

August 9, 2010

Via E-mail and U.S. mail

Commissioner Tom Albro  
President Bill Bryant  
Commissioner John Creighton  
Commissioner Rob Holland  
Commissioner Gail Tarleton

CC: Tay Yoshitani

Dear Commissioners:

Whenever I talk to friends and associates around the state and share the story of STITA's contract dust-up with the Port of Seattle, people always have the same reaction. It goes something like this: "What did you expect? It's the Port of Seattle. They don't know how to change. It's just how they do business."

I've been closely engaged in public policy issues for more than 40 years, for eight of those as an elected county auditor who understands public contracting processes. There's very little I haven't seen and even less that shocks me. So when I tell you that the Port's actions on this taxi concession rank right up among the most egregious violations of public trust I've seen, please understand that I do not say so lightly.

What happened here was that your CEO exceeded the scope of his authority. You authorized one contract, but he signed a severely altered document.

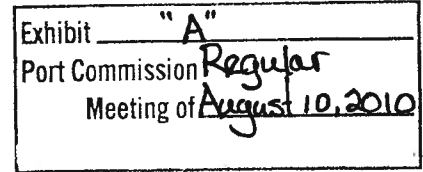
As you know, this contract has broad public consequences for travelers and residents, the tourism sector, the cab industry and the 450 STITA families who currently serve the airport.

Staff did this in spite of two letters from STITA's lawyers informing them that the Port was in violation of the Open Public Meetings Act for failing to bring a substantially altered contract back to the elected commissioners for further review and deliberation.

The changes to that contract were substantial (and legally material) – not minor ones as your staff says – and the contract does not resemble the one you voted to authorize in December 2009. STITA specifically asked that this matter be brought back before you before the contract was signed, but the Port staff simply ignored that request, and your CEO signed anyway.

I doubt any of you have read the version of the contract that was signed, and it was never considered by you in an open public meeting as required by law. The December 15, 2009 meeting concluded with an instruction to staff to award the contract to Yellow Taxi. "Award" means fill in a few blanks, not rewrite whole sections.

Additionally, I'm deeply troubled that your staff sent a letter to the "losing" bidders dated Dec. 11 – four days before they brought the choice of a vendor to you, the elected decisionmaking body of the Port. So, who really made the decision here? Does this sound like a new and transparent era in Port dealings? (Those letters were even attached in the memo your staff provided on Dec. 15.)



In addition, crucial, damaging information has been intentionally and deliberately withheld from the Port by Yellow Taxi. Its sister company, BYG Taxi Cooperative Association – which provides nearly half of the marked Yellow cabs – has been fined \$1.1 million in insurance premiums, interest and penalties by the Department of Labor and Industries.

I doubt either you or Port staff were aware of that. While Puget Sound Dispatch was representing to you in its bid that its workers are all “independent contractors” rather than “covered employees,” it clearly knew otherwise, because L&I had determined – after an extensive, multi-year audit – that BYG’s drivers are indeed “covered employees.”

So, it’s especially shocking that, in its now signed contract, rather than stating that the Port does not take a position on the issue, your staff took the position that indeed these drivers are “independent contractors” – in direct contravention of the ruling by the responsible state agency. But rather than ask for direction on this, your staff took the position on your behalf.

Yellow omitted all of this because a fine of that size on its affiliate severely jeopardizes its ability to perform the contract as bid. Clearly Yellow has serious questions in its own mind about whether it can perform the contract, evidenced by their backpedaling away from the Port’s proposed contract with multiple, substantial changes to the document.

These major changes include:

- Yellow doesn’t have to provide 210 cabs until March of 2011 and can start with only 170. This highlights that Yellow never had the cabs to begin with and always needed more time to raid STITA, Orange and Farwest, since that is where the remaining dual licensed cabs are.
- Yellow now does not have to meet the five minute wait time until March of 2010 if they don’t yet have “committed 210 taxis to the Concession...” Although service was supposedly paramount in awarding the contract, the Port is giving Yellow a five-month pass where it can keep customers waiting as long as they want while it figures out how to serve the Port. Small wonder staff did not want to put this version back in front of the Commission.
- The deadline for Yellow to make the \$867,000 balance of its security deposit has been moved to before “the effective date,” which means the Port, in its infinite wisdom, won’t know if it’s getting the deposit until October 29, a Friday, with the contract due to start on Monday, Nov 1. If Yellow can’t pay the deposit, then what? And how did they score the highest in financial strength if they need to move the date back to pay you?
- The penalties for being more than five minutes late to pick up a passenger were eviscerated with a nominal \$500 daily cap (or 10 instances at \$50 each) rather than the tens of thousands of dollars in damages owed for each late pickup – as specified in the RFP.
- The guarantees to minimize deadheading – a serious concern of Commissioners – were undermined by a provision inserted by staff to have good faith efforts become the standard for avoiding default on the contract, not real-world performance or reduction in deadheading.

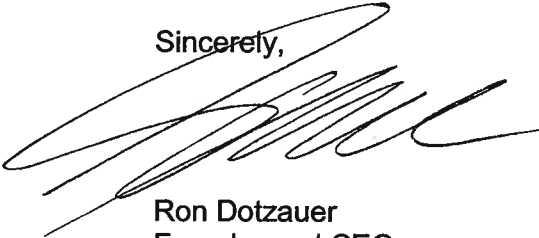
Several times during that Dec. 15 meeting, you asked your staff to negotiate for a better deal with Yellow – stronger deadhead reduction, with more green cabs sooner. Instead your staff went the other way and negotiated a substantially better deal for Yellow that not only failed to mitigate your concerns but actually exacerbated them.

Of course, as you have been made aware, this is only the tip of the iceberg with this contract, which has already generated two lawsuits, well-founded allegations of collusion and wrongful bid evaluations, and much more.

I believe you recognize the ramifications to the traveling public, the tourism industry, 450 STITA families and the Port's reputation if the Port doesn't get this right. Your authority has been abused and I truly believe that the wool has been pulled over your eyes.

It's now time to pull back the curtain and ask the hard questions, not just rely on representations that this is "all sewn up."

Sincerely,



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