



Port of Seattle

The table below is a summary of remaining “Open Action” items in response to the seven recommendations of the McKay Report submitted to the Port of Seattle on 12/3/2008

(Updated as of 8/24/09)

Executive Summary of Open Action Items

Expected completion September 15, 2009:

A.1.B

Revise employee policy to include requirement for all financial interest

- Establish reporting criteria
- Establish report mechanism, procedures

A.1.C

Revise ethics code and employee policy to include a reporting requirement for potential conflicts of interest

- Establish reporting criteria
- Establish reporting

A.2

Increase role of Port Legal Department in the compliance program

A.3

Increase the role of the Ethics Board

- Identify areas/activities for increased Ethics Board participation/compliance role
- Evaluate whether Commission action needed to revise Ethics Board role by resolution

Expected completion December 31, 2009:

B.2

Review procurement processes with respect to both state and federal law.

- CPO review of all applicable laws
- CPO completes new procedures and revisions to existing procedures.

B.5

Provide training on all new policies and procedures

- CPO training on source selection.

F.1

Standardize project manual provision used in major construction projects

- Prepare and publish manual
- Provide appropriate training, compliance, schedule and procedure for updates

G.1

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

- On an interim basis, include the audit provision from major consultant contracts on all small works contracts.
- Prepare an updated, enforceable audit provision for all contracts.

SPECIAL INVESTIGATIVE TEAM OVERALL RECOMMENDATION	RECOMMENDED ACTIONS	PORT RESPONSE	ACTION STEPS	ACCOUNTABILITY	ESTIMATED COMPLETION	STATUS/REMARKS
<p>OVERALL RECOMMENDATION</p> <p><u>A. Implement a robust Compliance Program.</u></p> <p>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.</p> <p>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.</p>	<p>A.1. We recommend strengthening several areas of the Ethics Policy:</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>The CEO has directed a newly-formed team to develop workplace responsibility awareness and training program for the six policies that serve as the Port's compliance program: employee ethics, consultant ethics, fraud, anti-harassment, appropriate use of information technology and whistleblower protection. These policies will be aggressively promoted throughout the Port to ensure that all staff members understand their responsibility for ensuring that Port policies are followed in every area. The program will include communication, formal and informal training, ongoing policy development, and, in response to the report's recommendation, special emphasis on compliance.</p> <p>Deliberate communication and training will continually reinforce a culture that reflects basic integrity, common sense and good citizenship in the workplace and in the community. Ongoing policy development will ensure that policies are continually refined, improved and integrated and that employees are aware of and understand existing policies. The CEO has asked for a report from the team by February 15.</p> <p>On December 8, 2008, the CEO released an updated, strengthened whistleblower policy. Although the Port has had such a policy in place since 1997, the updated version clarifies which matters should be reported, clearly lists appropriate people to approach with concerns, and defines the retaliatory actions that are forbidden under the policy. In general, the updated policy is easier to understand and follow.</p> <p>The CEO noted with concern that throughout his report, Mr. McKay provides several examples where Port staff failed to come forward to report ongoing practices that violate policy or law. The Port has invested significant time, dollars and energy over the past several months revising, reorganizing and improving</p>	<p>A. Implement a Robust Compliance Program</p> <ul style="list-style-type: none"> • Develop short term mandatory all-Port review of six key policies pending new program implementation. • Create programmatic Workplace Responsibility awareness plan incorporating six key policies, including communication planning, annual training, further policy development and compliance components, including Code of Conduct • Formalize team membership • Select outside consultant • Provide interim report to CEO by February 15 • Finalization of work plan and schedule with CEO 	Deputy CEO	<p>3/31/2009</p> <p>7/31/2009</p> <p>1/1/2009</p> <p>1/15/2009</p> <p>2/15/2009</p> <p>2/20/2009</p> <p>4/15/2009</p>	<p>CEO Message to staff 1/21/09; Complete.</p> <p>Drafts in progress.</p> <p>Action completed.</p> <p>Davis, Wright, Tremaine (DWT) selected 1/13/2009</p> <p>Action completed.</p> <p>Draft interim report provided to CEO on 2/20/09.</p> <p>Action completed. Interim report to CEO 4/2/09. Includes work plan for</p>

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		<p>our contracting and procurement processes. The CEO believes it is critical that Port employees feel invested in improving the organization and feel safe to speak out when they see actions that raise suspicion. A strong whistleblower policy is crucial to creating that safe environment</p> <p>The Port has taken several other recent actions in the area of ethics and workplace responsibility:</p> <ul style="list-style-type: none"> • The Port Commission adopted a revised Ethics Code for Commissioners (Resolution 3583) in September, 2007, and the CEO subsequently revised the Port's parallel Policy for Employees. • The Port implemented a new Ethics Policy for Consultants. • The Port adopted a new Fraud Awareness Policy and implemented a confidential Fraud Hotline, accessible to the public and to employees. <p>A.1, A.1.a, A.1.b, A.1.c</p> <p>The Port will immediately implement each of these suggested additional changes in our Ethics Code and Policy. All three make good sense. The first - prohibiting use or disclosure of information not available to the general public – can be implemented quickly. The other two, which address reporting and recording certain financial interests and potential conflicts of interest, may take longer to develop, but work will begin immediately.</p>	<p>A.1 a Revise Ethics Code and Employee Policy to prohibit use or disclosure of information not available to the general public</p> <p>A.1.b Revise Employee Policy to include requirement for all financial interest</p> <ul style="list-style-type: none"> • Establish reporting criteria • Establish report mechanism, procedures <p>A.1.c Revise Ethics Code and Employee Policy to include a reporting requirement for potential conflicts of interest</p> <ul style="list-style-type: none"> • Establish reporting criteria • Establish reporting 	<p>General Counsel</p> <p>General Counsel</p> <p>General Counsel</p>	<p>3/31/2009</p> <p>9/15/2009</p> <p>9/15/2009</p>	<p>remainder of 2009. Commission briefed 4/21/09.</p> <p>Action completed. See EX-3 II. Details Section 3 D.</p> <p>Drafting of proposed requirement and form in progress, to be incorporated into full compliance program.</p> <p>Under review as part of full compliance program.</p>

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	<p>A.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.</p>	<p>A.2 Mr. McKay also suggests increasing the role of the Port legal department in all levels of a compliance program, including development, implementation, training and oversight. The Port's Legal Department is playing a major role in the development phase of a workplace responsibility program and will continue to have a high level of involvement and responsibility in all future phases, as well as primary responsibilities in the program compliance and policy development areas.</p>	<p>mechanism, procedure</p> <p>A.2 Increase role of Port legal Department in the Compliance program</p>	<p>General Counsel</p>	<p>9/15/09</p>	<p>Under review as part of full compliance program.</p>
	<p>A.3 We recommend the Port increase the role of the Ethics Board 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.</p>	<p>A.3 The suggestion to increase the role of the Port's independent Ethics Board is excellent. The Ethics Board currently consists of five outside members, appointed by the Commission for three year terms. The scope of the Board's duties and responsibilities is set out in the Commission Ethics Code, Resolution No. 3583 and has not changed in many years. The Commission has indicated they will evaluate this recommendation, creating an appropriate additional role for the Ethics Board and revising and updating its Resolution accordingly.</p>	<p>A.3 Increase the role of the Ethics Board</p> <ul style="list-style-type: none"> • Identify areas/activities for increased Ethics Board participation/compliance role • Evaluate whether Commission action needed to revise Ethics Board role by resolution 	<p>Port Commission</p>	<p>9/15/09</p>	<p>Under review as part of full compliance program.</p>
	<p>A.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</p>	<p>A.4 Training a workforce of 1600 employees is not a simple or inexpensive task, but the Port fully agrees that policies such as fraud awareness, ethics and anti-harassment need regular communication and training to be fully effective. The planned workplace responsibility awareness program will feature formal initial and reinforcement training.</p> <p>In November, Port staff members were notified that they were required to complete an on-line anti-harassment training module by December 31. New hires will receive the full course; all other employees will be given a follow-up course every 18 months. This model of mandatory initial and reinforcement training will be evaluated for use with other policies such as ethics and fraud awareness. The CEO has</p>	<p>A.4 Incorporate initial and ongoing employee training into compliance program</p> <ul style="list-style-type: none"> • Review and inventory on-going training and communication activities • Update and revise on-going actions/training to reflect broader programmatic values • Ensure that New Employee Training reflects compliance program • Utilize updated internal website to enhance compliance program 	<p>Deputy CEO/Human Resources Director</p>	<p>4/15/2009</p> <p>8/31/2009</p> <p>8/31/2009</p> <p>8/31/2009</p>	<p>Action completed.</p>

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	<p>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.</p>	<p>asked staff to prepare a proposed formal training plan for his review by February 15.</p> <p>Other training programs, such as lunch training sessions, will be used while more formal training is being constructed. A complete remodel of the Port's internal website is already underway. The new design features easier employee access to policies as well as any accompanying materials.</p>				
<p><u>B. Ensure all procurement processes comport with Port policy and State and Federal law.</u></p>	<p>B.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.</p>	<p>B.1 In response to the State Performance Audit, the Port established a Central Procurement Office (CPO) which has been fully functional for several months and has placed early emphasis on quality control and staff training. The CPO is responsible for providing guidance and oversight of the procurement process to ensure that Port policies and procedures comply with applicable federal and state laws. Relevant state laws and policies are used to establish and revise explicit procedures; then, Port staff members are trained to follow the procedures so that only those trained to do so have contracting responsibilities. In addition, the Port is implementing quality control procedures to check that procedures are being followed, and has begun using the organization's internal audit department and other resources for independent quality assurance.</p>	<p>B.1 Ensure all procurement processes comport with Port policy and State and Federal law.</p> <p>Implement a mechanism to ensure that all procurement processes comport with Port policy and laws.</p> <ul style="list-style-type: none"> • Ensure necessary resources for support of Port's new Central Procurement Office • Continue strong quality control and training efforts throughout Port • Engage additional resources, such as Internal Auditor to assist with compliance 	<p>CPO</p>	<p>On-going (see B.2 below)</p>	

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	<p>B.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.</p> <p>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.”</p> <p>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</p>	<p>B.2 The CPO is currently considering three fundamental process improvements and changes:</p> <p>The CPO will review all applicable state procurement laws to ensure that the Port is complying with those requirements, and will establish any additional necessary policies and/or procedures. The CPO will draft or revise applicable policies and procedures and practice guidelines as necessary.</p> <p>Clarify Port practices for communications with third parties during the procurement process. In the future, for service agreements over \$200,000 and all construction procurements, all communication must be directed through CPO staff during the procurement process through contract execution. However, a Port project manager may conduct negotiations directly with the consultant after the Port has selected the most qualified firm and notified all bidders of the decision. CPO staff members, as professional procurement staff, should manage any such communication to ensure compliance with federal and state laws and to maintain a fair and transparent competitive process. The CPO will provide additional training and direction so that Port staff members understand the limitations placed on discussions and communication with potential bidders, subcontractors, suppliers, consultants and vendors.</p> <p>Improve how procurement requests are submitted to the CPO for service agreements, construction, and goods and services. Currently, no overall central system exists, although a unified system is in place for construction and goods and services.</p> <p>In addition, the CPO will work with requesting departments to identify all federal and grant dollar requirements and review the documents to be certain that those requirements are contained in the procurement and contract documents.</p>	<p>B.2 Review procurement processes with respect to both State and Federal law.</p> <ul style="list-style-type: none"> • CPO review of all applicable laws • CPO complete procedure for personal and professional services (CPO-1) • CPO identifies revisions to existing and/or additional policies and procedures. • CPO completes new procedures and revisions to existing procedures. • CPO establishes communication protocol & provides training. 	<p>CPO</p>	<p>12/31/09</p> <p>1/31/09</p> <p>Identify new procedures: 6/30/09</p> <p>12/31/09</p> <p>Communication Protocol & Service Agreement Training: 1/31/2009</p>	<p>Ongoing</p> <p>Action completed.</p> <p>Action completed.</p> <p>Action completed regarding consultant agreements; in process regarding construction contracts.</p>

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	<p>requiring recipients of grant money to comply with the local laws and policies and to ensure that these procurements are “full, open, and competitive.”</p> <p>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.”</p>	<p>B.2.a The Port is implementing a revised policy on service agreements that provides for CPO oversight and more explicit definitions of the categories of service agreements and procedures for each category. The policy will replace existing policies. This training will begin in January/February 2009.</p> <p>With respect to the procurement of professional and personal services, the Port has implemented requirements as to when the Port Commission is informed of advertisements and, in many cases, the Port will obtain Commission approval prior to contract execution. The Port Commission will be notified of all amendments to service agreements when the amendment(s), either singly or cumulatively, exceeds fifty percent of the original contract value.</p> <p>The Port has notified and is working with FAA representatives to ensure that any questions regarding grant funding on the major 2004 and 2006 Embankment Contracts are identified and addressed.</p>	<p>B.2.a Professional Service Agreements – ensure Port compliance with grant conditions</p> <ul style="list-style-type: none"> • Port begins implementation of CPO-1 policy regarding personal and professional services and implementing training on new procedures • Port Commission to be notified of all PSA amendments exceeding 50% of original contact value • Continue communication with FAA to ensure grant funding on 2004 and 2006 Embankment Contracts are identified and addressed 	<p>CPO</p> <p>Director, Accounting Services</p>	<p>CPO-1 Training commenced 1/29/09 and was completed 5/21/09</p> <p>Notification of amendments exceeding 50% - current practice</p>	<p>13 classes were conducted, training approx. 350 employees</p> <p>Action completed.</p> <p>Action completed.</p> <p>The Port has provided a copy of the full McKay report to the grants officer of the FAA, who has completed review of the report and currently intends no further action.</p>

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		<p>B.2.b The Port conducted classes for Port Construction Services personnel regarding proper Small Works contracting procedures on March 20, 2008. Topics included:</p> <ul style="list-style-type: none"> • Revised procedures for tracking small works expenditures against budget • Work requests and authorizations • Cost limitation language for contracts • Contract work authorization estimate and tracking sheet <p>The CEO has directed that additional training must occur by the end of January 2009 for the Port Construction Services and Central Procurement Office staff members who award or administer these contracts. This additional training will address:</p> <ul style="list-style-type: none"> • Procedures for soliciting bids from the roster and for public advertising; • Procedures for enrolling new contractors on the roster and for updating the roster information; • Procedures for contacting contractors by e-mail and making corrections to addresses; • Document tracking and resending of information when applicable; • Rules for structuring Small Works contracts with respect to the \$200,000 limit. <p>Since Fall 2006, the Port has been advertising Small Works contracts to all registered contractors on the Small Works Roster as well as posting each advertisement on the Port's small works public website and on a wall display located in the PCS office.</p> <p>In May of 2008, Interim Capital Development Director Dwayne Lee discovered through an internal review that Small Works Roster</p>	<p>B.2.b Small Works Roster Program (SWR) – Ensuring compliance with grant conditions</p> <ul style="list-style-type: none"> • Additional training for CPO staff and other Port staff involved in small works projects. Training includes how to structure small works contracts within larger projects. 	CPO/CDD		Training completed 1/23/09. Refresher course ongoing.

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		<p>contracts were being broken into smaller contracts to fit within the \$200,000 statutory limit. Mr. McKay included that in his report. The Port does not condone that practice. Mr. Lee provided guidelines on Small Works Roster in July 2008, including the following:</p> <ul style="list-style-type: none"> • Requiring a justification memo be placed in the file describing Port Construction Services participation and setting forth the reason for using a Small Works contract for any Small Works contract that is part of a larger project costing more than \$200,000; • Listing appropriate circumstances when a Small Works contract or contracts may be structured at less than \$200,000, even if it is part of a larger work effort; • Requiring review by the Central Procurement Office and the Capital Development Division of such justification memos. <p>Over the past few weeks, the Capital Development Division Director reviewed the list of Small Works contracts awarded in 2008 to confirm that improper “contract splitting” is not still occurring. He did not find any evidence of improperly split contracts awarded since May 2008. There are legitimate circumstances when structuring project work into Small Works contracts of less than \$200,000 is legal and appropriate, so there may be some confusion even within PCS about when such a practice is allowed. Training will emphasize those distinctions.</p> <p>B.2.c The Port provided timely notification and a complete copy of the McKay findings to the FAA. The Port intends to fully cooperate with any follow up reviews, or other actions the FAA may require.</p>	<p>B.2.c Major Construction – Ensuring Port is in compliance with grant conditions.</p> <ul style="list-style-type: none"> • Continue communication with FAA to ensure grant funding on 2004 and 2006 Embankment Contract are 	Director, Accounting Services	See B2.a above	

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	<p>B.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.</p>	<p>B.3 Review and revision of Port contracting procedures is underway. The CPO is currently working on revisions to Port policies and procedures regarding the procurement of personal and professional services. The Port will adopt and implement those provisions by February 2009. Training on the new policies and on Resolution 3605 will begin concurrently with implementation. The CPO is also beginning to consider revisions and new policies, procedures, and/or practice guidelines for goods and services, major construction and the small works roster, as well as other purchasing and procurement activities in the coming year.</p>	<p>identified and addressed</p> <p>B.3 Conduct detailed review of all procurement aspect to ensure compliance with state and federal laws.</p> <ul style="list-style-type: none"> • CPO to continue review and revision of Port policies and procedures regarding procurement of professional and personal services • CPO to provide comprehensive training on new policies/procedures for procurement of professional and personal services 	CPO/CDD	See B.2 and B.2.a above	
	<p>B.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.</p>	<p>B.4 The Port will develop a policy and publish procedures no later than the end of January 2009 clarifying when and how the Engineer's Estimate is compiled, how it must be protected as "procurement-sensitive information," how bids are evaluated against the estimate and what steps must be taken if the apparent low bid exceeds the estimate by more than 10%.</p>	<p>B.4 Clarify procedures for use, calculation and preservation of Engineer's Estimates</p> <ul style="list-style-type: none"> • CDD will develop and publish procedures. 	CDD		Action completed. Commission briefed 4/21/09.
	<p>B.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.</p>	<p>B.5 Extensive training has already occurred including:</p> <ul style="list-style-type: none"> • Training on the areas of responsibility for all change orders and change order documentation, as well as roles and responsibilities within the new review process and contract schedule enforcement. • Revised construction and contract management processes training was conducted by Engineering and Central 	<p>B.5 Provide training on all new policies and procedures</p> <ul style="list-style-type: none"> • CPO provides training on CPO-1, resolution 3605. • CPO Training on source selection. 	CPO	<p>Training CPO-1 and 3605 beginning 1/29/09</p> <p>Training source selection</p>	<p>Action completed.</p> <p>In progress</p>

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		<p>Procurement Office staff.</p> <p>PCS staff was notified via email and trainings were held on expected compliance with new procedures, especially in comparing expenditures to budgeted limits.</p> <p>Training on contracting for consultant services was initially provided to two groups, and will be scheduled subsequently for all other appropriate individuals.</p> <p>In addition, the CPO plans to establish and conduct a program of ongoing training for all Port staff responsible for procurement and contract administration tasks. Eventually, the CPO envisions implementing two training programs: (1) a certification program for CPO staff and (2) a certification program for any Port staff involved in any procurement actions or responsible for performing certain contract administration duties.</p> <ul style="list-style-type: none"> • The CPO Staff certification program would be similar to the Federal government warranted contracting officer program. CPO staff would attend a series of federal classes that warranted contracting officers are required to complete and other classes that we determine appropriate. • For the Port staff certification program, CPO would develop a series of in-house training courses. Port staff members would be required to complete the training prior to participating in procurement tasks and/or certain contract administration tasks. <p>These certification programs require substantial investment of time and money. In the meantime, given time and financial constraints, the CPO will develop training sessions on the new policies and procedures as they are developed, Resolution 3605, and source selection evaluation. The CPO currently plans to implement the first training on the new policy and procedure for service agreements and Resolution 3605 in January/February 2009. Likewise we hope to</p>	<ul style="list-style-type: none"> • CPO to evaluate and propose establishment of "certification" training program similar to federal government program 		<p>evaluation – 12/31/09</p> <p>Evaluate & Propose Certification Program – November 2009 (w/ 2010 budget).</p>	

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<p>C. <u>Increase legal department involvement in procurement processes.</u></p>	<p>C.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.</p>	<p>implement training on source selection evaluation in January/February 2009.</p> <p>C.1The Legal Department regularly consults with the CPO and the Capital Development Division on matters of policy development, interpretation of standards, regulations, Port policy documents and statutes and to ensure that standard practices, procedures and documents comply with applicable law. Exceptions to internal CPO and Capital Development Division practices and procedures are regularly coordinated with the Legal Department.</p>	<p>C.1 Increase legal department involvement in all levels of the procurement process</p> <ul style="list-style-type: none"> • Identify additional more formal and more frequent consultation process between Legal Department and Procurement 	<p>General Counsel/CPO</p>	<p>1/10/2009</p>	<p>Action completed. Regular meetings have been implemented. New CPO-1 policy contains additional legal review points.</p>
	<p>C.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.</p>	<p>C.2 The Legal Department is regularly involved with capital project development and procurement decisions as projects progress through planning to completion. However, legal review of procurement decisions and documents must take into account the Central Procurement Office and Capital Development Division role in the review, training and enforcement of procurement procedures, as well as their specialized expertise. The Legal Department and the CPO and Capital Development Division are currently working to implement practices that will assure appropriate legal review without creating duplicative or unnecessary review levels.</p>	<p>C.2 Legal Department, CPO and CDD to implement practices to assure appropriate legal review</p>	<p>General Counsel/CPO</p>	<p>1/10/2009</p>	<p>See C.1 Action completed.</p>

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<p><u>D. Ensure legal department involvement is appropriately documented.</u></p>	<p>D.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.</p>	<p>D.1The Legal Department has prepared a set of draft guidelines for documenting and distributing legal advice that will be finalized and published by December 31, 2008. In summary, the guidelines will distinguish between discussions involving straightforward procedural issues that carry minimal legal risk from more complex issues that include an element of material risk. Written record will be made for matters involving material legal risk, or that in the judgment of the attorney should be recorded.</p> <p>The Legal Department attorneys frequently attend planning and strategy meetings where legal risk is not the subject, but where they may make an observation about a potential legal issue that could arise. If in the judgment of the attorney a material legal issue has been raised or appears to have been overlooked, a written opinion typically will be issued.</p>	<p>D.1 Ensure legal department involvement is appropriately documented and maintained.</p> <ul style="list-style-type: none"> • Draft guidelines for documenting and distributing legal advice will be completed by January 31, 2009 	<p>General Counsel</p>	<p>1/31/2009</p>	<p>Action completed</p>
<p><u>E. Centralize procurement document management system</u></p>	<p>E.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 management systems (both hard copy and electronic)</p>	<p>E.1 In early 2009, the Central Procurement Office will determine an appropriate document management system for both hard copies and electronic files. Currently multiple systems are used for small works, major construction, service agreements and goods and services. Funding is provided in the 2009 budget to establish a centralized filing system, and CPO staff members are currently exploring options.</p> <p>Protocols and procedures need to be established for matters such as where the official files are maintained, who has responsibility to maintain the documents/files and ensure all documents are in the file, how we handle and manage electronic files, what has to be maintained in hard copy, and what controls are needed for managing use of the</p>	<p>E. Centralize procurement document management system.</p> <p>E.1. Consider implementing a centralized procurements document management system.</p> <ul style="list-style-type: none"> • CPO in conjunction with other departments to determine a procurement document management protocol by the end of April 2009. • CPO also by the end of April 2009 to determine the timeline for implementing a system of management, files, maintenance and controls for procurement documents. 	<p>CPO</p>	<p>CPO-3, Contract File Procedure, is published and effective 7/21/09</p>	<p>Action completed.</p>

SPECIAL INVESTIGATIVE TEAM OVERALL RECOMMENDATION	RECOMMENDED ACTIONS	PORT RESPONSE	ACTION STEPS	ACCOUNTABILITY	ESTIMATED COMPLETION	STATUS/ REMARKS
	<p>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.</p>	<p>files. Developing protocols is not a simple matter: Port staff members are located in many different buildings and there are legitimate reasons why some files must be maintained at different locations. CEO Yoshitani has instructed the CPO staff to make this goal a priority in early 2009.</p>				
	<p>E.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.</p>	<p>E.2 See above responses.</p>	<p>E.2. See E.1 above.</p>	<p>CPO</p>	<p>See E.1 above</p>	<p>Implementation of CPO-3 addresses this issue.</p>

SPECIAL INVESTIGATIVE TEAM OVERALL RECOMMENDATION	RECOMMENDED ACTIONS	PORT RESPONSE	ACTION STEPS	ACCOUNTABILITY	ESTIMATED COMPLETION	STATUS/ REMARKS
<u>F. Standardize project manual provisions.</u>	F.1 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.	F.1 The Port recognizes the value of a central, consistent, explicit set of standard instructions and common contract provisions to guide the many staff members involved in forming and administering construction contracts. Creating one falls to the newly-formed Capital Development Division which includes project managers, contract specialists and construction managers. A computer-based system would be readily available, standardized for all users and easily updated. Establishing such a system requires identifying applicable laws, policies and best practices, ensuring that procedures meet the needs of the Port's wide variety of construction types, locations and customers and compiling a large quantity of information. Once the manual is written and posted, the Capital Development Division will train staff on its use, follow up to ensure compliance and periodically review for updates.	F.1 Standardize project manual provision used in major construction projects <ul style="list-style-type: none"> • Prepare and publish manual • Provide appropriate training, compliance, schedule and procedure for updates 	CDD	12/31/09	
<u>G. Include an enforceable audit provision in all contracts that survives termination of the contract.</u>	G.1 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	G.1 Contract provisions for construction (both major construction and small works) and service agreements need to be reviewed and updated or revised. An appropriate audit provision and duty to cooperate provision will be included in the terms. This is another goal of the CPO, but a time frame for beginning and completing this goal is not yet established. As an interim measure, the Port will include an audit provision as a supplemental condition in all small works procurements initiated after January 1, 2009.	G.1 Include an enforceable audit provision in all contracts that survives contract termination. <ul style="list-style-type: none"> • On an interim basis, include the audit provision from major consultant contracts on all small works contracts. • Prepare an updated, enforceable audit provision for all contracts. 	CPO/General Counsel	12/31/2009	Action completed Draft provision prepared; under review

SPECIAL INVESTIGATIVE TEAM OVERALL RECOMMENDATION	RECOMMENDED ACTIONS	PORT RESPONSE	ACTION STEPS	ACCOUNTABILITY	ESTIMATED COMPLETION	STATUS/ REMARKS
	<p>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.</p>					