



## Management Letter

To: Ralph Graves,  
Managing Director, Capital Development Division

From: Joyce Kirangi  
Director, Internal Audit

Date: March 31, 2011

Re: Review of the Port Capital Improvement Program

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Internal Audit has completed an audit of the Capital Development Division. This was a performance audit reviewing management's effectiveness in managing the processes and procedures implemented by the Capital Development Division. We also visited many business units across the Port and evaluated whether these processes and procedures were carried as intended.

Although our audit is concerned primarily with current practices, our procedures focused mainly on 2009 transactions. During the course of the audit, we noted weaknesses related to transparency and the Small Works Roster that could be improved. Based on the numerous tests that we conducted, the noted weaknesses were not significant enough to warrant inclusion in the audit report; however, if not addressed, the issues could become significant in the future.

### 1. Unclear Documentation on Two Change Orders or Unclear Project Manual Language

We reviewed the project manual and two change orders related to the construction of the Aviation Consolidated Warehouse Distribution Center.

#### a. Possible Overpayment

During the planning phase of the Aviation consolidated Warehouse project, Port management conducted a geotechnical engineering study to assess the subsurface conditions of the site. The study concluded that the site contained concrete debris, brick debris, cobbles, boulders, and traces of organic materials. The geotechnical report also disclosed presences of concrete slabs in some test pits. Port management made the geotechnical report available to prospective bidders, and clearly referenced the study in the public bid manual.

#### ***Project Manual Specifications***

***Section 02240, Part 7.03 – Rammed Aggregate Pier Excavation states:***

*“Should any obstruction be encountered during the drilling or excavation for the Rammed Aggregate Piers, the General contractor shall be responsible for removing such obstruction or the Pier shall be relocated or abandoned...”*

**Section 02240, Part 8 - Measurement & Payment states:**

*“No separate measure or payment will be made for rammed aggregate piers. The cost of the rammed aggregate piers as required shall be included as a portion of the lump sum price bid for the project.”*

We questioned two change orders that Port management paid for the rammed aggregate piers contract work. Change order No. 5 for \$130,000 was to remove obstructions encountered by the contractor during the drilling for the geo-piers installation. Change order No. 9 for \$163,000 was for over-excavation and structural backfill repair. The Resident Engineer documented in the change orders that the contractor had encountered “unforeseen conditions” including concrete pieces that prevented the drilling of the geo-piers to the required depth.

Per the Project Manual Section 02240, Part 7.03, and Section 02240, Part 8, it appears that the contractor was responsible for all the cost related to the rammed aggregate piers. The cost should have been part of the contractor’s lump-sum price bid. The two change orders that we reviewed and questioned did not clearly document why additional payment to the contractor was necessary.

**Recommendation**

We recommend Port management review the project manual specification language and the two change orders and re-assess whether the contractor was entitled to additional compensation. We further recommend that change orders be clearly documented to reflect when additional payment is warranted.

**Department Response**

*These change orders were initiated during our transition period, where POS CM staff were using an old change order procedure while efforts were underway to finalize an in-depth procedure that provide staff with expectations and requirements for documentation (CM SOP #10) along with training. In review of these two change orders, POS acknowledges that the entitlement for the change and description of the justification did not clearly convey the thinking and opinion made by the POS Resident Engineer that the project manual specification language was unenforceable. Our current procedures detail the level of documentation that is required by POS CM staff to explain entitlement along with periodic training and lessons learned discussion to ensure that staff understand our expectations for thorough and accurate documentation. POS CM staff will re-assess whether the contractor was entitled to the additional compensation in the two change orders in collaboration with POS legal.*

**b. Appearance Of Change Order Splitting**

Resolution 3605, as amended, requires Commission approval for change orders (COs) estimated to exceed \$200,000 (before 11/3/2009) or \$300,000 (after 11/3/2009).

For the two change orders discussed above, Port management issued two separate cost estimates in March 2009. The cost estimates were written within one week of each other and totaled \$293,000. One single event triggered the need for the change orders. Specifically, during the drilling for the geo-piers installation, the contractor encountered excessive obstructions. One change order was for \$130,000 to remove the excessive obstructions, and another for \$163,000 for the contractor to use alternative method of over-excavation or structural backfill repair on the disturbed sub-grade areas.

Because one common trigger (event) changed the scope of work, management should have issued only one change order, and obtained commission approval for the total amount of the change order. Writing two separate change orders, instead of one, has the appearance of splitting change orders in order to avoid Commission approval. At the time, any change order exceeding \$200,000 required Commission approval

### **Recommendation**

We recommend CPO management continue its current practices of training Port staff on CPO policies and compliance with Port procedures.

### **Department Response**

*POS CM staff evaluates the merit of discrete issues or events that give rise to a change order based on its individual circumstances. The issues of over-excavation to allow geopier installation in Change Order 5 and the fundamental change in foundation type in Change Order 9 were considered two discretely different issues that arose from a similar condition of debris-laden soil conditions in February and March of 2009 respectively. One required the contractor to remove obstructions whereas the other issue required a new foundation type which had to be designed and drafted by the designer of record. POS CM staff believed that while the causes of both change orders were the debris-laden soil, these were two different changes required to solve the two issues. There was no intent to split change orders and avoid Commission approval.*

*There will be instances where the Port will need to issue incremental change orders to direct changed work as the scope of work is being fully defined to ensure that we satisfy the RCW on prompt pay and to direct critical work in the field. Our current practice requires email notifications to Port managers and directors for the cumulative value of the change, in addition to the EX-2 signature authority limits. We will continue to review and revise our current procedures to provide key accountabilities and transparency and provide staff training and management oversight to ensure that CM staff understands and complies with Port policies, procedures and expectations.*

## **2. Small Works Roster System**

The Port utilizes the online Small Works Roster system to solicit contractors for Small Works opportunities. The Port provides all registered contractors an equal opportunity to compete for a contract.

We noted a deficiency in the design of the online Small Works system. The current system can allow exclusions of otherwise eligible contractors from the bid solicitation. When there is a Small



Works contract, all contractors within that particular trade (craft) are solicited (invited) to bid. The system automatically sends the solicitation to all the contractors who have “Active” status in the roster system. Thus, the integrity of the contractor “status” is critical to the open and fair competitive process.

The current Small Works Roster system does not track or maintain an audit trail of the status changes. Any update to the system overrides the prior recorded status. An “Active” contractor could be excluded from the bid solicitation by changing its status to “In-Active” and revert it back to “Active” status after solicitation. A contractor could also be unintentional excluded from solicitation without accountability.

Indeed, we found five contractors that had not been invited to some contract bids. Because of the lack of system audit trail, we could not determine why the contractors were not invited to bid.

Management is aware of the current Small Works Roster weaknesses and is in the process of procuring a new Small Works Roster.

### **Recommendation**

We recommend that management implement a compensating control procedure for the design deficiency in the online Small Works Roster system.

### **Department Response**

*POS promotes open competition on its small works roster procurements. First, we send procurement notifications to all active firms identified in the category or categories that relate to the work. Second, we publish the procurement documents on the Port’s website so that any firm, even firms not on the roster, may submit a bid for the contract.*

*The current small works roster is older system. In 2008 POS evaluated making changes to the current system. One of the many changes would have been to track changes to the active and inactive status report. The cost to make the changes to the current small works roster was in excess of \$200,000. Instead of making the changes, POS determine a more appropriate action was to develop a new bid and roster management system. CPO has been working with ICT since early 2009 and the project was approved and moved into development in late 2009. This system will track changes in status so that we will have accountability on when a contractor is made inactive or active. Due to technical issues the original go live date of February 2011 has been pushed back to late June 2011.*

*With regard to the 5 contractors, those contractors were identified on 2 procurements. We believe this issue cited occurred as a result of CPO issuing pre-announcements notifications. Basically to alert contractors to upcoming work, we may send pre-announcements to contractors in certain categories. With our current system, we then send the actual notification to the list of contractors who received the pre-notifications. We could not issue a new list without cancelling the original pre-notification. Companies who joined the roster between the pre-notification pull and the actual roster notification would have been missed. This practice has been discontinued.*