

EXECUTIVE SUMMARY

I. Background

On January 22, 2008, the Seattle Port Commission created the Special Investigative Committee to undertake an investigation of findings in the State Auditor's 2007 Performance Audit that identified areas where the Port of Seattle may be vulnerable to fraud or where fraud may have occurred. Commissioner Bill Bryant chaired the Committee. Commissioner Gael Tarleton served on the Committee. Former U.S. Attorney Mike McKay was hired to serve as legal counsel for the Committee, organize an investigative team, and conduct the investigation.

The investigative team conducted over 75 interviews, reviewed over 250,000 pages of documents, searched over 300 gigabytes of electronic data and e-mail, established its own hotline, and followed anonymous tips received from it.

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. The concept of fraud is distinct from that of embezzlement, which requires that an individual personally profit from his or her misconduct.

While the investigative team did not identify any embezzlement or personal gain, it found ten incidents of fraud in port contracting practices. It also identified findings in the State Auditor's Performance Audit which were not substantiated by facts.

In November, the investigative team briefed the U.S. Department of Justice on its findings.

The report is divided into four sections: (1) Findings of fraud, (2) Findings in which laws or policies were violated, but no fraud was established, (3) Findings in which neither violations of law nor fraud were established or Findings of the State Auditor that were not substantiated by facts, and (4) Recommendations.

II. Findings of fraud

1. A Port employee provided a detailed internal port estimate to a potential bidder on a third runway contract prior to the bid submission date and failed to notify the public, Port leadership or the Commission.

2. Port employees falsely represented a \$2 million cost reduction as a \$9.4 million reduction in an attempt to avoid Commission scrutiny.

3. Port staff provided the Commission with a memorandum containing overtly misleading language intended to lull the Commission into taking no action.

4. A Port employee made large dollar "pre-payments" to a third runway contractor for materials in advance of when the funds were owed.

5. Port staff steered contracts to preferred vendors, often awarding contracts for work that had already been performed.

6. Port staff broke large contracts into smaller “subcontracts” in order to expedite work, avoid competition requirements, and avoid Commission oversight.

7. Port staff circumvented competition requirements by awarding smaller no or limited competition professional services agreements, expanding them to the maximum amount permitted, and awarding follow-on agreements.

8. Port staff manipulated professional services agreements to avoid commission oversight.

9. Port staff amended a \$25,000 no-competition “emergency” professional services agreement to over \$1 million and added work that was outside the scope of the original agreement, after the “emergency” window had passed.

10. Port staff steered work to a preferred minority consultant to artificially increase the volume of work that appeared to be awarded to minority owned businesses.

III. Findings in which laws or policies were violated, but no fraud was established

1. Port employees engaged in invoice altering in both Small Works Roster Program contracts and Professional Services Agreements to divert invoices from the appropriate contracts and agreements and apply them for payment under different contracts and agreements with available funds.

2. Port management involved in the Small Works Roster program encouraged “work-arounds,” including invoice altering, to avoid the requirement to bring contracts that exceeded \$200,000 to the Commission for review. As a result, numerous Small Works Roster contracts had actual billings in excess of the \$200,000 maximum established by state law.

3. Port employees used an existing aviation service contract to pay consultants for “out of scope” work on the seaport, rather than competitively procuring new contracts.

4. Port staff circumvented the requirements of 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).

IV. Findings involving neither violation of law nor fraud or Findings in the State Auditor’s Performance Audit which were not substantiated by facts

1. The State Audit concluded that the Port unnecessarily spent over \$60 million by using the Parsons’ Program Management Support Consultant agreement 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. The investigative team found that this procurement was conducted with full competition, that the duration and scope of the agreement was anticipated and disclosed to potential vendors during the original competitive procurement, and that 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 alleged that the Port retroactively agreed to pay consultant markups of 1.5% that were not stipulated in the PMSC contract. The investigative team found that Port staff had, in fact, pre-approved these mark-ups.

3. 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. The investigative team found that the Port had legitimate reasons for procuring this work in two separate contracts and concluded that the concerns raised by the State Audit were not substantiated by the underlying facts.

4. The State Audit cited 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 agreement with Hedlund Construction Management was in fact competitively procured and the \$2.7 million agreement with Walsh Hedlund & Harlow was approved by Port legal counsel. The investigative team concluded that this finding of the State Audit was not substantiated by the underlying facts.

5. The State Auditor indicated that 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. The investigative team found 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.

6. The State Auditor expressed the opinion that Port employees were displaying a lack of cooperation by refusing to sign representation letters. The investigative team found that Port employees had reasonable grounds to choose not to sign the representation letters in the form in which they were provided. Review of the specific representations that were requested, and interviews with employees who were asked to make such representations, caused the investigative team 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.

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

V. Ethics violation

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 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. The investigative team concluded that Mr. Dinsmore'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.

VI. Recommendations

1. The Port should develop and implement a compliance program that includes a comprehensive code of conduct and a robust compliance section which includes staff training, code violation reporting mechanisms, and whistleblower protection.
2. The Port senior leadership and general counsel should review all procurement processes with respect to both federal and state law and determine if any processes have violated grant funding requirements.
3. The Port should increase the involvement of the legal department in procurement processes at all levels.
4. The Port should consider implementing procedures to document requests for legal advice and advice provided in response to those requests.
5. The Port should consider implementing a centralized procurement document management system.
6. The Port should consider standardizing the project manual provisions that are used in major construction contracts.
7. The Port should review the standard Small Works Roster Program contracts and consider including an enforceable audit provision that would survive the termination of the contract.
8. The Port should consider taking appropriate personnel action in response to Port employee misconduct discovered during this investigation and reflected in the findings of this report.