

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6f

Date of Meeting June 9, 2009

DATE: April 27, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Dakota Chamberlain, Director Seaport Project Management

SUBJECT: SAO Performance Audit Report of Port of Seattle Construction Management, Report No. 100008; submission of Annual Report

REQUESTED ACTION

1. Authorization for the transmittal of the Port of Seattle's State Auditor's Office Annual Report Summary for the Performance Audit Report, Port of Seattle Construction Management from the Chief Executive Officer to the Port Commission; and
2. Request for authorization for the Commission President to submit the report to the State Auditor's office as required by RCW 43.09.470.

SYNOPSIS

As required by RCW 43.09.470, the Port's Annual Report to the State Auditor is due by July 1. It details the status of the implementation of the State Auditor's recommendations related to the 2007 performance audit of the Port's Capital Construction Management. The Annual Report is attached.

BACKGROUND AND PREVIOUS COMMISSION ACTION

- On December 20, 2007, the Washington State Auditor released the results of a performance audit of the Port's Capital Construction Management. The performance audit identified several areas where the Port's capital program management should be improved. The audit was conducted under the authority of citizen-approved Initiative 900 and is intended to evaluate the Port's performance in specific areas, increase credibility, and ensure efficiency and effectiveness in the Port's operations.
- On January 8, 2008, the Commission approved several motions related to organizational policies and operations included in the audit report. Actions taken included:
 - *Strengthening Commission oversight.* Commissioners formed a committee to research best practices for organizational governance and recommend ways to strengthen Commission oversight of major construction projects. The committee drafted a new

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

April 27, 2009

Page 2 of 4

delegation of authority to repeal and replace Resolution No. 3181, which previously governed how the Commission's authority was delegated throughout the organization.

- *Establishing protocols for regular updates on major capital projects.* Commissioners now receive detailed quarterly reports – written and in public session – on capital projects with costs of \$10 million or more.
- *Affirming their commitment to transparency and accountability.* Commissioners approved a “Transparency Code of Conduct,” which set expectations for transparency and accountability in its work. All Commissioners signed the Transparency Code of Conduct in January 2008 and again in January 2009.
- *Outlining an Audit Response Action Plan.* Commissioners directed Port CEO Tay Yoshitani to provide quarterly reports in public session regarding the Port's response to the performance audit. Those reports update action items resulting from the audit and deadlines for achieving them.
- Also on January 8, the Port held a public hearing on the results of the performance audit. Public testimony was received and 39 members of the public provided comment.
- On January 20, 2008, the Port posted a detailed Audit Response Action Plan on its website. The plan outlined how the Port planned to respond to each of the 51 recommendations contained in the performance audit report. The action plan provided specific information, including what the auditor's report recommended; changes the Port planned to implement; immediate and long-term action steps; status and estimated date of completion for each item; and staff member or department accountable for its completion. All 51 of the recommendations are now complete.
- On January 22, 2008, the Commission passed a motion creating a Special Committee to Investigate Fraud Vulnerability in Port Contracting Policies, Procedures and Practices.
- On February 5, 2008, the Audit Response Action plan was presented to the Commission. The action plan was posted on the Port's internet web page and was updated regularly to show progress as it is made in each area.
- On March 6, 2008, the Commission passed a motion lifting the moratorium on new project approval that had been instituted in mid-January. Under the moratorium, the Commission had delayed authorization of new projects that were not essential for public health, safety, or security until Port staff demonstrated significant progress in key areas identified by the performance audit.
- On March 20, 2008, Governor Christine Gregoire signed legislation that implemented the State Auditor's recommendations for clarifying port contracting statutes. The Port of Seattle supported this legislation and advocated strongly for its passage. The legislation stipulated

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

April 27, 2009

Page 3 of 4

which projects fall under the purview of “public works” and which can be considered personal service contracts. The new law also requires the Port to maintain a publicly available database of all contracts by 2010.

- On July 1, 2008, the Port Commission authorized transmittal of the Port of Seattle’s State Auditor’s Office Annual Report Summary for the Performance Audit Report, Port of Seattle Construction Management from the Chief Executive Officer to the Port Commission; and for the Commission President to submit the report to the State Auditor’s office.
- On August 5, 2008, the Commission was briefed on the new delegation of authority resolution (Resolution No. 3605), which would replace Resolution No. 3181 upon adoption.
- On August 12, 2008, the Commission unanimously approved Resolution No. 3605 on First Reading.
- On August 26, 2008, the Commission unanimously adopted Resolution No. 3605.
- On December 3, 2008, the Special Committee to Investigate Fraud Vulnerability in Port Contracting Policies, Procedures and Practices released the results of a ten-month investigation into the Port’s contracting policies and practices (the McKay Report). The report was reviewed with the Commission on December 9, 2008, and presented in public session that same day.
 - The investigation identified 10 findings of civil fraud. In addition, the investigation identified areas in which policies or laws were violated but fraud was not established, and areas in which neither violations of law nor fraud were established or where the conclusions of the State Audit were not substantiated by fact.
 - There were eight recommendations listed in the McKay Report. The Port developed an action plan to implement those recommendations or document actions previously taken that respond to the recommendations. Implementation of the recommendations will be completed in 2009.
 - In response to the findings and recommendations of the special investigation, the CEO has taken disciplinary action.
- On January 27, 2009, the CEO briefed the Commission in public session on steps he is taking to implement recommendations in the McKay Report.
- On April 21, 2009, the Commission was briefed on the status of a number of internal reforms, including implementation of Resolution No. 3605, the new procurement policy for personal and professional consulting services (CPO-1), the Engineer’s Estimate, the Small Works Roster, implementation of the McKay Report and “Lessons Learned” from the SAO Performance Audit.

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

April 27, 2009

Page 4 of 4

The Port is committed to transparency, accountability, cost control, and open government. We take the stewardship of taxpayer and customer resources seriously, and recognize that the Port must have public and customer confidence and support to operate effectively.

Initiative 900 requires that an annual report be submitted by the local government's legislative body by July 1st of each year detailing the status of legislative implementation of the State Auditor's recommendations. Details of corrective action must be provided and justification must be provided for recommendations not implemented. In addition, for performance audits of local governments, the legislative body must consider the State Auditor's report in connection with its spending practices.