitively procured and legal approval was obtained to bypass the competitive procurement requirements for the $2.7 consulting agreement with Walsh Hedlund & Harlow.

J. Aircraft Fueling System Issues.

1. During negotiations regarding the scope of the Aircraft Fueling System Project, the construction manager deleted work related to the Fire Protection System but neglected to obtain a deduction in contract price related to that scope deletion. This mistake was not an intentional act constituting misconduct.

2. During these scope negotiations, the construction manager engaged in informal change order discussions that did not comply with "best practices;" however, they did not constitute violation of laws or fraud.

K. Representation Letters.

With respect to the State Audit's concerns regarding a lack of cooperation by Port employees concerning representation letter requests, we found that Port employees had reasonable grounds to resist these efforts. Our review of the specific representations that were requested, and our interviews with employees who were asked to make such representations, caused us to conclude that the requested representations were, in fact, overly broad and that the employees were rightfully hesitant to sign these letters in the form in which they were presented by the State Auditors.

L. Consultant Management and Selection Committee Issues.

1. The State Audit raised concerns that a major Third Runway construction contract was managed by a former employee of the contractor. Our investigation revealed no undue influence based upon either an existing or perceived conflict of interest. The consultant had no current financial interest in his former employer and was not in a position to direct favorable influence toward his former employer. While the consultant could potentially influence change orders, we found that there was a review process in place that would not allow the consultant to show any favoritism to his former employer.

2. The State Audit also raised concerns that a consultant served on a selection committee that awarded a $5.8 million contract to one of his company's subcontractors. Our investigation revealed that the Port often uses consultants as participants on selection committees because these consultants provide valuable input concerning both the required work and the vendors under consideration. We confirmed that the consultant served on the selection committee; however, we found that the consultant did not engage in any improper influence that benefited the subcontractor in question.

M. Conflict of Interest of Former Port CEO Mic Dinsmore.

Our investigation revealed that Mr. Dinsmore violated the Port Ethics Policy when he used the services of a Port consultant, McBee Strategic Consulting, to obtain a paid internship for his daughter. While the Port was not charged for this service and while we find that McBee's actions were not inappropriate, Mr. Dinsmore's use of a Port consultant's services for personal benefit is not appropriate, since the only reason the service was provided was because it was the Port CEO who asked for it.

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III. Detailed Findings In Which Fraud was Established

A. Findings Related to the Third Runway.

1. **Overview of Third Runway Findings**. The State Audit expressed concerns that the manner in which Port staff procured the Third Runway Embankment contracts and administrated activities related to this work created an environment in which the Port was vulnerable to fraud. Our investigation of the Third Runway Embankment contracts found that significant misconduct took place, both by Port staff and by the contractor that was awarded these contracts; in some cases, this misconduct constituted fraud.

2. **The Engineer's Estimate used for the public advertisement for the 2006 Embankment contract was revised upward by 13% ($11.9 million) without disclosure to the public.** State law requires that an Engineer's Estimate be established for public work prior to the advertisement of that work. The Engineer's Estimate created by Port staff prior to the advertisement for the 2006 embankment work was approximately $93 million. When the advertisement was issued for the 2006 embankment work, it contained an Engineer's Estimate Range, based upon the $93 million estimate, of $80 - $100 million. Between the time this work was advertised on October 20, 2005 and the time that bids were submitted on December 20, 2005, Port staff continued to adjust the internal Port estimate. By the bid submission date, the internal Port estimate had grown to over $105 million; however, Port staff did not provide this updated information to the public through an addendum to the advertisement or any other publicly accessible mechanism.

a. Port staff have indicated to us in interviews that: (1) The initial estimate range was accurate at the time the advertising package was put together, and there was no requirement to subsequently update that information; (2) Contractors look at these ranges simply to determine if this is a job that they can do, and if the range is such that they believe they can compete and still earn a reasonable profit; and, (3) Going to the trouble to update a range in these types of circumstances would cause unnecessary delays in receiving bids and awarding a contract. Port staff emphasized that a $5 million difference on a job of this magnitude would not make a difference to a contractor that was seriously interested in such work.

b. While we appreciate Port staff's perspective on this issue, we disagree with the conclusion that such a disparity is simply not important. We believe that $5 million, even when viewed against an approximately $100 million estimate, is a considerable amount of money. We also believe that it would not be difficult to find contractors who believe that an increase of the Engineer's Estimate of $5 million above the maximum range is material. Also, Port staff admitted that, in most instances, any delay that would arise by reaching out to prospective bidders with updated range totals would be minimal, and would not likely harm contract performance.

c. Our investigation also revealed that the higher cost estimates for this work were dated after the public advertisement for bids. The only cost estimate we found within the range published in the advertisement was $93,165,100, dated September 6, 2005. Other cost estimates prepared after the public advertisement ranged from $104 million to $110.4 million. We learned that the preparation of these estimates was a collaborative effort, and it involved a number of Port engineering employees, as well as some assistance from outside contractors hired as consultants.

[III.A.2] d. To determine the underlying analysis that resulted in the various estimates that were prepared, we interviewed Port staff who helped prepare the estimates, as well as consultants who assisted in the preparation of the estimates. One such consultant told us that there was ample justification for line item dollar amounts, and there would be no problem providing documentation to us that would confirm such justification. After repeated requests for such documentation over a period of months, we were finally told no such documentation was available.

e. In the Port's response to the State Audit, it confirmed that the "Engineer's Estimate" is the estimate that is required by Washington law to be prepared before proceeding with the public advertisement of a public works project. Port Response, December 2007, p. 31. We were informed by several Port employees that they believe the estimate to which bids should be compared is the "final engineer's estimate" -- not the one prepared before the published advertisement for bids, but the last estimate done immediately prior to bid opening. Port counsel, however, explained to us that the Engineer's Estimate is the one prepared prior to the published advertisement for bids. Based on the industry experience of Team members and upon our own independent research, we agree with Port legal counsel that the Engineer's Estimate is the estimate prepared before the published advertisement for bids. This practice is consistent with the practice of other governmental entities, such as the Washington State Department of Transportation. One Port employee stressed that internal estimates were constantly being updated as more information became available regarding the scope of work to be done, the ever-changing costs of material and contract labor, and even the number and identities of prospective bidders became known. He made it clear that the internal estimate can vary greatly if, as in this instance, it is known that there is only a single bidder on a project. Port staff further stated that when they believe there will be a single bidder on a project, the contractor has much less incentive to cut its margins to be competitive for the job award. Port staff took the approach of increasing its internal cost estimate to account for the possibility that there might be a single bid on the 2006 Third Runway Embankment contract, thereby negatively impacting any viable comparison between this internal estimate and the sole bid that was received.

f. Pursuant to Resolution 3181, when the low bid on a project is greater than 10% above the Engineer's Estimate, the Commission must be notified prior to the award of the contract. We find that the analysis of several Port employees, who believe the Engineer's Estimate is not what was prepared at the time of the published advertisement for bids, but instead is the last estimate prepared at the time of bid opening, is flawed because it would provide the ability to routinely circumvent the 10% notification requirement in Resolution 3181. Unless the Engineer's Estimate is "locked down" at the time of the published advertisement for bids, Port employees could later manipulate the Engineer's Estimate and increase it to ensure that a bid was seldom, if ever, above 10% of an Engineer's Estimate, and never required Commission notification. We believe that the only way for the notification requirement to be a valid control on the contracting process is for the Engineer's Estimate in place at the time of the advertisement to be the estimate to which bids are compared.[13]

g. ***Fraud Analysis***. Our concerns with this action relate to the possibility that failing to provide an accurate estimate range before allowing bid submissions: (1) might limit competition from contractors who might bid if armed with a more accurate estimate range, (2) might subject the Port to challenges from contractors that inaccurate ranges of

[13] If it were determined that a significant scope change was necessary, an addendum could be published to all bidders identifying the scope change and the associated modification to the published Engineer's Estimate range; however, Port staff did not publish any such modifications to the advertisement for bids on the 2006 embankment work.

estimates in an advertisement creates an unfair bidding environment, and (3) might allow manipulation of the Engineer's Estimate to circumvent the requirement that the Port Commission be notified when the "low bid" exceeds the Engineer's Estimate by more than 10%. Despite these concerns, we found no evidence that there was any attempt by Port staff to mislead or deceive anyone through the adjustment of the internal estimate. We emphasize, however, that Port staff's approach to dealing with these types of situations does not serve the best interests of the Port or of prospective bidders on Port construction projects. Further, Port staff's later reference to this adjusted internal estimate of $105 million as the "Engineer's Estimate" against which the TTI bid was compared presents a different situation which we address separately.

3. **An internal Port estimate was provided to one of the potential bidders (TTI) for the 2006 Third Runway Embankment contract prior to the submission of that contractor's bid. TTI later received the contract award**. After the State Audit, we learned that a Port employee provided a detailed $104 million[14] internal Port estimate for the 2006 Embankment contract to a senior employee of TTI, the contractor who was awarded the contract. The estimate was provided prior to any bids having been submitted on this contract.

a. When we interviewed the individual who provided the estimate, he told us that he provided the estimate after the TTI employee told him that TTI would be the sole-bidder on the contract. The Port employee told us that the TTI employee claimed the TTI bid would be around $150 million, and the Port employee explained that he hoped that if TTI saw an estimate substantially below their anticipated bid, it might temper their inclination to submit an excessively high bid. The Port employee told us that he acted alone in providing the estimate, but that he was also not aware of anything that prohibited him from sending out an estimate prior to the receipt of a bid. The Port employee added that he regretted providing the estimate to TTI and that he would never do anything like this again.

b. We interviewed senior Port staff and contractor personnel regarding the propriety of providing internal estimates to a prospective bidder prior to the receipt of contract bids. In every instance the response was the same: this is an unacceptable and inappropriate action under any circumstance. This is wrong because: (1) no one knows for sure if there will be only one bidder until the bids are opened and (2) it gives a potential bidder an unfair advantage by knowing exactly how much the Port thinks the project should cost. We also believe that, in spite of the representations made to us by the individual who provided the estimate, an individual in his position, and with his knowledge and experience, must have had some reservations about his actions at the time that he provided this information to TTI.

c. ***Fraud Analysis***. Based on our investigative findings, we conclude that providing an internal Port estimate to only one bidder without notification to the public or any other prospective bidders was an act of extremely poor judgment; that it may have damaged the Port by emboldening the contractor to submit an even higher bid than it might otherwise have submitted; and, that it may have prevented a competitive bidding environment, by providing an advantage to one potential bidder and placing other prospective bidders at a competitive disadvantage. This type of collusive behavior warrants further investigation, as it may be an indicator of other potential fraudulent or illegal activity that was beyond the resources and scope of our investigation to resolve.

[14] This internal Port estimate of $104 million was later revised to $105 million.

[III.A.3.c] (1) Material misrepresentation or suppression of a material fact. Our investigation revealed that the failure to inform senior Port leadership and the Port Commission that one of the final internal Port estimates had been provided to the sole bidder on the 2006 Third Runway Embankment contract constitutes fraud, in that it suppressed material facts. Not only did the Port employee who provided this estimate have a duty to provide that information to senior Port leadership and the Commission, that employee was also involved in drafting the Commission notification memorandum which was required by Resolution 3181. At no point during the procurement process for this work, including the Commission notification memorandum in which it would have been appropriate to inform the Commission that not only did the sole bid exceed the Engineer's Estimate by more than 10%, the sole bidder had also been privy to the specific estimating information used by the Port in evaluating that bid, did the Port employee reveal this information. The Port employee also failed to reveal this information during the State Audit, despite repeated interviews by the individuals conducting that audit.

(2) Made with knowledge of its falsity. The Port employee was aware that he should not have provided the estimate to the contractor and that he should have informed his supervisors that he had done so. He indicated to us that he later made his direct supervisor aware of this fact, although the information does not appear to have traveled beyond that individual.[15] This employee was also involved in the drafting of the Commission notification memorandum and did not provide this information for inclusion in that memorandum.

(3) Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed). The suppression of this information appears to have been done to avoid scrutiny by the Commission of this contract. It is highly likely that had the Commission been informed that one of the final internal estimates for this contract had been provided to the sole bidder on that contract, the Commission would have, at a minimum, asked questions about the procurement process and may have rejected the bid entirely.

(4) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information. The Commission appears to have relied upon the false information concerning this procurement process as it did not ask any questions about this procurement process. In addition, our interviews with those individuals who were Commissioners at that time did not reveal that they were aware that an internal Port estimate had been provided to the sole bidder. After other information surfaced about this procurement (addressed later in this report), several Commissioners, including one Commissioner who was serving at the time, did ask questions about this procurement.

(5) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, suffers damages as a result of his reliance on the false information. While it is difficult to quantify the damages to the Port as a result of the failure to inform senior Port leadership and the Commission that one of the final internal estimates was provided to the sole bidder for the contract, it is virtually inconceivable that the contractor did not take the Port's internal estimate into account in determining its final bid. Had this information been provided to senior Port leadership and the Commission, this procurement could have been scrutinized and the procurement re-advertised, with the potential for a more reasonable cost result to the Port. Given the fact that TTI appears to have made a profit in excess of 30% on this

[15] The employee's direct supervisor confirmed that she later learned this employee had provided internal Port estimate information to TTI; however, she believed only the "final number" (i.e., the $104 million) had been provided, rather than the detailed spreadsheet articulating all of the Port's internal estimating information for each line item, which was actually provided.

contract[16] and that the bid exceeded the Engineer's Estimate at the time of the advertisement ($93 million) by $31 million and the final internal estimate at the time of bid opening ($105 million) by $19 million, we conclude it is likely that additional scrutiny of this procurement, if done promptly, could have reduced the loss sustained by the Port on this contract. We recognize, however, that we are unable to determine what the financial impact may have been as a result of the potential delay of the construction schedule.

4. **Port staff negotiated with TTI after receipt of TTI's bid, but prior to the award of the contract. The resulting negotiations produced a misleading change order that falsely represented a $9.4 million agreed-upon reduction in the amount of TTI's bid (SAO Finding 3-A)**. Port CEO Mic Dinsmore and a senior Port aviation executive met at a local restaurant with one of the owners of TTI, the contractor who submitted the sole bid for the 2006 Third Runway Embankment contract, to discuss ways to reduce TTI's $124,777,043 bid. At the meeting, we have been told that the CEO requested TTI reduce its price to within 10% of the Engineer's Estimate.[17] The Port CEO was referring to the fact that TTI's $124,777,043 sole bid for the 2006 Embankment work was significantly higher than the Port estimates[18] and, as a result, there was a risk that the Commission would not authorize the award of the contract and the project would have to be re-bid. After this meeting, another Port employee was instructed to meet with TTI to discuss ways to reduce the bid amount. The results of this discussion were later reflected in a deductive change order to the contract.

a. We attempted to interview Mr. Dinsmore to discuss the specifics of these meetings with him; however, he declined our request to meet with us.[19]

[16] See discussion later in this report.

[17] It appears that the CEO was actually referring to the final internal Port estimate of $105 million, rather than the actual Engineer's Estimate of $93 million.

[18] Whether compared to the "Engineer's Estimate" (the estimate at the time the advertisement is published) or the final internal Port estimate (the estimate at the time that bids are received), the sole bid received for the 2006 Embankment work was more than 10% higher than either of these estimates.

[19] Mr. Dinsmore's attorney sent us the following email: "Please be advised that Mr. Dinsmore is declining your request to be interviewed in conjunction with the internal investigation that your office is conducting on behalf of the Port of Seattle. As you know, the United States Attorney has announced that his office is also conducting an investigation of Port related issues. To our knowledge that investigation continues. Although Mr. Dinsmore is adamant that he has not engaged in any inappropriate or otherwise unlawful behavior, I have advised him that it is not in his interest to agree to an interview during the pendency of the federal investigation. Moreover, unlike your client, Mr. Dinsmore does not have access to the many documents which I am sure you have reviewed during the course of your investigation nor is he privy to the information that you have learned from the many witnesses you have no doubt interviewed during your investigation. Accordingly, he would likely be unprepared to answer many of your questions without first having an opportunity to review and evaluate both the content and accuracy of documents or other information about which you would likely inquire. If the Port would be willing to provide us with copies of those materials and additional time to review and evaluate them, then our response to your requested interview might be different. Given that you have represented many individuals in the same situation that Mr. Dinsmore now finds himself, I am certain that you understand and can appreciate his decision not to agree to be interviewed at this time."

[III.A.4] b. We interviewed the Port employee who met with TTI at Mr. Dinsmore's direction about his specific instructions to conduct negotiations on this contract. The Port employee told us that he received a call from the TTI Project Manager asking him to meet to discuss some changes to TTI's bid. The Port employee called Mr. Dinsmore, who confirmed that he should meet with TTI. Mr. Dinsmore told the Port employee to "get the deal within 10 % of the Engineer's Estimate." During our investigation, we determined that this individual was not successful in negotiating a contract with TTI that was within 10% of the Engineer's Estimate and this fact was never made clear to the Port Commission. This Port employee met with TTI personnel and negotiated a contract value fuel-cost sharing agreement. TTI agreed to a deductive change order at the beginning of the project. This arrangement would only reduce the contract value if TTI's fuel costs were to drop during the life of the contract. Fuel costs did not decline.

c. The Port employee worked with TTI representatives to develop a deductive change order in the amount of $9,391,604. This amount was comprised of the $4 million contingent fuel-cost reduction, $3.4 million in cosmetic reductions, and $2 million in actual cost reductions. The key aspects of the agreed-upon $9.4 million change order are: (1) the agreed-upon amount was artificially chosen at the outset in order to produce a bid-reduction so that Port Staff could make it appear that TTI's bid was within 10% of their cost estimate. However, we have concluded that even with the deductive change order, TTI's bid was not within 10% of the Engineer's Estimate, (2) only $2 million of the amount represented actual savings, as the remainder was purely cosmetic in nature or contingent on fuel costs declining (which was speculative), and (3) the change order itself was unenforceable because at the time this package was presented to the Commission, no one from either the Port or TTI had signed it, nor was there any legal obligation for anyone to sign it. Only after a costly additional financial inducement was provided by the Port, as discussed below, would TTI be found willing to sign this change order.

d. The cosmetic elements of the change order pertained to line items on the TTI bid that were entered only as estimated quantities of material. From the outset, it was always part of the TTI proposal that TTI would be paid for actual quantities of certain specified deliverables (e.g., quantities of debris removed), regardless of what was entered on respective line items on the bid sheet. Lowering these quantities on the change order created a false impression that the change order brought about actual cost savings. Had Port staff wished to present a fair picture of the difference between the TTI bid and the final internal estimate after the change order came to pass, the same quantity reductions that were made on the change order should also have been made to the internal estimate. They were not, and consequently the end comparison was not comparing "apples to apples."

e. ***Fraud analysis.*** Based on our investigative findings, we conclude that discussions with TTI after receipt of TTI's bid resulted in a misleading change order that falsely represented a $9.4 million reduction in TTI's bid when the reduction was closer to $2 million. It included an apparent attempt to cause the Commission to believe that TTI agreed to a contract amount that is within 10% of the Engineer's Estimate.

(1) <u>Material misrepresentation or suppression of a material fact</u>. The change order that was created to memorialize the negotiations between TTI and the Port contained material misstatements of fact and omitted material facts to create a misleading document that appeared to reflect a $9.4 million reduction in the cost of the contract, which was not accurate.

[III.A.4.e] (2) Made with knowledge of its falsity. The Port employee who conducted the negotiations with TTI has informed us that he was aware, both at the time of the negotiations and at the time the change order was prepared, that all but approximately $2 million of the "cost reduction" reflected in the change order was "cosmetic" (i.e., would have been realized in the absence of the change order) or was a contingent fuel cost adjustment. The Port employee was aware that at least one other individual involved in this process refused to sign the change order because he did not believe it was appropriate; the Port employee who conducted the negotiations with TTI signed the change order for the individual who refused to do so.

(3) Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed). This misleading change order appears to have been created to avoid scrutiny by the Port Commission of this contract. It is highly likely that had the Commission been informed of the actual true facts regarding this procurement, the Commission would have, at a minimum, asked questions about the procurement process and may have required the work be re-opened for competitive procurement.

(4) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information. The Commission appears to have relied upon the false information concerning this procurement process, as it did not ask any questions about the procurement process or about the change order.

5. **Port staff provided a misleading Commission notification memorandum (SAO Finding 3-A)**. Resolution 3181 required that when the low bid on a project is greater than 10% above the Engineer's Estimate, the Commission must be notified prior to the award of the contract. Port staff drafted a memorandum to the Commission, dated December 27, 2005, which provided notice that Port staff intended to award the 2006 Third Runway Embankment contract to TTI. This memorandum failed to provide actual notice to the Commission of the facts of this procurement.

a. An initial draft of the memorandum to the Commission was created on December 22, 2005, providing notice that the low bid exceeded the Engineer's Estimate.[20] The initial version specifically provided that the bid exceeded the original Engineer's Estimate by over 10%, and clarified that the bid actually exceeded the Engineer's Estimate by 18.75%. This original version also included a discussion of the primary contributing factors to the cost increase. A second draft was circulated among senior Port staff on December 27, 2005; this draft deleted both the specific notice that the bid exceeded the Engineer's Estimate by 18.75% and the discussion of the contributing factors to the price increase. This second draft also stated, "[i]t is the Port's intent to continue with the award process to TTI Constructors, LLC, the lowest responsible and responsive bidder, unless direction is received to the contrary by December 31, 2005 . . . ." A third draft was circulated later that day, containing non-substantive changes. A fourth draft deleted the sentence "[i]t is the Port's intent to continue with the award process to TTI Constructors, LLC, the lowest responsible and responsive bidder, unless direction is received to the contrary by December 31, 2005 . . . ." Copies of these iterations of the memorandum, as well as the final version of the memorandum, are attached to this report.

[20] Throughout this process, the drafts of this memorandum inaccurately refer to the final internal estimate of $105 million as the "Engineer's Estimate."

[III.A.5] b. The final version of the memorandum included a cost estimate in the amount of $105,071,395, as well as TTI's bid in the amount of $124,777,042.50; however, it failed to provide sufficient information to permit the Commission to make an informed decision about this procurement. The memorandum failed to state that the published Engineer's Estimate range was $80,000,000 - $100,000,000 and that TTI's bid exceeded the Engineer's Estimate by more than 10%. The memorandum also indicated that the "Port will proceed with the award process on December 30, 2005, and administer an immediate deductive change order to reflect the adjusted quantify/pricing as described above." It appears this final version was sent to the Commission approximately 4:30 p.m. on December 27, 2005, leaving only two days for the Commission to review the details of this procurement, ask further questions, or object to the award of the contract to TTI.

c. The December 27, 2005 memorandum notifying the Commission of the Port staff's intent to award the 2006 Third Runway Embankment contract to TTI was misleading for the following reasons:

(1) Port staff eliminated from the initial version of the memorandum a key statement that the bid exceeded the Engineer's Estimate by over 10 %, and that the TTI bid exceeded the Engineer's Estimate by 18.75 %. The absence of this disclosure in the final memorandum did not allow the Commission to fully understand how much the TTI bid exceeded the Engineer's Estimate.

(2) The memorandum stated TTI provided an adjusted contract amount of $115,384,438.50; however this was misleading, because this price was contingent on a fuel cost adjustment that never occurred.

d. The Port's response to the State Audit indicated that "Port staff currently notifies the Port [C]ommission of all bid irregularities and provides a window of time within which the Port Commission can consider and provide input on those irregularities."[21] Despite this stated policy, the events leading up to the creation of the Commission memorandum, and the actual creation and presentation of this memorandum to the Commission, represent, in our judgment, a series of disingenuous actions by Port staff members that were motivated by a desire to ensure that the Commission would not interfere with Port staff's desire to accept TTI's bid. The memorandum was also misleading because if TTI's bid had been correctly compared to the actual Engineer's Estimate of $93 million, it would have been clear to the Commission that the TTI bid was greater than 10% over that estimate.

e. ***Fraud Analysis***.

(1) Material misrepresentation or suppression of a material fact. Our investigation revealed that the "notification" memorandum that was provided to the Commission on December 27, 2005 failed to inform the Commission of the true facts surrounding the bid scenario and contained overtly misleading language intended to lull the Commission into taking no action as a result of the memorandum. A significant number of senior Port staff were involved in drafting this memorandum; however, review of each evolution of the memorandum reveals that the memorandum becomes less specific, more vague, and more misleading with each iteration. By the time the final version of the memorandum was provided to the Commission, it had been altered to the point that it had become a material misstatement of fact, rather than a "notification." The very best that can be said about this document is that it suppresses material facts. The Port employees that provided this memorandum to the

[21] Original Port Response, December 2007.

Commission had a duty to provide accurate information to the Port Commission. They failed to do so by: (1) failing to specifically include language in the memorandum informing the Commission that TTI's bid was greater than 10% above the Engineer's Estimate; (2) failing to inform the Commission that Port staff had engaged in negotiations with TTI after receipt of the bid; (3) referring to "an adjusted amount of $115,385, 438.50" that was largely cosmetic and not finalized; (4) failing to inform the Commission that it could object to Port staff's stated intent to award this contract to TTI; (5) comparing the "adjusted" TTI bid to the "unadjusted" internal Port estimate; and (6) comparing TTI's bid to the most recent internal Port estimate, rather than the Engineer's Estimate established when the work was advertised.

(2) Made with knowledge of its falsity. The Port staff involved in the drafting of this "notification" memorandum did not simply fail to include relevant information but consciously removed important language from the memorandum during the revision process. During our interviews with many of these individuals, they admitted that the final version of the memorandum was misleading. Some individuals informed us that they had reservations about the language contained in the memorandum at the time that it was being drafted. One of these individuals told us that he expressed reservations that the language in the memorandum was not accurate to a more senior Port employee; however, he was informed that "this is what everyone feels is what needs to be done." The more senior Port employee denies that such concerns were raised to him by this individual.

(3) Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed). The suppression of this information appears to have been done to avoid scrutiny by the Port Commission of this contract. It is highly likely that had the Commission been informed of the true situation, it would have, at a minimum, asked questions about the procurement process and may have rejected the bid entirely. Several individuals told us during our investigation that there was pressure to rush this contract through before the Commission membership changed at the beginning of 2006, as well as concern that there would be additional costs associated with any delay in awarding the contract. The very fact that the Commission was not specifically informed that it could object to Port staff's intent to the award the contract on December 30, 2005 and that the "window" of opportunity for the Commission to act consisted of less than three days,[22] during a holiday season, suggests a deliberate design by Port staff to push this contract through without scrutiny by the Commission.

(4) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information. The Commission appears to have relied upon the false information concerning this procurement process as it did not ask any questions about this procurement process. After issues regarding this procurement process were raised by the State Auditors, several Commissioners, including one Commissioner who was serving at the time, did ask questions about this procurement.

(5) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, suffers damages as a result of his reliance on the false information. While it is difficult to quantify the damages to the Port as a result of the material misrepresentations contained in this memorandum and the suppression of material facts that should have been included, had this information been provided to the Commission, this procurement could have been scrutinized and the procurement re-advertised, with a more reasonable cost result to the Port, as compared to the actual cost and profit margin for this contract. Given the fact that the contractor appears to have made a profit in excess of 30% on this contract and that the bid exceeded the Engineer's Estimate at the time of the advertisement ($93

[22] The standard window that is generally provided to the Commission for response is 7 – 10 days.

million) by $31 million and the final internal Port estimate at the time of bid opening ($105 million) by $19 million, it appears unlikely that timely scrutiny of this procurement would have resulted in a net loss to the Port. These actions also deprived the Commission of the opportunity to fulfill its responsibilities by asking questions about important aspects of this contract.

6. **A Port employee made large-dollar premature payments to TTI that may have cost the Port many thousands of dollars in foregone interest income.** A Port employee has indicated that he "overpaid" TTI invoices[23] for fill material as an inducement for TTI to sign the deductive change order at the time of the contract award to TTI and in recognition of the rising fuel costs. This employee paid TTI up-front for material costs that were not due to be paid under the contract terms until the conclusion of the contract. Even though TTI was awarded the 2006 Third Runway Embankment contract on the auspices of declining fuel prices, as reflected in the deductive change order at the time of the contract award, Port funds were improperly paid to TTI during the course of the contract to offset the rising costs of fuel. By engaging in this behavior, the employee became part of a fraudulent billing practice of seeking payment for quantities of material not yet delivered to the project, as well as providing unlawful gifts of public funds in violation of the Washington state constitution.

a. The Port employee responsible for making the premature payments to TTI told the State Auditor that the reason he did so was that this was an agreed-upon incentive reached with TTI to induce TTI to sign off on the deductive change order. The change order was referenced in the December 27, 2005, Commission notification memorandum, but was not signed by TTI until June 5, 2006, after several monthly pay estimates had been submitted for fill material. When we interviewed the Port employee who authorized these premature payments, he told us that he did not recall these payments being a quid pro quo for the deductive change order, but that he provided these funds because he believed it was unfair for TTI to front the cost of the increasing fuel prices and only be reimbursed at the close of the contract. He explained that he reviewed the TTI monthly pay estimates for fill material against the Port's lower estimates and "gave TTI the benefit of the doubt" by authorizing payment at the higher TTI estimate number. This employee was either unable or unwilling to quantify the amount of Port funds that were prematurely paid during the course of the contract; however, at the height of the embankment work, he told us that the Port was paying TTI $500,000 per day in payments for fill material. Even a small percentage on a scale of this size could result in a significant premature payment of Port funds and a significant loss of the interest the Port would have earned on these funds had they not been paid until the conclusion of the contract, as was provided by the change order.

b. When we questioned the Chief Engineer, a Port senior executive, about the premature payments to TTI, and the fact that it may have resulted in substantial losses to the Port, this senior executive responded that he saw no problem with such up-front payments, and felt that, even though they were made in contravention of the contract provisions, such early payments were "fair."

[23] The Port employee characterized his actions as "overpayment" during his discussions with the State Auditor. We have not been able to determine if payments in excess of the amount owed to TTI were made; however, we have established that payments were made in advance of the date those payments were authorized. As a result, we refer to these payments as "premature."

[III.A.6] c. We view the specific conduct surrounding this action as not only a serious departure from sound contract administration, but a practice of approving invoices that resulted in unlawful gifts of public funds and significant loss to the Port. Although the Chief Engineer may not have been directly part of the billing scheme, we find his willingness to support this type of action, even though it produced unnecessary risks and added costs to the Port, to be extremely troubling.

d. ***Fraud analysis***.

(1) Material misrepresentation or suppression of a material fact. The approval of payments in excess of the amount due to a contractor to offset the increase in fuel costs during the course of the contract, in direct contravention of the terms of the contract that provided for reimbursement for higher fuel costs at the conclusion of the contract, constitutes a material misrepresentation of fact by indicating the amount paid was appropriate, when it was not. In addition, the failure to inform senior Port leadership and the Commission that premature payments were being made to offset the increased cost of fuel constitutes the suppression of material facts that should have been disclosed.

(2) Made with knowledge of its falsity. The Port employee who authorized the premature payments to TTI was aware that he was acting in contravention of the terms of the contract and that the payments he authorized exceeded the actual amount that was due to TTI at that time.

(3) Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed). The Port employee who authorized the premature payments to TTI did so with the intent that the Port payment department pay TTI in excess of the amount it had earned at that time under the terms of the contract. The Port employee's failure to inform senior Port leadership and the Commission that he was authorizing premature payments to TTI was done with the intent that no questions be raised concerning these premature payments and that the premature payments continue.

(4) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information. The Port payment department paid TTI based upon the Port employee's authorization of more than the amount due TTI at that time under the terms of the contract. As senior Port leadership and the Commission were unaware that the employee had authorized premature payments, it raised no concerns about this practice.

(5) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, suffers damages as a result of his reliance on the false information. As the Port employee has been unable or unwilling to quantify the amount of the premature payments, we cannot quantify the amount of loss to the Port; however, it is clear that premature payments were made and that the Port lost money that would have earned interest in the Port accounts if the contract had been paid appropriately.

7. **Context for concerns regarding potential collusion between TTI representatives and Port employees.** Our findings regarding the Third Runway contracts reflect an environment in which there is a close relationship, potentially involving collusion, among some Port employees and representatives of TTI that benefited TTI to the detriment of the Port. This relationship resulted in TTI receiving a Port internal cost estimate before submitting a bid, informal negotiations with TTI after the receipt of TTI's bid, the creation of a misleading Commission notification memorandum, the creation of a misleading deductive change order, and

premature payments to TTI for fill materials. This relationship is troubling on its own merit; however, when viewed in the context of statements made by TTI representatives to Port employees alleging TTI was "losing money" on the 2004 Third Runway Embankment contract, the actual profit made by TTI on both the 2004 and 2006 Third Runway Embankment, and the lack of cooperation we received from the TTI member companies in our investigation, this close relationship appears significantly more problematic.

a. TTI members and representatives falsely represented to the Port that they lost money on the first (2004/2005) embankment contract. A Port employee told us that the Project Manager and each of the TTI owners told him that TTI "lost money" on the 2004 embankment contract. A former senior Port consultant and a former senior airport executive also recall TTI representatives making such claims. The current Port employee told us that he did not believe these claims because contractors always talk about losing money. He told us that he did believe, however, that TTI was not making as much profit as it had expected to make as a result of higher fuel costs, strict enforcement of the truck weight requirements, and expenses associated with "wheel washes" and other environmental protection measures required by the state and EPA. The Port employee took actions, both during the negotiation and payment phases of the 2006 contract that reflect his concern that TTI had, in fact, lost money on the 2004 contract. Review of the TTI records reveals not only that TTI made a substantial profit on the 2004 contract, but that it made more profit than it had anticipated. Review of those records also reveals that TTI "frontloaded" some of its profit on the 2006 contract as "mobilization costs," making the premature payments for fill materials to offset the increased cost of fuel unnecessary, as well as inappropriate.

(1) Our review of TTI's project files reveals that not only did TTI make a profit on the 2004 embankment contract, but it made more profit than it had expected to make. The table below shows that TTI made a $25 million profit on the 2004 contract, representing a 14.55% markup on costs, and also had job costs that were $10.6 million under their original cost estimate.

Third Runway 2004-05 Embankment Contract

Amount Billed	$197,444,323
Total Costs per TTI's Job Cost Report	$172,359,702
Profit	$ 25,084,621
% Markup on Job Costs	14.55%
Original Cost Estimate	$182,961,531
Cost Underrun	($ 10,601,829)

(2) In addition, when TTI was awarded the 2006 Third Runway Embankment contract as the only bidder, TTI was paid an even larger markup on its job costs.

Third Runway 2006 Embankment Contract

Amount Billed	$124,826,426
Total Costs per TTI's Job Cost Report	$95,968,564
Profit	$28,857,862
% Markup on Job Costs	30.07%

This profit is far above typical industry markups. In addition, TTI's records reveal numerous self-dealing transactions upon which TTI's member companies made millions of dollars in additional profit. For example, based on project records provided by one of TTI's members, it appears that one member company made an additional $6.9 million related to its work on the 2006 contract.

b. Our review of TTI records raised numerous questions regarding TTI's performance on these contracts. TTI Members refused to be interviewed, and also (in varying degrees among the different members) refused to make a timely production of all requested records as required by the contract audit clauses.

(1) Audit clauses contained in the two embankment contracts require prime contractors and subcontractors to produce accounting and related records after being requested to do so by the Port. Upon request, TTI did in fact provide these records in a timely manner. We examined these records, and quickly determined that in order to adequately complete our investigation, related subcontractor records would also have to be examined. In addition to a need for such subcontractor records, it was determined that the TTI member/owners (Gary Merlino Construction, Scarsella Brothers Construction, and Tri-State Construction) should make themselves available to answer questions regarding reviewed records. We communicated to each member through their counsel the need for their compliance with Port contract audit requirements. To date, Tri-State Construction and Scarsella Brothers Construction have provided some, but not all, of the records requested for review. Unfortunately, however, both of these companies delayed producing records to such an extent that even when certain records were offered for review, investigative time constraints were such that a meaningful analysis of such records was no longer possible.[24] The third TTI member, Gary Merlino Construction, has refused to provide virtually all documentation requested for review. As discussed above, none of the TTI members agreed to be interviewed to answer questions about records, or anything else.

(2) After reviewing the TTI records, a fourth company that provided trucking support to TTI was also identified as an entity that should provide access to its records. This company is City Transfer Inc. City Transfer Inc. ("CTI") also refused to cooperate by providing either records or interview assistance. CTI represented to us that it acted as a "supplier" on the two embankment contracts. As such, it informed us that it had no obligation – and no interest – in providing us with any investigative assistance.

(3) Additional trucking companies also refused to cooperate in this investigation, even though such cooperation is clearly mandated under the provisions of the contracts from which they benefited financially. These companies are J. Harper Contractors and JMR Trucking.

(4) Our primary interest vis-à-vis accounting records and witness interviews relate to the three TTI members and CTI. We learned that CTI provided by far the bulk of the hauling of fill material on these contracts. Many, if not all, of our questions and concerns pertaining to the TTI members and CTI would more than likely have been resolved if requested records and interview assistance had been provided. Without such cooperation, however, questions remain and the scope of the SIC investigation has been restricted.

[24] Document requests were made on July 8, 2008. Tri-State Construction did not agree to provide documents until October 1, 2008. Scarsella Brothers did not agree to provide documents until October 3, 2008.

[III.A.7.b] (5) A brief explanation is set forth below regarding records that we reviewed from TTI Constructors that led us to determine that significant questions would remain in the absence of the aforementioned additional subcontractor records and interview assistance. (This explanation addresses some of the more important issues that we found. Additional issues remain unanswered, but they will not be addressed in this summary, as our focus here will be limited to the more material unresolved areas.)

(a) During our review of TTI records, we found that numerous large payments (millions of dollars) were made by TTI to each of the TTI members. We also found that TTI made numerous large payments (in the millions of dollars) to CTI. We found that many of the checks made payable to CTI also contained additional payees. Examination of these checks revealed that in those instances, both CTI and the additional payee provided their respective endorsements. The co-payees on these checks included TTI, M&M Leasing, Minority Trucking, Gary Merlino Construction, Bella Bottega, and Casetta Lago. We determined that each of these co-payees was associated with one of the respective members of TTI. It appeared that the full proceeds of checks containing co-payees went to the benefit of the co-payee, not to CTI. Some of these checks were deposited to the TTI bank account, while others reflected that they were deposited to other accounts.

(b) While the above check writing actions may have totally sound and legitimate business bases, they raise questions that would clearly be pursued by any attentive auditor or investigator. We had hoped to answer such questions by taking the approach discussed above; as we were not permitted to do so, unanswered questions remain.

[III] B. Findings Related to Small Works Roster Program Contracts.

1. **Overview of Small Works Roster Program law**. The Small Works Roster Program allows public work construction projects estimated at $200,000 or less to be procured through less formal procedures. RCW 39.04.155. The Port is authorized to use a Small Works Roster Program. RCW 53.08.120. A Small Works Roster is maintained by the Port and consists of a number of vendors within specific trades, such as electrical, mechanical, and hazardous material remediation trades. The law requires that agencies establish procedures for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder. RCW 39.04.155(2)(c). Quotations may be invited from all contractors on the appropriate Small Works Roster or quotations may be invited from at least five contractors on that roster, in a manner that will equitably distribute the opportunity among the contractors on the roster. Id. "Equitably distribute" means that the agency may not favor certain contractors on the appropriate Small Works Roster over other contractors on the appropriate Small Works Roster who perform similar services. Id. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the Small Works Roster Program. RCW 39.04.155(4).

2. **PCS personnel steered contracts to preferred vendors, often to pay for work that had already been performed, by using "expedited" procedures, requesting vendors not submit bids on identified contracts, not notifying selected vendors on the Small Works Roster of contract opportunities, and opening an additional contract opportunity when the "wrong" contractor won a contract.**

a. The State Audit found that PCS personnel added preferred bidders to the randomly-generated Small Works Roster Program bid lists to potentially steer contracts to these particular bidders (SAO Findings 1-E and 2-F). Our investigation corroborates this concern. During the course of our work, we identified multiple contracts that were steered to preferred contractors, often to pay for work that had already been performed. This was a clear violation of Port policies and state law. In some cases, it also constituted fraud.

b. Our individual findings are summarized below:

(1) PCS personnel stated that the work performed would often exceed the established contract value and as a result, the contract administrator would have to procure a new contract and hope that the "right" contractor won the contract so that the contractor's invoices could get paid. Numerous examples of this are detailed in the invoice altering discussion.

(2) PCS contract administrators told us that they used an "expedited contract procurement process" that could take 1 to 3 days to get a contract in place with the preferred contractor rather than the normal 1 to 2 week process.

(3) A PCS contract administrator described how he, on occasion, when he needed to award a contract to a specific contractor with invoices that needed to be paid, would ask certain contractors not to bid because they already had enough open contracts. This activity was clearly a deliberate act to prevent open competition from occurring, which likely resulted in financial losses to the Port.

[III.B.2.b] (4) A PCS contract administrator was instructed to issue a series of small works contracts to a conveyor belt contractor for the same scope of work. The contractor was the only bidder for each of the contracts and when the contract administrator started looking for additional potential bidders, the individual's supervisor instructed the Port employee not to do so.

(5) On two of the small works contracts that had only one bidder and appeared to be steered to favored contractors, we conducted additional investigative steps by attempting to contact each of the other potential bidders listed in the Port's procurement records as having received notice of the contracting opportunity. We were not able to identify a single contractor that recalled ever being notified that these contracting opportunities were available.

(6) As the apparent low bidder, a contract was awarded to Cedar Creek Electric Company, but another identical contract was immediately advertised and was awarded to SHJ Electric – the desired bidder. Cedar Creek received just $1,000 in billings while SHJ received almost $200,000, some of which was for work that had already been performed.

c. ***Investigation of other potential bidders for Prime Electric Contract SWV-0311608***. The State Audit suggested that PCS manipulated the Port's Small Works Roster to steer contract SWV-0311608 to Prime Electric. The State Audit contended that large numbers of Prime Electric invoices from other contracts were stockpiled, altered, and then reassigned to this contract – nearly all of which contained invoice dates which preceded the SWV-0311608 contract execution date. The State Audit also contended that Port staff could manipulate the Small Works Roster program to direct a contract toward the favored vendor – whereby the invitation can be sent to just the favored contractor, omitting other contractors listed as receiving an 'invitation to bid.'

(1) To test these contentions, the Team contacted eight contractors that PCS procurement documents reflected had received an 'invitation to bid.' None of the eight could verify that they had received invitations to bid. In addition, Port staff were unable to provide any conclusive documentation proving that the eight bidders received the solicitation or were aware of the solicitation. Prime Electric was the only bidder associated with contract SWV-311608. There is strong evidence that the bid process was manipulated by Port staff to ensure that Prime Electric received this contract award.

(2) In addition, as a result of invoice alterations, $99,156 of the $211,419 in work billed under SWV-0311608 was performed prior to the contract being executed. This is a clear indication that this contract was steered to Prime Electric to pay outstanding invoices.

(3) We conducted interviews with current and former PCS staff on this issue. They largely agreed that contracts such as SWV-0311608 were the result of a lack of controls to track the amounts authorized and billed to open order contracts. Consequently, PCS would receive vendor invoices pushing open order contracts beyond their maximums, leaving PCS with three options: first, they could approach the Commission for a change order to increase contract capacity (which according to multiple current and former employees, was viewed by Port management as 'not an option'); second, they could alter and reassign invoices to other contracts already open with that contractor; or, third, if there was no open order contract already in place, they could procure a new contract, and 'hope' the 'right' contractor was awarded the new contract.

[III.B.2.c] (4) PCS staff emphasized in our interviews that no fraud was involved; yet it is clear that Port staff regularly engaged in "expedited procurement practices" that did not comply with Port policies or Washington state law pertaining to Small Works Roster Program contracting. Some of the Port staff we interviewed told us they knew that contracts were used only to keep the work going and pay the vendors for work they had already performed at the request of the Port. One individual stated that he/she 'took the lazy way out;' and, in hindsight, should have demanded that a change order be issued, and Commission approval be obtained, because that would have forced the construction managers to plan ahead in the future.

d. ***Analysis of Cedar Creek Electric Co. resulting from Vendor Phone Calls***. As part of the vendor phone calls to potential bidders for contract SWV-0311608, the Team spoke to Jim Colton, owner of the now-defunct Cedar Creek Electric Company. We asked if Cedar Creek had ever received an invitation to bid on small works contract SWV-0311608. Mr. Colton told us that he did not believe he ever received an invitation to bid on SWV-0311608, but he did receive an invitation to bid on, and was awarded, another electrical open order contract. Cedar Creek contract SWV-0309461 was executed on December 3, 2002, for a not-to-exceed amount of $185,000.[25] Mr. Colton indicated however, that despite the contract award, only about $1,000 in actual work was ever given to his firm. At the same time, documents indicate that once it became clear to PCS that Cedar Creek would win the contract, PCS began procuring another contract for the same type of work that would ultimately be awarded to SHJ Electric.

(1) Our audit of Port records substantiates Mr. Colton's claim. Cedar Creek executed a contract on December 3, 2002, received a single $2,000 work authorization on January 29, 2003, invoiced $1,120 against that work authorization on February 3, 2003, and never received any more work.

(2) SHJ Electric bid on SWV-0309461, but was underbid by Cedar Creek. This contract allowed for up to $185,000 in Port electrical work. Despite the Cedar Creek Contract being signed on December 3, 2002, another Open Order contract was procured soon after (Electrical Open Order 2002-06, SW-309469) and was awarded to SHJ Electric, effective January 7, 2003. Specifically, the Port advertised an entirely new contract – Electrical Open Order 2002-06, the day before Cedar Creek executed its contract - Electrical Open Order 2002-05.

(3) Twenty-five work authorizations were billed to SHJ Electric's contract SWV-309469, while Cedar Creek received only one, despite having lower prices than SHJ Electric. In addition, $11,874 of the SHJ Electric and subcontracted billings invoiced against this contract were for work that had already been completed by the time the contract was executed on January 7, 2003.

e. ***Vendor Phone Calls to bidders of MD Moore Contract SWV-0314449***. MD Moore was a conveyor belt contractor that received nine sequential Small Works open order contracts for principally the same work. As discussed previously, invoices for work on these contracts were stockpiled, altered, and reassigned to other newly-executed MD Moore contracts – which were split to circumvent Port procurement requirements.

[25] This contract was outside the date range upon which the State Auditor focused; the Cedar Creek Electric Co. issue is not addressed in the State Auditor's Performance Audit.

[III.B.2.e] (1) The Team attempted to contact each of the five vendors the Small Works Roster indicates as having received 'invitations to bid' in 2007 for contract SWV-0314449 – which consists solely of two invoices. One of the contractors purportedly 'invited to bid' (Sound Steel Service Inc.) was dissolved in 2001, six years before the invitation was issued. A second contractor (Scanlon Engineering, Inc.) purportedly 'invited to bid' had contact information in the Port's procurement system listing an email address at a company that was dissolved in 2003, four years before the invitation. A third contractor could not be contacted for confirmation. The fourth contractor (Lance Gyldenege Construction) could not confirm receipt of an invitation to bid. The fifth contractor (Pacific Fabricators, Inc.) declared emphatically that he never received a single invitation to bid on any contract from the Port, even though Port records indicate that he was invited to bid on seven contracts that were awarded to MD Moore.

(2) PCS records indicate that Pacific Fabricators was invited to bid on seven of these MD Moore Conveyor Open Order contracts and the two now-defunct firms, Sound Steel Service Inc and Scanlon Engineering Inc, were invited to bid on seven and six contracts, respectively. The PCS Small Works Roster's inability to properly advertise procurements may have contributed to the fact that MD Moore was the sole bidder for each of these nine conveyor contracts.

(3) The PCS contract administrator responsible for the MD Moore contracts told us that he was instructed to procure enough small works contracts for this contractor to ensure that the contractor always had enough contract dollars against which to submit billings. He confirmed that the scope of work for all of these contracts was identical.

(4) This evidence, combined with the fact that contract SWV-0314449 was procured to pay for work already performed, and the claim by the contract administrator that he was told to stop looking for other potential bidders, supports a finding that this series of small works contracts was steered to the Port's preferred contractor, MD Moore.

f. ***Fraud Analysis:*** Our investigation revealed that circumvention of the competition requirements for the PCS Small Works Roster Program by steering contracts to preferred vendors violated Port policies and state law. In some cases, it also constituted fraud.

(1) <u>Material misrepresentation or suppression of a material fact</u>. Our investigation revealed that the steering of contracts to preferred vendors with outstanding invoices involved material misrepresentations and suppression of material facts. While the very act of providing notice to a group of vendors that there is a contract opportunity of a certain dollar amount, when there is a preferred vendor and a portion of that work has already been performed, is misleading, our investigation revealed that, in many cases, it does not appear that PCS actually notified vendors other than the preferred vendor of the opportunity to bid, despite the fact that the contract files ostensibly reflect such notice. The contract document itself includes a statement that "[t]he Work to be performed under this Contract shall commence on this effective date of this 'Agreement' and shall be completed not later than 365 calendar days following the effective date of this Agreement." This contract is signed by the Port (generally by the CEO) and by the contractor. When the contract documents are forwarded to the CEO for signature, there is a material misrepresentation made to the CEO by PCS personnel that the contract was competitively procured in accordance with the law and that the work that will be paid under this contract has not already been performed. At a minimum, there is a suppression of the material information that this contract was steered to a preferred vendor to cover invoices for work already performed. PCS staff have a duty to provide accurate information to the CEO concerning contracts they are forwarding to him for signature. This duty is articulated in the Ethics Code for Employees, as well as in the Port Mission and Values Statement.

[III.B.2.f] (2) Made with knowledge of its falsity. It is clear that PCS personnel were aware when contracts were "steered" to preferred vendors to pay outstanding invoices. The contract records clearly reflect this pattern and multiple PCS personnel have informed us of this practice.

(3) Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed). The material misrepresentations and suppression of material facts made by PCS staff to the CEO were made with the intent that he act upon the false information by signing these contracts.

(4) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information. The CEO did, in fact, rely upon the false information provided by PCS staff by signing the contracts.

(5) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, suffers damages as a result of his reliance on the false information. There are identifiable damages to the Port as a result of steering of contracts to preferred vendors. PCS personnel have informed our Team that when invoices exceeded contract capacity for a given vendor, they would "put out" another open order contract for bid and "hope" the "right" vendor would win the contract. While no PCS personnel recalled a situation in which the "right" vendor did not receive the contract, it is clear that on at least one occasion, such a result occurred. One open order contract was offered, for which SHJ Electric and Cedar Creek Electric both bid. Cedar Creek was the low bidder and was awarded the contract. Immediately, another open order contract was offered for bid and was awarded to SHJ Electric. Cedar Creek, despite lower prices, was only given authorization to perform a small amount of work, leaving almost $185,000 in contract capacity unused, while SHJ Electric, a more expensive vendor, used all of the capacity on not only the new contract, but the next three contracts. Cedar Creek eventually cancelled the contract and no longer works for the Port. In sum, the Port not only incurred the cost of procuring an additional open order contract for SHJ Electric after Cedar Creek Electric (the "wrong" vendor) was awarded the contract, but it also paid a premium to continue using SHJ Electric, rather than the open, and less-expensive, capacity remaining on the Cedar Creek Electric open order contract. It is also likely that when the "expedited" open order contracts were offered for bid with award within only a few days, the preferred contractor had an opportunity to submit an inflated bid, particularly if it was known that competitors were requested to not submit bids.

3. **PCS routinely takes large-dollar projects and breaks them into smaller "sub-contracts" to fit within the Small Works Roster Program $200,000 contract limit.**

a. A Port employee informed us that PCS deliberately undertakes projects which are too large, and then breaks them into smaller "sub-contracts" to fit within the Small Works Roster Program $200,000 contract limit. This practice was confirmed by several other Port employees, both within PCS and in groups that do business with PCS. Multiple former PCS employees noted their reason for leaving the Port as relating to disagreements with PCS management over pressure to perform such inappropriate actions. Both current and former Port employees have informed us that this practice of "splitting" contracts continues to occur within PCS to this day.

b. The PCS General Manager confirmed that PCS routinely handles projects in excess of $200,000; historically, PCS has handled projects up to $2.5 million. He emphasized that PCS's involvement in these projects was known to the Port, was approved by the legal department, and was reported by PCS to Port leadership in the annual reports. In PCS's

view, so long as the individual components of any given project do not exceed $200,000, that work can be performed under the Small Works Roster Program and does not constitute "splitting contracts." In addition, the PCS internal "field crew" can perform unlimited work and is not governed by the $200,000 limit imposed by the Small Works Roster Program laws.

c. ***Analysis of Contract Splitting Related to MD Moore***. PCS issued nine consecutive Conveyor System STIA Open Order contracts to MD Moore between September 2006 and September 2007 – each for a not-to-exceed capacity of $185,000. Five of these contracts were executed in May and June 2007; three of these five were executed in an 11-day span, and two of the three were executed on the same day.

(1) A review of these contracts and related invoices illustrates that rather than issuing one full-competition contract under the major construction group for approximately $1.8 million, PCS split the work into nine small works contracts. PCS simply issued MD Moore a small works contract and billed to that contract until reaching the billing maximum, whereupon additional small works contracts were issued.

(2) PCS issued blanket contractor work authorizations for these contracts, rather than for specific scopes, as PCS staff knew that billing capacity on these contracts would be reached and another limited-competition contract would be issued to MD Moore. For example, Conveyor System STIA Open Order 2007-01, (the second of the nine contracts executed) included just one work authorization for a total $185,000 – the amount of the entire contract. Normally, the Port issues separate Contractor Work Authorizations for specific tasks, but in this case, MD Moore received authorization without limit.

(3) The Port's PMIS electronic database for this contract includes a note dated March 21, 2007: "Work Authorization was issued for the total contract amount due to the fact that the CM [construction manager] believes the work to be accomplished will use all of the funds on this contract." This language supports the Contract Administrators' admission to us that all of these contracts were for the same scope of work and that he knew the work in question was larger than any one contract could fulfill.

(4) During discussions, PCS staff and consultants told us that it is very difficult to do a fully competitive procurement on this kind of project because the scope is largely undefined and done "on the fly." For the MD Moore contracts, they contend that the job ended up being much more time and work intensive than expected.

d. ***Reprimand***. One PCS contract administrator with considerable prior contracting experience in a variety of contexts, received a reprimand from PCS management for questioning the propriety of invoice altering and splitting of contracts to circumvent Port policies. The reprimand was issued on May 13, 2007 at the direction of his immediate supervisor and the PCS General Manager. The reprimand stated, in pertinent part:

> You need to recognize that Port Small Works contracting is somewhat simpler and certainly more flexible, informal, and abbreviated [than] that guided by the Federal Acquisition Regulations. We encourage you to make an attempt to recognize that we do business a bit different at the Port, accept Port contracting for what it is (despite the impression that Port contracting might appear to be too lax or informal), and attempt to work around the minimum standards the Port requires instead of introducing old familiar standards that might only serve to be impediments to the Port's way of doing business – look for "work arounds" instead of introducing possible problems. It is a fine line to work around, because the CA's must be trusted to do the right thing and despite what the CM's want, on

> occasion a CA will have to tell them things they do not want to hear. What the CM's want to hear from a CA are available options and solutions (workaround) after the CA has thoroughly researched the matter. Not Dead Ends.

It is significant that when a PCS contract administrator who noted potential violations of Port policy and state law raised those concerns to the PCS leadership, the leadership's response was not to investigate potential problems, but to chastise the employee and to encourage him to find "work arounds" even for the "minimum standards" governing PCS Small Works Roster Program contracting. As these "minimum standards" involve not only internal Port policy but also state law, such disregard for these legitimate concerns is deeply troubling. That disregard, when combined with overt direction to look for "work arounds" merits senior Port leadership attention.

e. ***Fraud Analysis:*** Our investigation revealed that circumvention of the competition requirements for the PCS Small Works Roster Program by breaking work into smaller components to fall below the $200,000 limit of that Program, violated Port policies and state law. In some cases, it also constituted fraud.

(1) Material misrepresentation or suppression of a material fact. Our investigation revealed that the practice of breaking contracts into units of less than $200,000 involved material misrepresentations and suppression of material facts. Numerous Port personnel, both within PCS and in Port departments working with PCS, informed us that PCS routinely and deliberately "broke" larger projects into smaller components to avoid the maximum dollar amount established for Small Works Roster Program contracts by Washington state law. While the PCS General Manager confirmed that PCS does large projects by breaking them into smaller pieces, he did not consider PCS's actions of doing those projects as smaller components as violating the provisions of law applicable to Small Works Roster Program contracts. The contract document bears a contract number identifying it as a "Small Works Roster Program" and a contract sum of no more than $200,000. This contract is signed by the Port (generally by the CEO) and by the contractor. When the contract documents are forwarded to the CEO for signature, there is a material misrepresentation made to the CEO by PCS personnel that the contract is appropriate for the Small Works Roster Program and complies with the law associated with that Program. At a minimum, there is a suppression of the material information that this contract is only one part of a larger project that has been broken into smaller components to avoid the maximum dollar amount of a contract that may be let using the Small Works Roster Program process. PCS personnel have a duty to provide accurate information to the CEO concerning contracts they are forwarding to him for signature. This duty is articulated in the Ethics Code for Employees, as well as in the Port Mission and Values Statement.

(2) Made with knowledge of its falsity. While it is not always clear that PCS personnel were aware of "project splitting" from the first contract, PCS personnel have informed us that after two or three sequential open order contracts for the same work, such as the MD Moore conveyor work, it became clear to them what was occurring. Other PCS employees have informed us that they were aware that it was improper to break contracts into smaller pieces to stay under the $200,000 threshold, but that they did so because PCS management encouraged this behavior. They were aware that the smaller contracts were actually part of larger contracts that had been "split" for this purpose. The PCS General Manager confirmed that he was aware of this practice as well.

[III.B.2.e] (3) Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed). The material misrepresentations (or suppression of material facts) made by PCS staff to the CEO concerning these contracts were made with the intent that he act upon the false information by signing the contracts.

(4) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information. The CEO did, in fact, rely upon the false information provided by PCS staff by signing the contracts.

(5) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, suffers damages as a result of his reliance on the false information. There are identifiable damages to the Port as a result of breaking projects into smaller components to avoid the maximum dollar amounts under the Small Works Roster Program. Breaking a larger project into smaller components to fit within the $200,000 contract limit for the Small Works Roster Program causes the Port to spend more money to accomplish the same work. Doing so as a result of material misstatements or suppression of material information to the CEO results in quantifiable damages to the Port. Port employees informed our team that there is a 10-20% additional cost to have PCS perform work (referred to as the "PCS surcharge") when compared to a standard major construction contract process and that the more "pieces" into which a project must be broken to fit within the PCS contract size limits, the more expensive that project becomes, as a result of increased administration costs. One Port employee informed us that he was pressured to use PCS to do a $1.4 million project, but that he felt that breaking the project into components to comply with the Small Works Roster Program limits would be both inappropriate and expensive. He estimated the additional cost to his project to do it through PCS would be $250,000. When he informed senior Port leadership of the potential additional costs associated with working through PCS, the project was competitively procured in the manner consistent with the requirements for a project that large.

[III] C. Findings Related to Competition for Professional Services Agreements.

1. Overview of Port Consultant Policy (PUR-2). The Port has adopted procedures for the selection and hiring of consultants (architectural/engineering and non-architectural/engineering). The procedure is similar for both categories, although price may be considered when evaluating non-architectural/engineering consultants during the selection process. PUR-2 sets different competition requirements for the procurement of consultants, based upon the contract amount:

a. Category A/1 (no more than $50,000). Any consultant may be selected, without the need for an interview. A short form agreement may be used.

b. Category B/2 (> $50,000 but no more than $200,000). Three consultants must be identified and interviewed. A standard agreement should be used.

c. Category C/3 (> $200,000). The opportunity must be advertised in the Seattle Daily Journal of Commerce or similar publication. A formal proposal and interview process is required. A standard agreement should be used.

d. Amendments. Amendments above the category fee limit are permitted only if: the project scope of work is not being divided into smaller segments to avoid PUR-2, statutory, or delegation of authority procedures; the amended work is generally related or associated with the project scope used in the original consultant selection; and, the total amended contract amount is less than $30,000 above the category fee limit. Amended contract amounts greater than $30,000 need to be reviewed by the Port legal department.

e. Funding. PUR-2 provides that if funding is received from federal sources, such as the FAA, EPA, etc., there may be additional consultant requirements.

2. **Port staff circumvented competition requirements by procuring services from preferred consultants by awarding consultant agreements[26] at no-competition (Category A/1) or limited-competition (Category B/2) levels, then repeatedly amending those contracts to the maximum amount and awarding follow-on agreements to avoid the competition requirements of PUR-2 and Resolution 3181.**

a. The State Audit found that Port staff circumvented competition requirements by awarding no- or limited-competition contracts on a sequential basis (SAO Finding 2-A). Our investigation corroborates this finding. The invoice altering on PSAs discussed herein largely occurred in conjunction with the issuing of new no-competition or limited-competition contracts. The practice described in the State Audit Report is to issue a new lower competition PSA to a vendor who has already exceeded the maximum allowed under its current PSA for the same scope of work. We reviewed these PSAs and their invoices and found the following examples of this finding:

[26] Professional Services Agreements (PSAs) are contracts for the services of consultants. Port documents generally reserve the term "contract" for construction contracts; however, a PSA is also a type of contract.

[III.C.2.a] (1) Ron Greene. Multiple no-bid PSAs were issued for the services of Ron Greene on the Airport Fueling System Project. These PSAs for Ron Greene's services were issued to three separate companies (R.L. Greene Company, KRAGS Enterprises, and Techstaff, Inc.) for the same scope of work over sequential periods of time. At the request of Port staff, Mr. Greene then became a lower tier subconsultant to CH2M Hill so his services could be billed under the existing PMSC contract with Parsons, which used CH2M Hill as a subconsultant. Interviews with Port personnel revealed that Port staff felt that Mr. Greene was an essential part of the project. Port staff needed his expertise, but did not want to go through a lengthy competitive procurement process that might result in a different consultant, when they knew that it was Mr. Greene's particular expertise that they wanted to retain.

(2) 3A Industries had a total of 12 contracts with the Port between 2001 and 2005 for similar scopes of work, totaling $1,044,500. Under these contracts, 3A Industries billed the time of seven different individuals. By examining the people and services provided who were billed under each contract, it is apparent that similar services were performed on sequential contracts. Based on our interview of 3A Industries, the contractor stated that they would monitor how much money remained on the existing PSAs and, whenever funds were running low, it notified PCS who would then either issue an amendment or procure a new PSA.

(3) AC Kindig & Co. provided environmental services to the Port on several different projects. The scopes of work on two of their contracts are exactly the same. As both contracts were Category A (no competition), the Port was limited to a maximum of $80,000 which could be paid under each. By comparing the dates and amounts of the invoices, we found that the second contract was issued by Port staff to pay an outstanding invoice which would have exceeded the $80,000 threshold of the first contract. This is confirmed by the fact that this invoice was split so that the remaining balance of the first contract was applied to the invoice and the rest was paid through the new contract.

(4) Vanir Construction Management is another company which was given sequential contracts for similar scopes of work over different time periods. The initial contract was a Category B (limited competition) award for which two other companies were also interviewed for the work. As funding for this contract was nearing exhaustion, a new Category A (no-competition) contract was issued to allow billings to continue. Once the funds on this new contract were used, another contract was issued. The total billings for these three contracts equaled $389,649.70, far in excess of the $230,000 cap allowed under PUR-2 for Category B PSAs. During our interviews of Port staff, one senior individual admitted that he knew these PSAs were a problem when he was signing them but saw no other way to get the work done by this firm and paid for.

(5) Our review identified a consistent practice by Port staff of issuing new PSAs to pay for continuing a scope of work being performed by a consultant rather than documenting the business justification and obtaining proper legal review and approval (as required by PUR-2) to execute an amendment in excess of the stated maximum PSA values. This practice violates the intent of PUR-2 to ensure that proper review and approval are obtained if a consultant's actual billings exceed the anticipated value which was the basis for the original procurement process and level of competition utilized. Some Port staff told us that they were not aware that the maximum amounts could be exceeded with proper legal approval. Others stated that the practice was simply the most efficient way to get the work done and the consultants paid.

[III.C.2] b. ***Fraud Analysis:*** Our investigation revealed that the widespread practice of circumventing PUR-2 competition requirements for the procurement of PSAs violated Port policies; in some circumstances, it also constitutes fraud.

(1) Material misrepresentation or suppression of a material fact. Our investigation revealed that the systemic practice of awarding consultant agreements at no-competition (Category A/1) or limited-competition (Category B/2) levels, then repeatedly amending those contracts to the maximum amount and awarding follow-on agreements to avoid the competition requirements of PUR-2 and the delegation of authority provisions of Resolution 3181involved both material misrepresentations and suppression of material facts. Port personnel had a duty to inform Port leadership that these agreements had been "split" to circumvent these requirements. In most cases, the material misrepresentation at issue is the PSA (or series of PSAs) itself, which indicates that it covers a more limited scope (duration and size) than is accurate. The statement is made by Port staff to both the payment department, for the purpose of obtaining payment to the consultant, and to the Port leadership signing the PSA, for the purpose of entering into the agreement.

(2) Made with knowledge of its falsity. Port staff has informed us that they were aware that awarding sequential no-competition PSAs to avoid competition requirements was improper; however, they explained that it was done as a matter of expediency to "get the work done." Port staff was aware that the contract terms, which reflected a more limited scope than was accurate, were false when they forwarded the contract to the CEO for signature and to the payment department.

(3) Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed). These misrepresentations were made with the intent that the Port staff with approval authority act upon the false information by signing the PSAs and that the payment department personnel act upon the false information by paying the invoices that would be supported by the PSAs.

(4) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information. The Port staff with signature authority did rely upon the false information by signing the PSAs. The payment department also relied upon the false information to pay invoices under the PSAs.

(5) The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, suffers damages as a result of his reliance on the false information. While it is difficult to quantify damages to the Port from the material misrepresentations represented by the false information contained in the PSAs, the systemic nature of this practice of circumventing the competition and approval requirements for PSAs increased the potential for payment of work that was not authorized by the Port and left the Port more vulnerable to fraud. Similarly, the suppression by Port personnel of material information concerning these practices deprived the senior Port leadership and the Commission of the ability to review both the individual instances in which these Category amounts were exceeded, but also the practices that allowed these instances to occur. There is a distinct likelihood that, had this information been brought to senior Port leadership and the Commission from the beginning, there would have been far fewer instances in which these Category amounts were exceeded and the practices and procedures under which these PSAs were procured and administered would have been reviewed and modified long before the State Audit, potentially resulting in considerable cost savings to the Port.

[III.C] 3. **Port staff executed PSAs and amendments that exceeded the maximum amount allowed by PUR-2.**

a. The State Audit found that a number of contracts were issued by Port staff which violated PUR-2 by exceeding the maximum value of the category in which they were procured. PUR-2 states that PSAs can not be amended to an amount greater than $30,000 above the category limits specified in PUR-2 ($80,000 for Category A, $230,000 for Category B, and no maximum for Category C).

b. Our investigation revealed that one company, Corporate Recycling Services, was paid in excess of the maximum amount allowed under PUR-2 and Resolution 3181. Corporate Recycling Services provided guidance concerning the implementation of a new recycling program at Sea-Tac Airport at the end of 2001. Port staff involved with the contract told us that they utilized a Category B limited competition process and attempted to contact other potential bidders but could not find any who were interested in the same scope of work. The original contract value was for $50,000 and compensation was to be calculated as 45% of the savings realized by the Port on landfill costs as a result of recommendations made by Corporate Recycling Services. The compensation scheme, however, did not set a maximum contract amount. Ultimately, the consultant was paid $593,549 under this contract, far above the maximum value allowed per PUR-2 for any consultant agreement that has not been specifically authorized by the Commission. According to the project manager, the Port's legal department provided the authority to pay the contractor through the term of the contract (5 years), however no evidence of this legal opinion could be found in the contract files. Our interview of Port legal counsel confirmed this authority was provided; however, it was provided after the invoices on this contract exceeded $50,000. Our investigation team attempted to interview Corporate Recycling Services, however Corporate Recycling Services declined our request for an interview.

c. ***Fraud Analysis***. The fraud analysis for this Finding is identical to that for the first finding, except that, had the legal department been involved in this procurement from its inception, the proper legal authority to conduct this procurement may have been obtained at the beginning of the procurement, rather than after the maximum funding capacity had already been exceeded.

4. **Port staff issued a no-competition $25,000 contract for damage assessment services under an emergency work exemption to PUR-2 following the Nisqually Earthquake. This contract was amended over time, without competition, from $25,000 to over $1 million, most of which was for ongoing project management services related to subsequent repair work, which was a different scope of work and outside the "emergency" window.**

a. A contract (PV-0306666) was awarded to DCMS, Inc. on February 28, 2001 for various engineering and support services related to the Nisqually earthquake. DCMS was issued a contract under the emergency work exemption of RCW 39.04.020 to assess any damage that resulted from the earthquake. The contract was issued for a not-to-exceed amount of $25,000 and grew to over $1 million over the course of several years to add additional, non-emergency project management services as amendments. The main scope of the original contract was to inspect Port buildings, assess damage, and write a report documenting their findings.

b. The contract was amended to add $25,000 on April 1, 2001 and $100,000 on April 28, 2001 for a total contract value of $150,000. Neither of these amendments had any description of scope change.

[III.C.4] c. On August 29, 2001, six months after the earthquake, Amendment 3 added $963,106 to the contact value to bring the total to $1,113,106. The Commission was not informed of this Amendment.

(1) A fee estimate from DCMS was attached to Amendment 3 detailing the costs are for a full year of service for 1 project manager, 2.5 task managers, 1 project assistant, as well as various sub-consultant services.

(2) A note on this amendment said that the estimate was for "planning and design oversight through August 2002," which implied a significant increase in scope.

d. Based upon discussions with project personnel, DCMS was engaged to manage the repair work needed as a result of the earthquake. Although the actual repair work to be performed by contractors was competitively bid, there is no evidence that DCMS' scope of work to manage the repair work was ever competitively procured. There is no evidence that the Commission was ever informed that this agreement had increased in size from the original $25,000 to over $1 million or had a change of scope, although such notification should have been conducted.

e. ***Fraud Analysis.*** The fraud analysis for this finding is identical to that in the first Finding of this section, except that, with respect to the DCMS, Inc. PSA, the Port may have benefited from conducting a competitive procurement for the additional services performed by DCMS after the emergency had passed.

5. **PCS personnel violated PUR-2 by steering work to a preferred consultant in order to increase the volume of work awarded to minority owned businesses.** Interviews with current and former Port staff revealed that PCS management steered work toward 3A Industries to augment the perception of PCS's usage of M/WBE contractors. Port staff speculated 3A Industries was a chosen contractor due to long-standing personal ties with top PCS management and that it received preferential treatment despite being unqualified for certain positions.

a. PCS's General Manager had a prior working relationship with the owner of 3A Industries dating back to the mid 1980's. According to PCS's General Manager, he was employed by the owner of 3A Industries until 1988; he indicated that he did not have much contact with the owner of 3A Industries between 1988 and 2001. He also emphasized that he has no financial relationship with the owner of 3A Industries and has not received any incentives from 3A Industries to provide PCS work to that company.

b. PCS staff told us that PCS's General Manager was "always looking for ways to give more work to 3A Industries" because it was a minority owned business. Many of the PSAs executed with 3A Industries were Category A no-competition contracts.

c. One Port employee recalled PCS conducting interviews for PSAs in which the top two consultants would receive PSAs. Two other qualified contractors were interviewed, in addition to 3A Industries. When 3A Industries began its interview, it became apparent that they had a misunderstanding because they thought they were only there to sign the PSA, not to be competitively interviewed. According to PCS staff, after the General Manager was informed that 3A Industries' interview was a "disaster" and that 3A Industries was not in the "top two" companies interviewed, the General Manager changed the procurement plan and ordered that PSAs be awarded to the top three contractors instead of two. The top three included

the two other consulting firms that were ranked highest, plus 3A Industries. Over $1 million worth of work was directed toward 3A under this and other contracts, while the other two contractors received considerably less work.

d. PCS management also arranged with 3A Industries to staff the 3A Industries' owner's son as a Construction Manager under 3A Industries' PSA. Multiple PCS staff stated that they raised concerns to the General Manager of PCS regarding the qualifications and sub-par performance of this consultant, however it was commonly understood that PCS management wanted him there and that terminating him was "not an option." Only after several years did this consultant stop working at PCS.

e. PCS management also transferred other individual contractors to 3A Industries' PSA. According to PCS staff, these individual contractors were billed as subcontractors under 3A Industries' PSA in order to boost PCS billings from M/WBE[27] vendors. Some Port staff raised concerns that PCS had not adequately reviewed and negotiated billing rates with 3A Industries for these subconsultants. PCS management instructed staff that 3A Industry rates were 'standard' – though Port personnel suspected, from review of the contract documents and discussions with the subcontractors, that 3A was charging the Port a 25 – 30% markup for the subconsultants' services.

f. ***Fraud Analysis:*** In addition to the general fraud analysis articulated for the other Findings in this section, PCS's consultant agreements with 3A Industries merit independent discussion for several reasons. In our view, the PCS General Manager's actions related to 3A Industries constitute fraud.

(1) The PCS General Manager suppressed material facts from senior Port leadership when he failed to disclose that he had an existing personal relationship and a previous financial relationship with the owner of 3A Industries, Reginald Frye. While such a relationship may not create an actual conflict of interest, it was not appropriate for the PCS General Manager to conceal this relationship or to take part in decision-making, review, selection, or supervisory activities concerning 3A Industries.[28] This relationship creates the appearance of a conflict of interest which should have been disclosed to his supervisors, so they could evaluate the relationship and determine if he should recuse himself from decisions involving 3A Industries. As a result of the suppression of this information, senior Port leadership assumed that the PCS General Manager could make procurement decisions concerning 3A Industries in an unbiased manner and did not either review or monitor those decisions. The fact that this relationship likely would be determined to be a conflict of interest is supported by the fact that the PCS General Manager personally signed "no-competition" (Category A/1) PSAs for 3A Industries; he instructed another PCS manager to alter the terms of a selection process (from the "top two" firms to the "top three" firms) when he learned that 3A Industries was not in the "top two" firms interviewed; and he informed another PCS manager that terminating a 3A Industries consultant (the son of the owner) was "not an option." There has been a quantifiable cost to the Port as a result of the suppression of this material information. PCS paid in excess of $1 million to 3A Industries over a four year period,

[27] Minority and Women Owned Businesses.

[28] Under the terms of the Port Ethics Policy, an employee shall not knowingly take part in any decision-making, review, selection, or supervisory activities, concerning any contract, property, or other significant matter of any kind, in which the employee or his/her Family has a Financial Interest, or which otherwise creates a conflict of interest. While the Ethics Policy does not currently mandate the disclosure to a supervisor of any non-financial conflict of interest, we recommend the Policy be revised to mandate such disclosure.

through 12 PSAs. Multiple PCS employees have informed our Team that 3A Industries was not competent to perform the work for which they were hired and that it took several years of complaints and documentation before the PCS General Manager would agree to no longer contract with the company. Had there been oversight of this relationship, it is likely these additional expenses would not have been incurred.

(2) The PCS General Manager made the decision to alter multiple consultant agreements to allow the funds for individual consultants who had previously had PSAs directly with PCS to flow through 3A Industries. Our team has been informed that this action was taken both to "hide" sequential PSAs to those consultants and to artificially inflate the percentage of funds PCS paid to minority owned businesses, which are reported on a regular basis. The fact that these consultant agreements were altered for these purposes without disclosure to senior Port leadership constitutes the suppression of material information, if not an affirmative material misrepresentation. Reporting of these "pass through" funds as legitimate funds paid to minority owned businesses also constitutes a material misrepresentation of fact. There has been a quantifiable cost to the Port as a result of the suppression of this material information. 3A Industries charged a "sub-contractor mark-up" for each of the individuals who were moved under the 3A Industries' PSA. While the mark-up reflected in the PSA documents is 8%, a PCS manager who reviewed the payment applications and inquired of the subcontractors "what they were really getting paid by 3A Industries" told us the actual mark-up was between 25-30%.

VI. Detailed Findings in Which Violations of Policies and Laws Were Established But Fraud Was Not Established

A. Port staff engaged in invoice altering in both Small Works Roster Program contracts and Professional Services Agreements (PSAs).

1. The State Audit found that Port staff altered contractor invoices to pay a contractor for work that exceeded the maximum contract amount set by law, thus violating state law and the Commission's delegation of authority (State Audit Finding 1-E). Our investigation corroborates this finding. During the course of our work, we identified over 80 invoices that had been altered by Port personnel to facilitate payments under a different contract or professional services agreement ("PSA") than the one originally identified on the invoice by the contractor or consultant. This was a clear violation of Port policies, as well as state law; however, we did not find that it met all of the elements of fraud.

2. Our findings are summarized below:

a. The Port has a Port Construction Services (PCS) department that administers the Port's Small Works Roster Program. Over 80 invoices were altered by Port staff for work performed on Small Works Roster contracts and Port PSAs.

b. Port staff altered invoices related to existing Small Works Roster contracts and PSAs that had exceeded their maximum contract values to apply those invoices to new contracts and PSAs with available funds, to pay the invoices.

c. Contracts with available funds were used to pay altered invoices even though the invoices were for different scopes of work than what was specified in the contract.

[IV.A.2] d. New contracts and PSAs were executed to pay for work already performed and invoiced.

e. PCS's General Manager represented to our investigation team that invoices should never be altered and that change orders with proper approvals (i.e., Commission approval)[29] should be issued if invoiced work exceeds the remaining contract value. However, numerous PCS employees stated that it was well known that PCS management did not want to go in front of the Commission for these types of issues and encouraged "work-arounds."

f. As a result of the invoice alterations, numerous small works contracts had billings (before they were altered by Port staff) in excess of the $200,000 maximum for small works contracts established by state law.

3. ***Analysis of Prime Electric Small Works Roster Contracts and Invoice Alterations.*** The State Audit revealed numerous instances where vendor invoices were altered after they had been received by the Port. Our analysis of the four Prime Electric small works roster contracts referred to in the State Audit corroborated their finding of invoice alterations. In addition to reviewing the contracts noted by the State Auditor, we also expanded the investigation to include all Prime Electric small works contracts executed between 2004 and 2007. Our investigation found the following:

a. This period included eighteen Prime Electric contracts, eleven of which contained invoices that had been altered for payment under different contracts. These eleven contracts contained 74 invoices that were altered to apply the invoices to a different contract number than originally intended. These intentional alterations were conducted in part to provide funding for work performed prior to certain public procurements being completed. These instances of altered invoices resulted in approximately $475,000 in redirected billings.

b. Analysis of these invoices revealed that such alterations were neither random nor the result of genuine error or misprint. Rather, a distinct migration of funds existed from certain "over-billed" contracts to others with available billing capacity within the $200,000 small works contract limit. For example, 21 invoices totaling $82,903 were altered to redirect billings from contract SWV-0311882 to other contracts with available billing capacity, many of which were altered after the contract maximum had been reached. Of the total amount that was redirected from this contract, $16,433 was diverted to contract SWV-0310958; $5,424 was diverted to contract SWV-0311608; and $61,046 was diverted to contract SWV-0312250. The total amount of work that was conducted, and originally invoiced, under contract SWV-0311882 totaled $296,846. As a result of the alterations and diversion of invoices, it appeared as though only $199,873 of work was conducted under SWV-0311882, when it was, in fact, $296,846.[30]

[29] Several Port employees and Port legal counsel have indicated that the appropriate remedy for a Small Works Roster Program contract that has exceeded the $200,000 maximum funding limitation is to notify the Port Commission and seek approval for a Change Order authorizing payment of the entire amount of the work conducted under that contract. While it is not clear that Washington law provides the Port Commission with this authority, we concur that this appears to be the only appropriate remedy, once the maximum funding limitation has been exceeded.

[30] There is some additional variance due to the impact of State sales tax.

[IV.A.3] c. Many of the 74 altered invoices contained invoice dates or underlying documents (such as time sheets) that preceded the execution date of the contracts to which they were diverted and billed. PCS personnel represented that no work should be performed until a contract is executed and a work authorization is approved; however, in practice we found this rule was routinely violated. For example, only three of the nineteen invoices that were altered and applied to contract SWV-0311608 were dated after that contract was executed and $99,156 was improperly applied to SWV-0311608 for work that was performed prior to the contract being executed.

d. As a result of the invoice altering, some contracts were used to pay for work that was outside the scope of work identified in the contract. For example, contract SWV-0311608 was executed specifically for electrical work on the Master Evacuation System and Upgrade ("MES") Project at the airport, but due to invoice alterations, $106,731 of the $211,420 billed against the contract was for work that was outside the project scope identified in the contract.

e. During our investigation, we requested documentation from Prime Electric related to their Small Works Roster contracts with the Port. Although we have made repeated requests, Prime Electric failed to provide any of the information we requested.

f. Conclusions related to Prime Electric Invoice Alterations.

(1) It is clear that there were numerous misrepresentations of material facts with the intent to deceive which prevented the proper procurement and administration of small works roster contracts, to the detriment of the Port by subverting an open and robust competitive contracting environment. Given the information available to us, it was not possible for us to identify clear financial loss to the Port as a result of these violations.

(2) Due to Prime Electric's failure to provide documents or information, we cannot determine if additional violations occurred with respect to these contracts.

4. ***Analysis of MD Moore Small Works Roster Contracts and Invoice Alterations***. As part of our investigation, we also expanded our review beyond those vendors specifically mentioned in the State Audit and identified additional vendors exhibiting similar peculiarities. MD Moore Co., Inc. is one such vendor we identified.

a. MD Moore received nine sequential small works contracts in the space of just over one year. These nine contracts totaled roughly $1.6 million. Rather than issuing one large competitively bid contract through the Port's major construction group, Port staff split the work into nine small works contracts to be procured through the PCS Small Works Roster Program. Invoices for these contracts were stockpiled, altered, and then assigned to newly-created contracts for MD Moore.

b. For example, two invoices were billed to MD Moore contract SWV-0314449:

(1) The first invoice (2872-A), was actually a photocopied replica of invoice 2872, with the '-A' handwritten in. Invoice 2872 was initially billed by MD Moore under a different contract (SWV-0314115) for $101,727.32; however, this amount would exceed that contract's available funding capacity. To remedy the situation, PCS staff manually altered the invoice so that $84,000 was billed against contract SWV-0314115 and the remaining amount of $17,727.32 was diverted to contract SWV-0314449 as invoice 2872-A. Invoice 2872-

A was dated April 30, 2007. The contract to which it was billed, SWV-0314449, was not executed until June 16, 2007, approximately six weeks later.

(2) The other invoice billed to contract SWV-0314449 was invoice 2910, dated June 30, 2007. While no alterations were made directly to this invoice, review of the underlying timesheets and related expenses (totaling $95,542.58) which were billed under this invoice shows that virtually 100% of the work occurred before the contract was executed. Only one hour, billed on June 29, 2007, occurred after the contract was executed. Further, all subcontractor billings (totaling $79,100) were for work performed on other MD Moore contracts which had reached capacity; these subcontractor invoices were manually altered so that they could be improperly applied to contract SWV-0314449.

c. Conclusion related to MD Moore invoice alterations. It is clear that Port staff intentionally altered vendor invoices to circumvent public procurement laws to the detriment of the Port.

5. ***Review of PCS Management's Involvement in Invoice Altering***. A former PCS contract administrator informed us that such alterations were common in order to get invoices paid and to prevent contract maximums from being exceeded. The person explained that even though work authorizations would be issued for a fixed amount, the construction managers would often verbally authorize greater amounts. PCS staff allowed the contractor to perform work in excess of the Small Works Roster contract maximum value of $200,000 and would then alter the invoices to apply the exceeded amounts to other contracts that were still below the $200,000 maximum. As a result, the contract administrator had to either obtain a change order – which PCS management deemed as 'not an option' – or alter the invoices to bill another PCS contract with the same contractor. In one instance where a change order was requested, we found that a PCS employee made false statements on the change order request form. Another former PCS employee also noted that if the contractor did not have an open available contract to pay an invoice, PCS would have to enter the process of procuring another contract, and 'hope' that the 'right' contractor won the bid. Multiple PCS employees indicated that such an approach was mandated by top PCS management. PCS management denies this. We do not find this denial credible.

6. ***Analysis of Professional Service Agreement Invoice Alterations***. In addition to the Small Works Roster contracts mentioned above, our review of a sampling of professional services agreements and related invoices identified numerous additional invoice alterations.

a. RL Greene Co. provided the inspection services of Ron Greene for the Airport Fueling System Project. RL Greene Co.'s second no-competition (Category A) PSA (P-00311682) was issued on October 8, 2004 after two invoices (P041509, dated September 15, 2004 for $10,164 and P043009 dated September 30, 2004 for $8,932) exceeded the $80,000 "not to exceed" amount of the first PSA. These invoices were initially billed to the first PSA (P-0310504) but were then altered and diverted for payment under the second PSA.

b. 3A Industries provided construction management and various other consulting services through multiple PSA's between 2001 and 2005. We identified four invoices totaling $20,784 which were originally billed to PSA P-00310432 but were then altered and diverted for payment through two new PSA's (PV-0310918 and P-00311190) because the original PSA had reached its maximum value. The two new PSAs created to pay these invoices were both Category A no-competition PSAs for $50,000 each.

[IV.A.6] c. AC Kindig provided wetland development support services thru two no-bid Category A PSA's. AC Kindig's second PSA (P-00313552) was issued on June 21, 2006, the same day the Port received invoice #2727 for $1,852, which would exceed the first PSA's limit. The invoice was altered and split with part of it going to the first PSA (P-00312599) to bring the total paid up to the $80,000 maximum and the remainder diverted to the second PSA (P-00313552). The new PSA created to pay this invoice was a Category A no-competition PSA for $50,000.

d. Vanir Construction Management provided services for the Harbor Island Redevelopment Project through multiple PSA's issued by the Port. Two invoices were altered to split payments among an existing PSA with limited remaining billing capacity and a new PSA issued for continuing work.

(1) Invoice P59329 was originally billed to contract PV-0305529, but was then split so only a portion of it was paid under that contract to bring the amount paid exactly to the $230,000 maximum PSA value. The remainder of invoice P59329 was paid using a new contract (PV-0309536). The new PSA created to pay this invoice was a Category A no-competition PSA for $50,000.

(2) Invoice P59340 was originally billed to contract PV-0309536, but was then split so only a portion of it was paid under that contract to bring the amount paid exactly to the $80,000 maximum allowed. The remainder of invoice P59340 was paid using a new contract (PV-0310814). The new PSA created to pay this invoice was a Category A no-competition PSA for $50,000.

e. Port employees were questioned about these invoices and asked to explain the Port's procurement practices and how they paid for the services that were provided.

(1) Many of the Port staff we interviewed felt that the contract limits set forth in PUR-2 were absolute and were unaware of any mechanism by which they could increase the maximum value of a contract. They were not aware that the maximum values could be exceeded if approval was obtained from the Port legal department.

(2) If a project had a delay or extension which caused increased effort on the part of the consultant, many Port personnel felt that there was no method for continuing with the existing PSA. This led to sequential PSA awards and the altering of invoiced PSA numbers in order to get them paid.

7. ***Fraud Analysis:*** Our investigation revealed that while the widespread practice of invoice altering violated both Port policies and state law, it does not meet the fraud standard because the Port did not suffer any damage as a result of the misrepresentation.

a. Material misrepresentation or suppression of a material fact. Our investigation revealed that the invoice altering we discovered reflects both material misrepresentations and suppression of material facts. The act of altering an invoice to reflect a contract or PSA number to which the underlying work was not associated is a material misrepresentation to the payment department personnel that this invoice is properly paid under the altered contract/PSA number, which is not true. In addition, by diverting invoices from the contracts/PSAs to which they are properly associated, Port personnel suppressed the information that these contracts/PSAs had exceed their "not to exceed" maximum levels. In the case of the Small Works Roster Program contracts, these levels are established both by Port policy (Resolution 3181) and by state law (RCW 53.08.120 and 39.04.155). In the case of PSAs, these

levels are established by Port policy (Resolution 3181 and PUR-2). For both the Small Works Roster Program contracts and the PSAs, Port personnel had a duty to inform Port leadership that these contracts/agreements had exceeded their maximum capacities.

b. Made with knowledge of its falsity. It is clear that Port personnel were aware when the alterations were made to these invoices that the alterations resulted in a false representation. Not only were the majority of the contracts/PSAs to which these invoices were altered and diverted not in existence at the time the work was performed, multiple Port personnel have admitted to our Team that they were aware this information was false when they made the alterations or directed that the alterations be made.

c. Made with the intent that the misrepresentation or suppression of material fact be acted upon by the individual to whom it is made (or suppressed). In the case of the overt material misrepresentation to the payment department, this misrepresentation was made with the intent that the payment department personnel act upon the false information by paying the invoices. Port personnel have indicated that they made these alterations for the purpose of having the invoices paid under the wrong contract numbers. Port records confirm that the payments were, in fact, made. In the case of the suppression of material information concerning the exceeding of the maximum contract/PSA amounts, Port personnel have informed our Team that the alteration and diversion of invoices was conducted, in part, to avoid the need to inform the Commission and senior Port leadership that these contract amounts had been exceeded.

d. The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, relies upon the false information. The payment department did, in fact, rely upon the false information to pay the altered invoices. The Commission and senior Port leadership can only respond to situations in which contract/PSA maximum amounts are exceeded when they are informed of those situations; therefore, they rely upon Port personnel to inform them when these situations arise. As Resolution 3181 establishes the levels at which each contract/PSA may be approved and RCW 53.08.120 and 39.04.155 establish the maximum amount for Small Works Roster Program contracts, Port personnel have a duty to inform senior Port leadership, up to and including the Commission, when these amounts are exceeded.

e. The individual to whom the misrepresentation is made, or from whom the material fact is suppressed, suffers damages as a result of his reliance on the false information. There do not appear to be any quantifiable damages to the payment department, or the Port in general, from the material misrepresentations represented by the altered invoices. The work for which the vendors were paid as a result of the altered invoices was authorized by Port personnel and, while paid under the wrong contracts/PSAs, did not result in overpayment by the Port. The systemic nature of this practice of invoice altering, however, increased the potential for payment of work that was not authorized by the Port and left the Port more vulnerable to fraud. Similarly, the suppression by Port personnel of material information concerning the exceeding of the maximum contract/PSA amounts deprived the senior Port leadership and the Commission of the ability to review both the individual instances in which these maximum amounts were exceeded, but also the practices that allowed these instances to occur. There is a distinct likelihood that, had this information been brought to senior Port leadership and the Commission from the beginning, there would have been far fewer instances in which the maximum contract/PSA amounts were exceeded and the practices and procedures under which these contracts/PSAs were procured and administered would have been reviewed and modified long before the State Audit, resulting in considerable cost savings to the Port.

B. Port employees used an existing aviation service contract to pay consultants for "out of scope" work on the seaport, rather than competitively procuring new PSAs.

1. The State Audit found that PMSC consultants worked outside of the project scope identified in the PSA. The Team investigated this finding, specifically looking for consultants who were performing seaport division work but were being billed under the PMSC contract for aviation work.

2. We identified three consultants who worked outside of the PSA scope of work for extended periods of time and were billed through Parsons' PMSC (Aviation) PSA.

a. The first consultant did seaport work between April 2006 and November 2006, billing over $230,000 (including markups and state sales tax) for his work at the seaport through the Parsons' PMSC (Aviation) PSA.

b. A second consultant did seaport work from November 2002 through June 2004 and billed the Parsons' PMSC (Aviation) PSA over $310,000 for seaport projects.

c. A third consultant billed the Parsons' PMSC (Aviation) PSA over $115,000 for seaport work conducted between February 2004 and January 2007.

3. Based upon our analysis, vendors billed the Port over $655,000 for services rendered outside of the PMSC (Aviation) PSA's scope of services. Port employees and consultants have admitted that these staffing decisions and associated billings should not have occurred as they did. Such staffing was initially intended for a short term basis but, they recognized, continued far longer than it should have. They also noted that out-of-scope billings were internally adjusted to reclassify all aviation charges to the correct seaport account.

4. ***Fraud Analysis.*** Our investigation revealed that while the practice of billing seaport work through the Parsons' PMSC (Aviation) PSA violated PUR-2, it does not meet the fraud standard because the Port did not suffer any damage as a result of the misrepresentation.

C. Port staff circumvented PUR-2 by procuring services from preferred consultants by using multiple contracts to split up the same scope of work at "less competition required" levels.

1. The State Audit found that Port staff circumvented competition requirements by splitting larger projects into multiple smaller contracts and awarding those contracts at "less competition required" levels (SAO Finding 2-A); this finding differs from our earlier finding because these contracts were let simultaneously, rather than sequentially. Our investigation corroborates this finding.

2. The Port paid a company called Pacific Handling Systems $150,000 to sell three aging cranes from the seaport facilities. Port personnel explained that disposing of these cranes cost money whether you sold them or paid someone to dismantle and scrap them. Since the cranes were three distinct pieces of property, Port staff wrote three contracts so that each could be sold individually if a buyer could be found. However, based on discussions with the consultant, this was really a single scope of work and the cranes were worked into a package sale to a single buyer. This is further evidenced by the fact that Pacific Handling Systems sent only one invoice for $150,000 for the services performed.

[IV.C] 3. ***Fraud Analysis***. While we found that breaking the $150,000 scope of work into three separate "less competition required" PSAs was a violation of the terms of Port policy (PUR-2), it does not meet the fraud standard because the Port did not suffer any damage as a result of the misrepresentation.

V. Detailed Findings in Which Neither Violations of Law Nor Fraud Were Established or Where the Conclusions of the State Audit were not Substantiated by Fact.

A. The Parsons PMSC Contract.

1. **The State Audit alleged that the Port unnecessarily spent over $60 million by using the Parsons' Program Management Support Consultant contract to facilitate the Capital Improvement Program work at the airport.** This was not substantiated by our investigation.

a. The State Audit alleged that the Port awarded a major Program Management Services Contract for an initial amount of $3.5 million and for a period of one year. The State Audit contends that this contract was then amended, without competition to more than $127 million ($134 million as of January 2008) in violation of state law. Our Team analyzed the procurement files, initial contract and change orders, correspondence files, commission notes, and billing data for this PSA and found that while the initial contract was indeed executed for $3.5 million, documentation provided substantiates that both bidding contractors and Port staff fully recognized that the initial contract would be a base amount and would be amended for future years as specific needs were determined, consistent with state law and PUR-2.

b. The initial Request for Proposal ('RFP') available to all bidding contractors contained a Port Commission Agenda, dated February 11, 1998, providing background information for the management services requested. It states: "For 1998, staff is estimating program management services to cost about $10,500,000 (5% of the 1998 capital budget). Future program management costs will be determined on an annual basis and staff will return to the Commission for authorization of funds beyond 1998…. Altogether, these program management services will need to continue throughout the life of the 10-year capital program (1998-2007)."

c. The initial procurement was conducted with full competition – a total of thirty local and national firms requested the RFP from the Port, 7-8 proposals were submitted, and four received interviews. As additional consulting needs were identified, Port staff and consultants worked together to identify and interview potential candidates from multiple firms, and then negotiate the applicable billing rates.

d. Documentation also showed that Port staff presented and obtained authorizations from the Commission on an annual basis to incur the anticipated cost of this ongoing PSA for the following year.

e. It should also be noted that during our investigation, our Team repeatedly requested documentation from Parsons related to the original procurement and administration of this contract. Although Parsons personnel represented on several occasions that it would provide the documentation requested, they did not do so. Parsons' delay in providing this documentation, as well as the eventual failure to provide the documentation, impaired our ability to conduct our investigation in an efficient and timely manner, resulting in increased costs to the Port.

[V.A.1] f. ***Fraud Analysis***. We conclude that this finding of the State Audit is not substantiated by the underlying facts. As there has been neither a misrepresentation of material fact nor the suppression of any material fact, we conclude that there has been no fraud. This finding is qualified by the fact that we were unable to review the documentation requested of Parsons, so we were unable to conduct a complete evaluation of this matter.

2. **The State Audit alleged that the Port retroactively agreed to pay consultant markups that were not stipulated in the PMSC contract.** This was not substantiated by our investigation.

a. The State Audit alleged that Port staff retroactively agreed to pay consultant markups of 1.5% for "Other Direct Costs" (ODC) that were not stipulated in the PMSC contract; however, our investigation found that Port staff had, in fact, pre-approved these mark-ups.

b. The Team interviewed Port and consultant staff and analyzed ODC records to calculate the total cost borne by the Port related to the markup on such charges. We found that over the course of the ten-year contract, total ODC billed to the Port amounted to $1,594,256 (including markup) – resulting in a 1.5% ODC markup billed to the Port of $23,560.

c. The Team identified a memorandum, dated November 2, 1998, which was initialed by Port staff indicating the Port's concurrence with the 1.5% mark-up at issue.

d. **Fraud Analysis**. We conclude that this finding of the State Audit is not substantiated by the underlying facts. As there has been neither a misrepresentation of material fact nor the suppression of any material fact, we conclude that there has been no fraud.

B. Splitting of Third Runway Embankment Work.

1. **The State Audit raised concerns regarding the Port's decision to conduct the Third Runway Embankment work using two separate contracts, rather than one combined contract.** We did not find these concerns substantiated.

2. Our investigation revealed that Port staff had legitimate reasons for procuring this work in two separate contracts and that this decision was not made with the intent to circumvent competitive procurement laws or policies. First, the FAA had communicated to Port staff that it intended to decommission, demolish, and replace radar tracking equipment that stood in the footprint of the embankment; however, the FAA was not able to provide a firm timeline for this work. As this work presented a significant risk of delay (and the costs associated with that delay) for the Port if construction work were halted midway through a single contract, this factor suggested doing the work in phases was the more appropriate option. Second, Port staff hoped that having this work conducted in two phases would both increase competition, as smaller companies may be more capable of bidding on work with a smaller scale, and provide a mechanism for the Port to change contractors, if the work on the first contract was not optimal.

3. ***Fraud Analysis***. We conclude that the concern raised by the State Audit that the embankment work was inappropriately split into two contracts to avoid the competitive procurement laws and policies is not substantiated by the underlying facts. As there has been neither a misrepresentation of material fact nor the suppression of any material fact, we conclude that there has been no fraud.

[V] C. Consulting Agreements Awarded Without Competition.

1. **The State Auditor cites two contracts, each for more than a million dollars, which it contends violated the provisions of PUR-2 and state law because they were awarded without competition.** Based on our review of the available documents and interviews of Port staff and consultants, it appears that the $1.4 million PSA with Hedlund Construction Management was in fact competitively procured. While the $2.7 million PSA with Walsh Hedlund & Harlow was not competitively procured, Port legal counsel provided approval to bypass the competitive procurement requirements of PUR-2 and state law.

2. The first contract was with Hedlund Construction Management for construction management services related to the Ground Access program at Sea-Tac Airport. We reviewed this contract file and conducted interviews with both Port personnel and Karl Hedlund, the owner of Hedlund Construction Management and the consultant listed on the contract. The contract file contained some paperwork that indicated there may have been a competitive procurement process for the contract; but it was not complete. Mr. Hedlund confirmed that the procurement was public and that he did go through the process of submitting a proposal and multiple rounds of interviews. As this was a Category C procurement requiring full competition, the contract appears to comply with the provisions of PUR-2.

3. The second contract detailed in SAO Finding 2-D was awarded to Walsh Hedlund & Harlow (WHH) in 2006 for construction management services to support the Port's capital improvement program. This was a new construction management firm started by three individuals, one of whom was Karl Hedlund, from the contract listed above. Initial review of this contract file revealed a memorandum to the file from the former Assistant Director of Engineering Services which described a meeting in which he discussed this issue with two of the individuals who founded WHH. The memorandum confirmed that no public procurement process was performed for the contract; but that Port legal counsel had agreed that the award was proper because two of the individuals starting the firm (Karl Hedlund and David Walsh) held construction management positions at that time within the Port which had already been competitively procured. As the Port had hired these two individuals as consultants to fill specific roles, Port counsel found that it was not necessary to conduct another competitive procurement.

4. ***Fraud Analysis***. We conclude that this finding of the State Audit is not substantiated by the underlying facts. As there has been neither a misrepresentation of material fact nor the suppression of any material fact, we conclude that there has been no fraud.

D. Aircraft Fueling System Issues.

1. **During negotiations regarding the scope of the Aircraft Fueling System Project, the construction manager deleted work related to the Fire Protection System but neglected to obtain a deduction in contract price related to that scope deletion.**

a. In order to ascertain the circumstance surrounding these change orders, we interviewed the consultant who was acting as the construction manager on the Aircraft Fueling System Project. We asked him to explain the negotiations that occurred regarding the Fire Protection System, which was the scope of work discussed in the State Audit. The construction manager described the project as delayed due to problems stemming from both the contractor and Port staff. The construction manager had convinced the contractor that the Port would not pay any damages for delays; however, he felt that the Port could potentially be liable for damages if the contractor performed a schedule analysis. The change order mentioned in the State Audit was written at the end of the project and was negotiated to close out the contract.

b. The construction manager acknowledged that he had forgotten about the Fire Protection System scope which had been added and deleted multiple times from the project. When the final negotiations occurred, the construction manager was focused upon reaching a mutually acceptable price so that he could close out the contract and eliminate the possibility of a claim against the Port from the contractor. He did not feel that it was worthwhile to open that case back up to seek compensation for the deleted scope of work, as it would have opened the door for a contractor claim.

c. ***Fraud Analysis***. Our investigation revealed that while the failure to ensure the Port received a credit for a deleted scope of work may have violated Port policies, there was no intentional misstatement or suppression of material fact that would constitute fraud.

2. **During these scope negotiations, the construction manager engaged in informal change order discussions that did not comply with "best practices;" however, they did not constitute violation of laws or fraud.**

a. The State Audit focused on the informal nature of price negotiations and "favors" which occurred between Port staff and contractors. Correspondence regarding the Fire Protection System Change Order listed above was found which used the term "tummy rub" to describe the negotiations. We discussed this language with the construction manager during our interview. As mentioned above, the negotiations on pricing for the subject change order on this project happened towards the end as it was being finished.

b. The construction manager claimed that he was in conversations with the contractor to determine what the final scope of work would be and how much they should be compensated for it. The email in question states *"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."* According to the construction manager, this sentence was meant as an effort to come to a mutually agreeable price on the remaining scope of work with the contractor. Instead of trying to document the detail of the negotiations and price of specific components of the scope of work, the construction manager wanted to use their respective project knowledge to make a fair assessment of the cost of the work and come to an agreement.

c. ***Fraud Analysis***. While we emphasize that this form of informal change order negotiation should not have occurred and that it violated Port policies, there was no intentional misstatement of material fact or suppression of material fact causing damage to the Port that would constitute fraud.

E. Representation Letters.

1. **The State Auditor expressed the opinion that Port employees were displaying a lack of cooperation by refusing to sign representation letters.**

2. We found that Port employees had reasonable grounds to choose not to sign the representation letters in the form in which they were provided. Our review of the specific representations that were requested, and our interviews with employees who were asked to make such representations, caused us to conclude that the requested representations were, in fact, overly broad and that the employees were rightfully hesitant to sign these letters in the form in which they were presented by the State Auditors.

F. Consultant Management and Selection Committee Issues.

1. **The State Audit raised concerns that a major Third Runway construction contract was managed by a former employee of the contractor.** Our investigation revealed no undue influence based upon an existing or perceived conflict of interest.

a. We identified and interviewed the former employee of the contractor that is overseen to an extent by this consultant. We concluded that there did not appear to be an undue influence based on a perceived or existing conflict of interest. After interviewing this individual and others who worked with him, we concluded that he was not in a position to independently direct favorable influence towards his former employer. We found that the only area where there would conceivably be a concern would be in the approval of contract change orders. We found that there is a review process in place that, if followed correctly (and we found nothing to indicate that it was not followed correctly), would not allow this consultant to show any type of favorable treatment to his former employer.

b. Although this consultant's former employer is a publically held company, we determined the former employee did not hold any of this company's stock and had no other remaining financial interest in his former employer when he came to work for the Port.

2. **The State Audit also raised concerns that a consultant served on a selection committee that awarded a $5.8 million contract to one of his company's subcontractors.** We found that the consultant did not engage in any improper influence that benefited the subcontractor in question.

a. We identified and interviewed the consultant in question regarding the selection committee that awarded the $5.8 million contract. We found that Port staff often uses the services of consultants as participants on selection committees for Port contract awards. Port staff finds that experienced consultants provide valuable input in these situations, particularly when consultants are familiar with work being contracted out, and also when they have had work experience with individuals and companies competing for contract awards.

b. We determined that the State Audit's main conclusions on this particular matter were not valid, although the facts were largely supported by our investigation. It is true that the consultant in question served on this selection committee. It is also true that there was an award of work to a company that was a subcontractor on another project at the airport that was supervised by this consultant. The implication, however, that the consultant in question improperly influenced the award of this work to the subcontractor, is not warranted. We determined from our interviews and review of supporting documents, that this consultant did not recommend selection of the subcontractor for any award on this particular contract, but instead recommended awarding work to a different company (that did not have existing ties to the consultant). Work on this contract was awarded to several companies, including the referenced subcontractor that worked under the consultant, but the consultant in question did not recommend an award as implied in the State Audit.

3. ***Fraud analysis***. Even though we did not find that any problems existed with either of the above instances that were discussed in the State Audit, we do not wish to leave an impression that the general concern regarding potential conflicts of interest is something that does not merit the Port's attention. The Port should exercise particular diligence in this area because of the number of consultants that participate in major projects at the Port, and because there are limited numbers of qualified consultants and companies working in these highly skilled fields. Because of these conditions, there are bound to be existing and former relationships that could cause conflict of interest concerns and should be closely watched.

G. Conflict of Interest of Former Port CEO Mic Dinsmore.

1. **Our investigation revealed that Port CEO Mic Dinsmore asked the President of McBee Strategic Consulting to help secure a paid internship for Dinsmore's daughter with a congressman in Washington, D.C**. McBee Strategic Consulting is a lobbying firm based in Washington D.C. and has performed various lobbying work for the Port since 2002. While the Port was not charged for this service and while we find that McBee's actions were not inappropriate, Mr. Dinsmore's use of a Port consultant's services for personal benefit is not appropriate, since the only reason the service was provided was because it was the Port CEO who asked for it.

2. ***Fraud Analysis***. We have concluded that the former Port CEO's actions do not constitute fraud because there are no material misrepresentations or suppression of material facts; however, his actions are a clear violation of the Port's Ethics Policy for Employees, which provides that "an employee shall not use his or her employment position to obtain any item or service for personal or Family gain from others … including … Port customers, suppliers, contractors, consultants, or lessees . . . ."

VI. Recommendations

A. Implement a robust Compliance Program. We recommend the Port implement a compliance program that incorporates the Ethics Policy for Commissioners, the Ethics Policy for Port Employees, the Ethics Policy for Consultants, the Fraud Awareness Policy, the Hotline, and the Ethics Board, that provides for increased training for all commissioners, employees, and consultants on these issues, and that ensures a viable system for oversight and enforcement. A comprehensive and robust compliance program which sets forth a clear code of conduct and is enforced through training, violation reporting, and whistleblower protection will help prevent many of the problems addressed in this report.

1. We recommend strengthening several areas of the Ethics Policy:

a. The Policy should prohibit the use or disclosure of information not available to the general public and acquired by reason of Port employment to the detriment of the Port. Currently, the use or disclosure of such information is not prohibited unless the employee receives a financial benefit to himself or his family.

b. The Policy should include a reporting requirement for all financial interests held by employees in entities doing business with the Port. Currently, the Policy requires disclosure of such interests, but provides no mechanism to document the disclosure, review by the supervisor, or enforcement of any recusal adopted as a result of the financial interest.

c. The Policy should include a reporting requirement for all potential conflicts of interest, financial or otherwise, of an employee who is in a position to influence the selection, non-selection, or conduct of business between the Port and any entity. Currently the Policy does not contain such a provision.

2. We recommend increasing the role of the Port legal department in the compliance program. A comprehensive and robust compliance program will require a more proactive and engaged legal department at the development, implementation, training, and oversight levels.

[VI.A] 3. We recommend the Port increase the role of the Ethics Board[31] in the compliance program. While the Ethics Board is an entity with great promise, it has been historically underutilized and is currently little more than a titular organization. Further, it has limited jurisdictional authority, given the limitations in the Ethics Policy itself to misconduct that can be readily tied to financial gain by the employee or a family member.

4. We recommend the Port incorporate initial and ongoing employee training into the compliance program. Our interviews revealed that relatively few Port staff members were aware that the Port had an Ethics Policy for Employees and fewer still were aware of the specific provisions of that Policy. We learned that one former Port employee who inquired of the Human Resources Department if there were any restrictions on his leaving the Port to work for a consultant doing business with the Port was informed that no restrictions existed, despite clear guidance in the Ethics Policy in existence at that time which prohibited that practice. We also found that very few Port employees were aware of the Ethics Board, that they could request advisory opinions of the Ethics Board, or that they could request the Ethics Board to conduct investigations.

B. Ensure all procurement processes comport with Port policy and State and Federal law.

1. We recommend that the Port implement a mechanism to ensure that all procurement processes comport with Port policy, as well as state and federal law. Our investigation revealed that the Port's procurement processes for major construction contracts, Small Works Roster Program contracts, and Professional Services Agreements suffered from informal Port staff internal practices. In some cases, these practices may have been a result of a legitimate desire to "keep the work moving." However, in other cases, it appears that Port staff deliberately "cut corners" and circumvented procedural safeguards to reach the desired endpoint without the need to bring procurement actions to the attention of senior Port leadership and/or the Commission. In the process, both internal Port policies and external laws were violated.

2. We recommend the Port review procurement processes with respect to both state and federal law. Throughout this report, we have detailed the areas in which state law and Port policies have been violated. As the Port receives federal grant funding at all levels of procurements, this funding also affects the competition requirements with which the Port must comply for the contracts/agreements receiving those funds.

a. Professional Services Agreements (PSAs). Our investigation revealed that federal funds were used on several PSAs we identified, including those for 3A Industries and Vanir Construction Management. As we have concluded that Port staff violated PUR-2 with respect to both of these consultants, it appears that the Port may also not be in compliance with the terms of the federal law requiring recipients of grant money to comply with the local laws and policies and to ensure that these procurements are "full, open, and competitive."

[31] The Ethics Board was established by the Port Commission in 1992. It is empowered to review ethical issues, provide advisory opinions (if requested) concerning the applicability of the provisions of the Ethics Policy, and conduct investigations of alleged violations of the Ethics Policy.

b. Small Works Roster Program. Our investigation revealed that federal funds were used on several small works contracts we identified, including those for Prime Electric and SHJ Electric. As we have concluded that Port staff violated state law and Port policy with respect to the small works contracts for these vendors, it appears that the Port may also not be in compliance with the terms of the federal law requiring recipients of grant money to comply with the local laws and policies and to ensure that these procurements are "full, open, and competitive."

c. Major Construction. Our investigation revealed that federal funds were used on both the 2004 and 2006 Third Runway Embankment Contracts. As we have concluded that Port staff violated state law and Port policy with respect to the 2006 embankment contract, it appears that the Port may also not be in compliance with the terms of the federal law requiring recipients of grant money to comply with the local laws and policies and to ensure that these procurements are "full, open, and competitive."

3. We recommend that senior Port leadership, in conjunction with the Port legal department, conduct a detailed review of all procurement aspects at the Port to ensure that current Port policies and procedures comply with state and federal law. Such a review is particularly important in light of the significant recent changes to state procurement laws applicable to the Port.

4. We recommend that the Port consider amending Port policies to clarify that the Engineer's Estimate against which contractor bids are compared is the Engineer's Estimate that is required under Washington state law to be prepared prior to the advertisement for bids in major construction contracts for public works. We further recommend this Engineer's Estimate be preserved intact and not altered after the advertisement is published, unless a formal addendum is also published for that procurement.

5. After Port procurement policies and procedures have been reviewed and updated to comply with all applicable state and federal laws, we recommend that all Port employees and consultants who are responsible for procurement tasks receive comprehensive training on both the laws and the policies pertaining to their duties.

C. Increase legal department involvement in procurement processes.

1. We recommend that the Port increase the involvement of the legal department in procurement processes at all levels. Our investigation revealed that many of the internal Port staff practices that resulted in violations of Port policies and state and federal laws were not known to the Port legal department. A more active involvement by the legal department would contribute to more transparent Port procurement activities and more limited opportunities for circumvention of procedural safeguards.

2. We recommend that all procurement actions receive legal review. Our investigation revealed that some members of the Commission assumed that all procurement actions received legal review. This is not the case. Not only are procurement actions infrequently reviewed by the legal department, but some of those reviews are superficial at best. According to one member of the legal department, his review of some procurement actions consists only of a review of the cover memorandum for grammar and typographical errors, rather than for substantive analysis of the underlying procurement action from a legal perspective.

D. Ensure legal department involvement is appropriately documented.

1. We recommend the Port consider implementing procedures to document requests for legal advice and the advice provided in response to those requests. In the course of our investigation, we requested copies of the legal department files/records pertaining to a number of procurement actions, including major construction contracts, Small Works Roster Program contracts, and Professional Services Agreements (PSAs). We were informed that the legal department does not keep files of questions asked, actions reviewed, or legal advice provided; however, we were informed that any such review and/or advised should be documented in the individual procurement file. Our review of those files revealed few instances of involvement by the legal department.

2. As our investigation continued, we interviewed a significant number of Port staff and consultant personnel who informed us that they had sought and obtained legal advice concerning these procurement actions. Most of these individuals expressed frustration with the legal department's practice of not documenting legal advice. Some of these individuals created memoranda for record of advice that they received from the legal department and inserted these memoranda into the procurement files.

3. Our interviews of Port legal personnel confirmed the practice of the legal department not to create written legal opinions. Counsel explained that they often provided legal advice on an ad hoc basis and without either a written summary of facts provided to counsel or a written record of legal advice given by counsel. Counsel emphasized that the fact that there were no written records did not mean that there were no records at all of legal inquiries or advice and that there would be email records, when email was the communication vehicle used for those questions. Counsel also noted that individual attorneys within the Port legal department often keep electronic records of advice provided and/or hard copy notes. Notably, however, when our Team requested all legal files and records pertaining to identified procurement actions, we received no email messages, electronic records, or copies of handwritten notes in response to our request. Instead, we were informed that "no files exist."[32]

4. The Port legal department's policy of not maintaining a record of actions reviewed, inquiries made, and/or legal advice provided contributes to the Port's vulnerability for fraud, particularly given the fact that this policy is widely known among Port staff and consultant/contractor personnel. Where the legal department fails to keep such records, memoranda of record prepared by Port staff and/or contractor/consultant personnel – whether accurate or inaccurate – may stand as the sole record of legal review, to the detriment of the Port. Further, the lack of such records allows situations to occur such as the 2006 embankment contract, in which Port staff insist legal counsel was involved and provided specific legal advice and legal counsel either do not recall such participation and advice or deny that it occurred at all.

E. Centralize procurement document management system.

1. We recommend the Port consider implementing a centralized procurement documents management system. The Port is a highly complex and decentralized organization, which increases the risk that fraud could occur. This risk is heightened by the fact that records pertaining to procurement actions are not maintained in a centralized fashion, but are fragmented among several different repositories. This fragmentation is aggravated by separate document

[32] Our later review of email data files of specific legal counsel did reveal that some records of legal advice for these identified procurement actions existed.

management systems (both hard copy and electronic) for major construction contracts, small works roster program contracts, and professional services agreements. These issues make it difficult to maintain internal control of the records and to locate and retrieve those records in a timely and accurate manner. When files cannot be located, retrieved, and audited without considerable difficulty, it greatly increases the likelihood that those files will not be adequately monitored and that fraud can occur without timely discovery.

2. We experienced considerable delay in identifying and obtaining access to source documents within the Port as a result of the decentralized contract file management system. We do not attribute this delay to any intentional attempt on the part of any Port employee to interfere with the investigation; rather, this delay appears to be an unavoidable consequence of the decentralization itself. We recommend the Port evaluate this contract file management system and consider a more centralized, accessible system to avoid similar problems and reduce the potential for fraud. We understand that such an evaluation may already be underway, through the newly-formed Central Procurement Office.

F. Standardize project manual provisions.

We recommend the Port consider standardizing the project manual provisions that are used in major construction contracts. Our investigation revealed that project manuals are not kept in a systemic fashion within a single program or on a Port-wide basis. This practice results in project manuals that are incomplete and/or contain obsolete contract terms and Port policy provisions. As such, Port staff cannot be certain what the terms of any specific contract are – even when they know that those terms should be – without reference to the actual contract, which may not be easily accessible, given the decentralized record keeping process addressed above.

G. Include an enforceable audit provision in all contracts that survives termination of the contract.

We recommend the Port review the standard Small Works Roster Program contracts and consider including an enforceable audit provision that would survive the termination of the contract, such as is found in all Port major construction contracts and, in more basic form, in Professional Services Agreements. In the course of our investigation, we found that we were unable to conduct a vendor audit of one of the companies identified by the State Audit as exhibiting indicia of fraud because no such audit clause was present in the Port's contracts with this company. In our view, the lack of an enforceable audit clause in Small Works Roster Program contracts is an oversight that not only undermines the Port's ability to conduct oversight of its contracting operations but results in an absolute bar to any review of the vendor's documents, to the detriment of the Port.

H. Consider Appropriate Personnel Action.

We recommend the Port consider taking appropriate personnel action in response to Port employee misconduct discovered during our investigation and reflected in our findings.

MOTION CREATING SPECIAL INVESTIGATIVE COMMITTEE

PORT OF SEATTLE COMMISSION MOTION REGARDING THE CREATION OF A SPECIAL COMMITTEE TO INVESTIGATE FRAUD VULNERABILITY IN PORT CONTRACTING POLICIES, PROCEDURES AND PRACTICES

January 22, 2008

Statement in Support of Motion

The Port of Seattle Commission (the "*Commission*"), as the county-wide elected oversight board for the Port of Seattle (the "*Port*"), is responsible for ensuring that the Port's operations are conducted in a transparent and accountable manner that both promotes public trust and is in accordance with all federal, state and local laws. As part of its oversight responsibilities, and in fulfillment of recommendations 43 and 47 in the state auditor's recent performance audit, the Commission will investigate specific findings in the state auditor's office recent performance audit that suggested certain contracting policies, procedures and practices are vulnerable to fraud, and will report its findings to the Commission in open session.

Motion

The PORT OF SEATTLE COMMISSION does hereby create a Special Investigative Committee (the "*Committee*") whose objective will be to undertake an investigation of the findings of the State Auditor's 2007 Performance Audit of the Port of Seattle with respect to certain contracting policies, procedures and practices at the Port being vulnerable to fraud or with respect to which fraud may have occurred. Of specific concern are those findings suggesting:

- possible altering of invoices in circumvention of the Commission's authority and state law (1E);
- possible awarding of contracts without competition or in circumvention of competition requirements (2A,B,C&D);
- possible circumvention of the Small Works Roster Program (2F);
- possible procurement violations and concealment of "unusual procurement" from the Commission (3A);
- possible project management and contract awarding conflicts (3D);

The Committee will be comprised of Commissioners Tarleton and Bryant; Commissioner Bryant will chair the committee.

a. The Committee may hire independent legal counsel and an independent fraud investigator. The Committee may hire a staff person for the duration of the investigation.

b. The Committee, the fraud investigator, legal counsel and staff will fully cooperate with federal authorities or any other agency investigating the Port.

c. The Committee may, as a result of this investigation, recommend to the full Commission how the Port should "strengthen controls in areas deemed vulnerable [to fraud]" and may recommend "control mechanisms designed to deter, prevent and detect [fraud]."

d. The Committee shall provide the full Commission with a proposed budget and timeline within thirty days of the passage of this motion, and shall keep the full Commission and the Chief Executive Officer apprised of the Committee's progress in public session of the Commission. At the conclusion of the investigation, the Committee shall report its findings and conclusions to the Commission. The Committee will disband upon completion of its objective.

BIOGRAPHICAL SUMMARIES OF TEAM MEMBERS

BIOGRAPHIES OF TEAM MEMBERS

MCKAY CHADWELL, PLLC

MICHAEL D. MCKAY

Mike McKay is one of the founding partners of McKay Chadwell, PLLC. He has been a trial lawyer since 1976, including service as a Senior Deputy King County Prosecuting Attorney (1976-1981) and as the U.S. Attorney for the Western District of Washington (1989-1993). Mike is involved in civil litigation, conducts corporate internal investigations, and handles white collar criminal cases. He is a graduate of the University of Washington (with distinction) and Creighton University School of Law, where he received the Alumni Merit Award in 2001. Mike's interest in public service has led him to leadership roles in numerous political campaigns, including state vice chair of the 2000 and 2004 Bush-Cheney campaigns, state steering committee co-chair of the 2008 McCain campaign and numerous campaigns of King County Prosecutor Norm Maleng. He has chaired and served on many public service boards and commissions, including the Legal Services Corporation Board of Directors, the Seattle Catholic Archdiocese Review Board, and two Seattle Police Department Review panels.

KRISTA K. BUSH

Krista Bush is an attorney at McKay Chadwell, PLLC, focusing on civil litigation and criminal defense for clients typically involved in complex cases in federal and state courts. Her prior practice has included service in the U.S. Army Judge Advocate General's Corps (1994 – 2001), where she litigated numerous federal cases before judges and juries, ranging from misdemeanors to premeditated murder cases; and, as a prosecutor in the Criminal Justice Division of the Washington Attorney General's Office (2001 – 2006), where she handled complex criminal and civil litigation at the superior court level and at all levels of appeal. She is a graduate of the University of Tampa (magna cum laude) and the University of Texas School of Law. Krista is an active member of the Washington and Texas Bar Associations, the National Association of Criminal Defense Lawyers, and the Washington Association of Criminal Defense Lawyers. She also serves as a part-time instructor for the University of Washington Law School's Trial Advocacy program.

Keller & Associates

JOHN KELLER

John Keller is the founding member of John Keller & Associates, LLC. As a licensed private investigator, John is responsible for obtaining and analyzing all types of evidence relating to both civil and criminal litigation. He has more than twenty-four years of law enforcement investigative experience and eleven years of experience as a private investigator. John served as a criminal

investigator with the Internal Revenue Service, investigating a variety of civil and criminal fraud cases involving both individuals and corporations. John is a graduate of the University of Washington, as well as a Certified Public Accountant, a Certified Fraud Examiner, and a Licensed Private Investigator. He is a member of the Association of Certified Fraud Examiners. John is also the past president of the Washington State Investigators Association.

PAUL S. FICCA

Paul Ficca is a Senior Managing Director in FTI Consulting, Inc.'s Forensic and Litigation practice. Paul has over twenty years of experience in forensic accounting, investigations and cost analysis, litigation support, and damages calculations. He has provided project management, financial and accounting advisory services, construction project auditing, construction industry consulting, real estate advisory work and construction claims services to both public and private clients. Paul has also served as an expert witness on financial damages and forensic accounting related issues in arbitrations and federal and state court. Paul is a graduate of the University of Washington and is a Certified Public Accountant, a Certified Fraud Examiner, and a Certified Management Accountant. He is also a member of the Association of Certified Fraud Examiners, the American Institute of Certified Public Accountants, the Washington Society of Certified Public Accountants, and the Institute of Management Accountants.

LOUIE WU

Louie Wu is a Managing Director in the FTI Consulting, Inc. Forensic and Litigation Consulting practice. Louie has over fourteen years of experience preparing independent accounting, financial, and functional analyses for clients, many of which were performed in a litigation or dispute setting. He has conducted forensic accounting investigations to identify, analyze, and quantify alleged fraudulent transactions, and has provided construction project monitoring, project control reviews, contract audits, cost analysis, claim preparation and analysis, and dispute resolution assistance to construction industry clients. Louie has specific experience serving companies in the construction, software, wireless communications, pharmaceutical, healthcare, and retail industries, as well as local and federal government agencies. Louie is a graduate of the University of Washington and is a Certified Public Accountant. He is also a member of the American Institute of Certified Public Accountants and the Washington State Society of Certified Public Accountants.

COMMISSION NOTIFICATION MEMORANDUM
(DRAFTS & FINAL VERSION)

[redacted]

From: [redacted]
Sent: Thursday, December 22, 2005 11:19 AM
To: [redacted]
Subject: 100724CommissionMemoBidResult.doc
Attachments: 100724CommissionMemoBidResult.doc

Draft

December 22, 2005

TO: Commissioners
Mic Dinsmore, Chief Executive Officer
Linda Strout, Deputy Chief Executive Director
Mark Reis, Director Aviation Division
Craig Watson, Port Counsel

FROM: Ray Rawe, Director Engineering Services

SUBJECT: Notification of Intent to Award a Contract to TTI Constructors, LLC, for 3rd Runway - 2006 Embankment Construction/RW 16L Safety Area Expansion project

1. In accordance with Resolution 3181, we are notifying Commission that we intend to award this contract to the successful low bidder, TTI Constructors, LLC, with a bid of $124,777,042.50. This bid exceeds the original Engineer's estimate by over 10%.

2. Background:

   We received bids on December 20, 2005 for the above-noted project. The sole bidder was TTI Constructors, LLC. The Port's Estimate of Construction Cost is $ 105,071,395.00.

3. The apparent low responsible and responsive bid was 18.75% over the Engineer's estimate. **[example follows]** *Upon further review of the Port's Engineer's Estimate, it was determined that significant cost differences existed in the common fill unit price which may have been due to the previous contracts shear volume of consumption impacting the market price.*

4. The primary contributing factors to the cost increase are as follow: [sample language]

   a. *Limiting space available for construction lay down area, which is reflected in the increase in demolition and materials handling related items.*
   b. *Confined in-water work period, and permit requirements, which are reflected in the increase in the crane beam construction, and unsuitable sediment dredging.*
   c. *Complex site condition with multiple utility crossings, which is reflected in the increase in electrical work.*
   d. *Unexpected high cost of steel, which is reflected in costs of "specialized" steel fabrication such as special steel sheet pile sections, heavy crane rail sections, and the fender walkway system.*

5. It is the Port's intent to continue with the award process to TTI Constructors, LLC, the lowest responsible and responsive bidder. We will proceed with the award of the contract unless direction is received to the contrary, by December 29, 2005. Sufficient funds are available within the program for this project to cover the increased costs with a construction contingency, and all required permits will be obtained before construction.

If you have any questions please contact me at 728-3105.

cc: David Soike, Deputy Director Airport

John Rothmie, Program Leader Airfield
Michael Mequet, Manager, Construction Services
Paul L. Powell Jr., Manager, Contract Services
Mike Merritt, Director Commission Services
Scott Kyles, Project Manager
Carol Bestwick, Contract Administrator

Header)

FROM : [redacted]

TO :

C :

DATE = 12/27/2005
IME : 20:43:51 GMT
UBJECT : Draft
FOLDER : \2005YE\Inbox
TTACHMENT : [redacted]
ESSAGEID : 3597aa901c1cc14099c37176903428f5061b9c73@msexchange.seattle.internal.local
MESSAGEINDEX = 0000001936
ODY : For review and comment.

[redacted]

December 27, 2005

TO: Commissioners
M. R. Dinsmore, Chief Executive Officer
Linda Strout, Deputy, Chief Executive Director
Mark Reis, Managing Director Aviation Division
Craig Watson, General Counsel

FROM: Ray Rawe, Chief Engineer/Director Engineering Services

SUBJECT: Notification of Intent to Award a Contract to TTI Constructors, LLC, for 3rd Runway - 2006 Embankment Construction/RW 16L Safety Area Expansion project

1. In accordance with Resolution 3181, we are notifying Commission that we intend to award this contract to the sole successful low bidder, TTI Constructors, LLC.

2. Background:

   We received one bid on December 20, 2005 for the above-noted project. The bidder was TTI Constructors, LLC with a bid of $124,777,042.50 based upon extrapolation of unit prices and estimated quantities. After requesting the Bidder to validate their bid and verify the unit prices and estimated quantities an adjusted amount of $115,385,438.50 arrived at. The Port's estimate of construction cost is $ 105,071,395.00.

3. It is the Port's intent to continue with the award process to TTI Constructors, LLC, the lowest responsible and responsive bidder. Unless direction is received to the contrary by December 31, 2005. The existing Commission authorization to date is adequate to satisfy this contract award. The Port will administer an immediate deductive change order to reflect the adjusted quantity/pricing as described above.

   If you have any questions please contact me at 728-3105.

cc: David Soike, Deputy Managing Director Aviation
Bob Riley, Director, Av/CIP
Mike Merritt, Director Commission Services
Michael Mequet, Assistant Director, Construction Services
John Rothnie, Program Leader Airfield
Paul L. Powell Jr., Manager, Contract Services
Scott Kyles, Project Manager
Carol Bestwick, Contract Administrator

Header

FROM :

TO :

CC :

DATE = 12/27/2005
TIME : 22:43:37 GMT
SUBJECT : 100724 Final Version of Commission Memo
FOLDER : \2005YE\Inbox
ATTACHMENT : V:\Port\ATTACH\[redacted]
MESSAGEID : 3597aa901c1cc14099c37176903428f5061b9c79@msexchange.seattle.internal.local
MESSAGEINDEX = 0000001940
BODY : Here is the final version -

December 27, 2005

TO: Commissioners
M. R. Dinsmore, Chief Executive Officer
Linda Strout, Deputy, Chief Executive Officer
Mark Reis, Managing Director Aviation Division
Craig Watson, General Counsel

FROM: Ray Rawe, Chief Engineer/Director Engineering Services

SUBJECT: Notification of Intent to Award a Contract to TTI Constructors, LLC, for 3rd Runway - 2006 Embankment Construction/RW 16L Safety Area Expansion project

1. In accordance with Resolution 3181, we are notifying Commission that we intend to award this contract to the sole successful low bidder, TTI Constructors, LLC.

2. Background:

   We received one bid on December 20, 2005 for the above-noted project. The Bidder was TTI Constructors, LLC with a bid of $124,777,042.50 based upon extrapolation of unit prices and estimated quantities. After requesting the Bidder to validate their bid and to verify the unit prices and estimated quantities, an adjusted amount of $115,385,438.50 was provided. The Port's estimate of construction cost is $105,071,395.00.

3. The existing Commission authorization to date is adequate to satisfy this contract award. The Port will proceed with the award process on December 30, 2005, and administer an immediate deductive change order to reflect the adjusted quantity/pricing as described above.

If you have any questions please contact me at 728-3105.

cc: David Soike, Deputy Managing Director Aviation
Bob Riley, Director, Av/CIP
Mike Merritt, Director Commission Services
Michael Mequet, Assistant Director, Construction Services
John Rothnie, Program Leader Airfield
Paul L. Powell Jr., Manager, Contract Services
Scott Kyles, Project Manager
Carol Bestwick, Contract Administrator