



Memorandum

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To: Bill Johnson, Acting Director
Miami-Dade Seaport Department

From: Christopher Mazzella, Inspector General

Subject: OIG Oversight of the Seaport of Miami Capital Improvement Program IG05-80

Date: August 10, 2006

As you are aware, our on-site staff at the Port of Miami is providing oversight for the Miami Seaport Redevelopment Program (MSRP). Currently we continue to monitor the three construction management (CM) at-risk contracts and the transition of the program management PSA contract for Port Development Management from DMJM Harris to Post, Buckley, Schuh & Jernigan (PBS&J).

Our activities include attending most of the regularly scheduled progress and change committee meetings held among the different CM contractors, the Architect, the Program Management Consultant and the Seaport Department staff. Our staff also interviews the contractors, consultant and Seaport Department staffs.

Various reports and memoranda have been issued based on observations made while performing these oversight functions. We received a written response from former Seaport Department Director Charles Towsley to our last memorandum, dated March 27, 2006. (A copy is attached for your convenience.)

We have the following recommendations resulting from our most recent involvement with the MSRP for your consideration:

1. CENTEX - QA/QC: Request a credit for a contract deliverable, the QA/QC Plan, which was never accepted by the Seaport Department. At this stage of the work, a credit is the only remedy. Even though several requests by the PMC have been made and several drafts have been submitted, there does not exist a Seaport Department approved Centex QA/QC Plan.
2. CHASE - Terminals D & E: Finalize the inventory of pending and potential work that is still needed in order to obtain Certificates of Occupancy (COs) for the two terminals. Work is still being uncovered and designed that is needed for operations but that has not been accounted for in the original contract scope, change orders and change authorizations. An accurate,

independent cost estimate should then be prepared for any extra work and compared to the remaining funding available to the Seaport Department.

3. All Contracts: Perform an accounting and accurate forecast of both scope and costs of any remaining necessary work not covered by one of the current CM contracts (over and above the balance of contract work and punch-list items) like the emergency generators for Bldg 1709 and the Maintenance Building. There are funding limitations to consider, and a determination of these costs may necessitate further scope/contract reductions of non-essential components of the work.
4. Schedule & Extensions of Contract Time: Schedules slippage and their causes are difficult to determine since the CMs are not providing the monthly schedule comparisons of progress as required by the contract specifications. To date, the CMs have been largely compensated for contract time extensions. Based on some of the comments at the weekly meetings, an independent review of the former Development Team's change request reviews (before the Change Review Committee was established) should be made to ensure that concurrent delays caused by the CMs have been properly identified. Seaport Department staff have suggested that, at least, with one of the CMs, there may have been under-staffing at certain times, prolonged equipment breakdowns, late critical material deliveries, and occasional under production in labor performance. It should be noted that these are "at-risk" type contracts with the CMs and any concurrent delays are not compensable.
5. Program Management Plan: Devote resources to prepare a comprehensive Program Management Plan (PMP) for future capital improvement projects. The PMP should include and/or reference the guiding practices, processes, and procedure for administering, managing, designing and constructing the projects in this and other future capital programs.
6. Contract Change Control: Establish and follow a more efficient review process. The two flow charts we have prepared, and which are also attached, depict the Change Request and Claims processes required by the CM contracts (Figures 1a and 1b). Although not stated in the CM contracts, the newly implemented requirement for an additional review of CM Change Requests by a Change Review Committee has been beneficial but is inefficient due to the reviews taking place at the end of the process. The third flow chart attached (Figure 2) was prepared to indicate a more efficient parallel process for the Committee's review of Change Requests. This was pointed out to the former Seaport Department Director in our Memorandum dated March 27, 2006 and has not been done even though Mr. Towsley agreed to its implementation in his reply Memorandum dated April 6, 2006.

7. Change Approval Authority: Improve the average time to approve contract change authorizations, to benefit both the Seaport Department and the contractors. One way would be to delegate the approval authority of Change Authorizations (not Change Orders) to the various levels of Seaport Department management beneath the Director and Deputy Director levels depending on the amount of the requests compared to a set of predetermined threshold limiting amounts. Additionally, you may wish to consider restricting this delegation to only change authorizations that have no affect on the schedule and, thus, could be a basis for a delay claim at a later date.
8. Back Charges: Follow through on back charges. Develop a listing for Seaport Department management of all known extra work performed to-date having the potential for back charges and initiate settlement with the affected CMs, tenants and consultants.

We would like to brief you on these recommendations and other matters at your earliest convenience. In the meantime, if you have any questions or would like further information, please contact either Patra Liu at 305-375-1946 or John Canepari at x5502 at the Port of Miami.

Attachments

CC: George M. Burgess, County Manager
Rogers T. Hernstadt, Director, Office of Capital Improvements
Clerk of the Board (copy filed)

CHANGE REQUEST PROCESS – PORT OF MIAMI

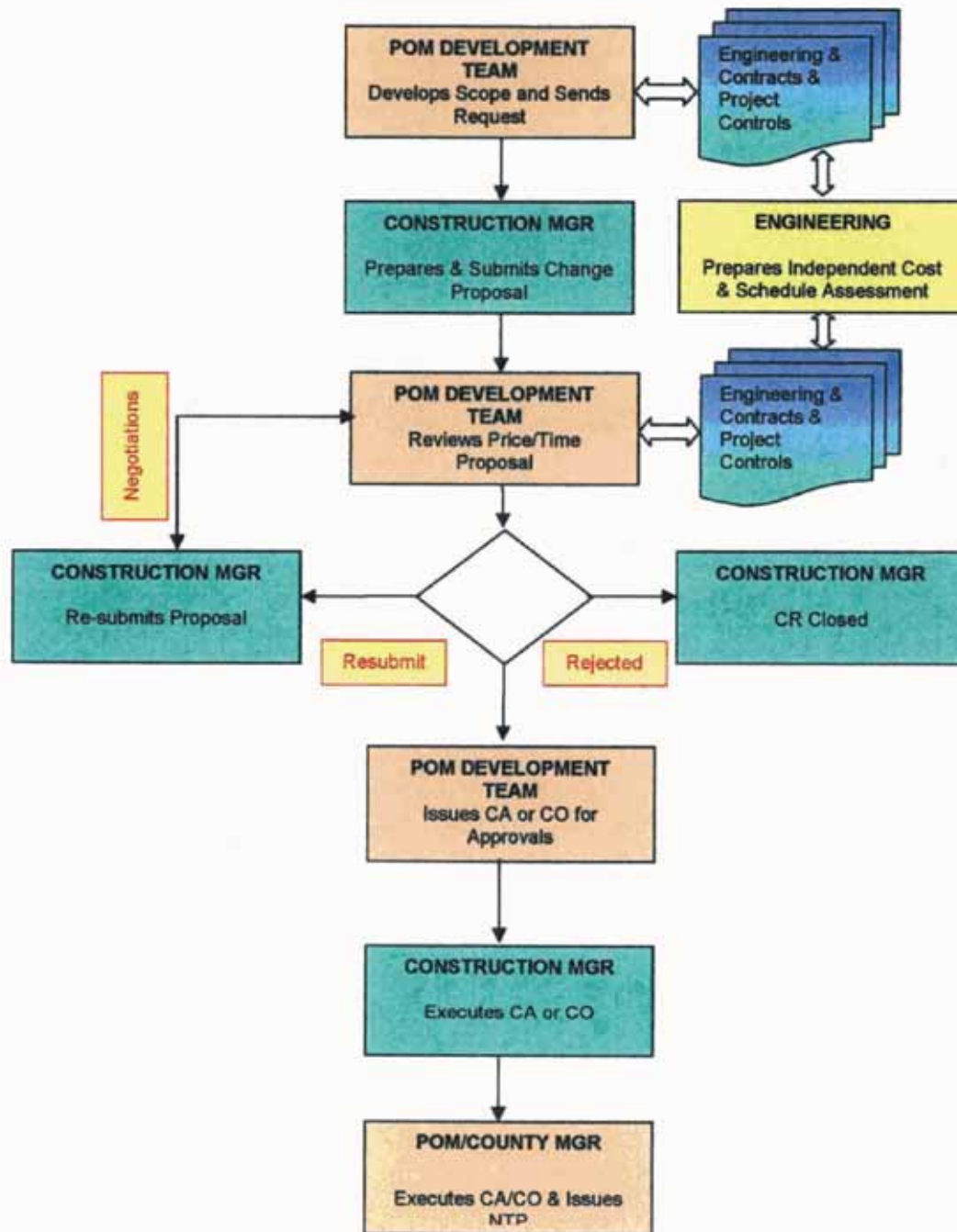


Figure 1 (a)

CLAIM PROCESS – PORT OF MIAMI

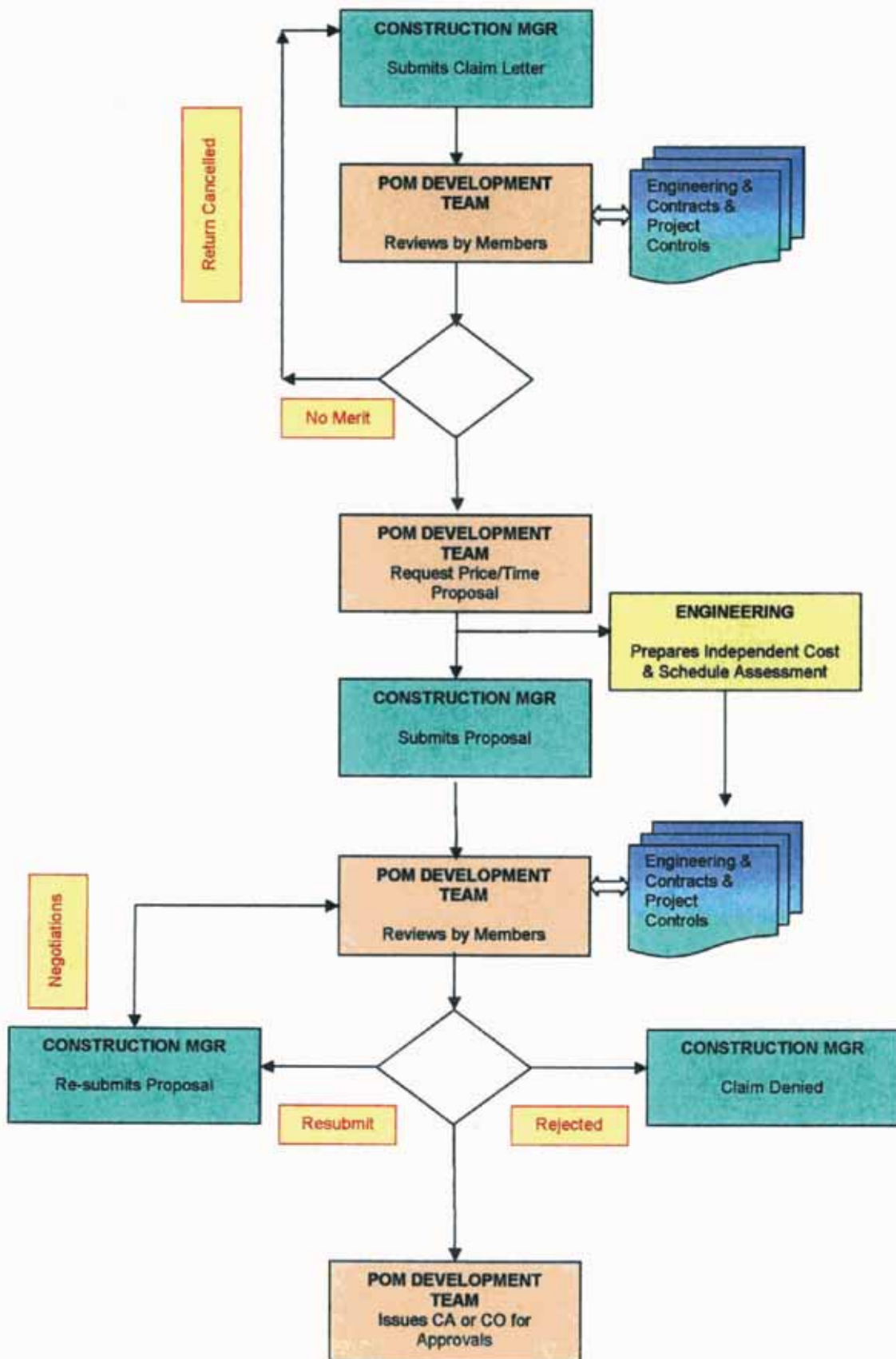


Figure 1 (b)

**CHANGE REQUEST PROCESS – PORT OF MIAMI
WITH A CHANGE REVIEW COMMITTEE**

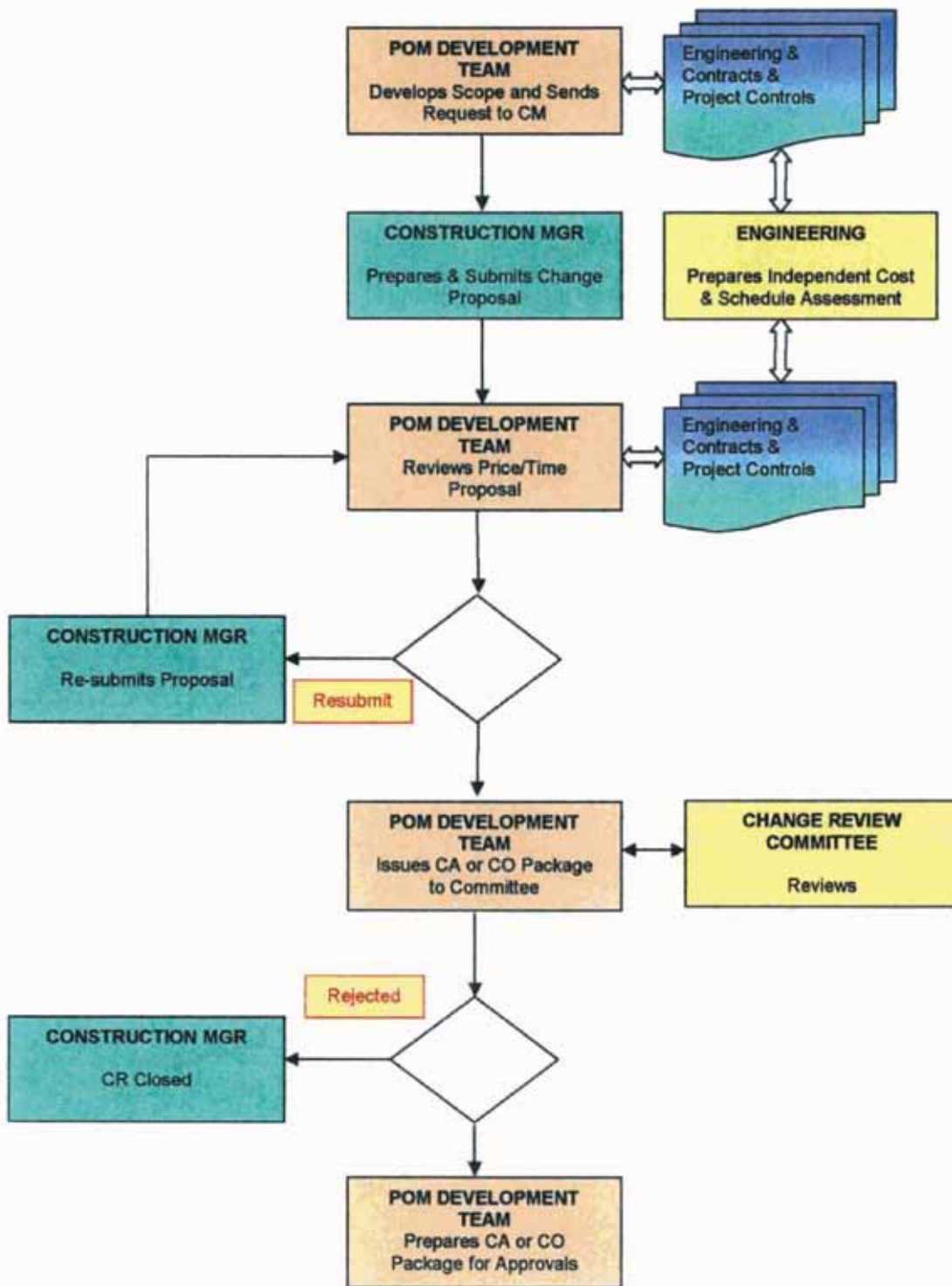


Figure 2

Carlos B. 152679
GB (red)

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Office of the Inspector General
Miami-Dade County

Memorandum

RECEIVED
2006 MAR 27 P 3:07
COUNTY MANAGER'S OFFICE

To: Charles A. Towsley, Director
Miami-Dade Seaport Department

From: Christopher Mazzella, Inspector General

CC: George M. Burgess, County Manager
Carlos Bonzon, Assistant County Manager

Date: March 27, 2006

Re: OIG Oversight of the Seaport of Miami Capital Improvement Program IG05-80

OVERVIEW

This memo will update you on two general subjects that have surfaced during the Office of the Inspector General's (OIG) continuing oversight of the Seaport Department's Capital Improvement Program (CIP).

The first of these subjects relates to the change review committee established last November by the Deputy Seaport Director to assure that changes going forward from the Development Team for your approval were adequately explained and that the change packages had gone through the thorough review as required by the respective construction contract.

The other subject involves the Professional Services Agreement (PSA) between the Seaport and Parsons, Brinckerhoff, Quade & Douglas, Inc. (PB). This agreement allows for individual work orders to be issued for specific scopes of work to include performing design services for the Cargo Yard Improvement Project (E01-SEA-02). We have identified three specific issues relating to the fee multiplier, possible backcharges and potential or perceived conflicts of interest. We have made recommendations relative to each of these three issues, and we request that the Seaport provide us with a follow-up responding to each of our concerns. Our recommendations, which are underlined, can be found at the end of the three subsections. We would appreciate a response by April 7, 2006.

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CHANGE REVIEW COMMITTEE

The Change Review Committee (CR Committee) has been providing a valuable service in the change review/approval process for all three construction management contracts. The CR Committee's independent reviews of the changes and the completeness and reasonableness of the change packages that are prepared by the Development Team have resulted in additional scrutiny by all Team members and more traceability to the original scopes and budgets. However, during the Committee's weekly meeting held on 3/16/06 there was a refusal by certain committee members to initial-off on several change packages even though they agreed that these packages should move forward for Seaport management approval. They had no issues with the changes as presented, but because the Committee members lacked knowledge of prior history concerning the original scope, they were uncomfortable with initialing the review recommendation form. It was pointed out by OIG oversight staff that the disclaimer printed at the bottom of the form basically restricted the scope of signing their initials to only the acknowledgement of the contents of the change packages as submitted, and thus would relieve them of any burden to have knowledge of contract history not specifically described in the change package materials. Without the form initialed there could be a further delay in the processing of the changes, which the construction managers/contractors may exploit.

To expedite the process without shortchanging this important review, OIG oversight staff suggested to the CR Committee and the Development Team that the Committee should participate earlier in the process as a parallel activity to the Seaport's Project Managers' review after the accuracy of the pricing and quantities in the CMs' Change Order Request are checked by the Development Team staff. This change would also eliminate the possible perception by the CMs that the CR Committee could undermine the Development Team's authority to review, negotiate and recommend disposition of CM CORs.

Both the Development Team and CR Committee have agreed to this process and have already implemented instructions to be used in the future. OIG personnel will continue to monitor the change review process and evaluate the effectiveness and efficiency of this process modification.

PB PROFESSIONAL SERVICES AGREEMENT

a) Direct Salary Multipliers

Work Order No. 05R1-PB-01 increased Work Order No. 05-PB-01 by \$222,000 and extended the performance period from February 27, 2005. The new total for the revised work order is \$434,520 and is currently set to expire in approximately one month due to actual charges reaching the new maximum work order amount. Correspondence from the

Seaport Contracts Administration Division notes that as of March 20, 2006, a cumulative total of \$408,049.40 has been expended. The scope of the work order covers the professional services of a PB Sr. Project Manager "on-loan" to the Seaport Department as an extension of staff and is working with the Development Team.

Recently, while reviewing a new extension request from PB for an additional year and \$239,500 in additional funding to provide the services of the aforementioned Sr. Project Manager, Contracts Administration noted that the incorrect multiplier used to calculate PB's fee was being applied. Simultaneously, OIG personnel were also reviewing the PB contract and several of the past approved pay applications from the consultant. We both questioned the Direct Salary Cost Multiplier being applied to calculate PB's fee entitlement.

The PSA specifically lays out three tiers of "Fees as a Multiple of Direct Salary Cost and Fixed Hourly Rate." The three levels are: "2.8 for office personnel, 2.3 for field personnel, and 1.75 for personnel on loan (not to exceed one person) to and under the direct supervision of the County's Seaport Department." [PSA Section V(A)] It is important to note that being "on loan" means that the individual is under the direct supervision of the Seaport (or in this case through its Program Management consultant, a.k.a. the Development Team) and that Seaport provides for all the office facilities and equipment necessary to support the personnel as its own.

The OIG personnel were advised that this issue had been previously raised among Seaport personnel when the pay applications for this Sr. Project Manager's services were first being submitted at the 2.3 multiplier rate applicable to "field personnel." We were advised that the County Attorney's Office was also consulted at that time and held the opinion that the lower 1.75 multiplier should be applied, as the individual was deemed to be "on loan" to the Seaport Department. However, based upon a conflicting interpretation held by the former Seaport Engineer, no challenges were made to the application of the higher multiplier until recently when the new request for extension of the work order was submitted. More recently, the County Attorney's Office reaffirmed its legal interpretation that: "[t]he correct multiplier is 1.75 for staff on loan not to exceed one person at any given time."

A meeting was held on March 17, 2006 for PB to express its position for using the higher of the two multipliers. After discussions and an opinion by teleconference with an Assistant County Attorney during the meeting, it was concluded that the Sr. Project Manager is "on loan" and as such any extension to this work order would only be approved for a multiplier of 1.75 on direct salary costs according to the terms of the PSA. The other option presented by the County Attorney's Office during the meeting was for PB to submit additional justification for higher multipliers for the Seaport's approval and, if approved, to start the process to amend the contract and have the amended contract ratified by the BCC. PB has countered with three alternative proposals as it relates to the prospective continuation of this particular Sr. Project Manager's services.

While the OIG believes that the current administrative services and supervisory arrangements make it abundantly clear that this PB employee is "on loan" to the Seaport, we do not understand why the Seaport Department is not pursuing recovery of a cumulative \$100,000 overpayment based on the application of the incorrect higher multiplier.

PB maintains that the 2.3 multiplier accorded to "field personnel" is the correct multiplier. However, this interpretation would necessarily imply that the field personnel is directed and supervised by PB itself, as only "on loan" personnel "is under the direct supervision of the Seaport. In other words, "field personnel" are PB's field personnel. If such an interpretation is applied to the individual in question, it would certainly create a direct conflict of interest as this Sr. Project Manager, now ostensibly directed and supervised by PB as its own field personnel, is also the same individual charged with evaluating and making recommendations to resolve issues arising from PB's design work on the project. Clearly, this individual has been on loan to the Seaport for which the fee is established by the contract at 1.75 multiplied against direct salary costs. It is the OIG's strong recommendation for the Seaport to seek recovery of the overpaid amount.

b) Possible Design Omissions

PB designed a drainage system including its alignment under Work Order No. 1R5-PB-01 - Wharves 6 & 7 Backland Cargo Yard Improvements. The system is comprised of 24" and 36" concrete pipe and well/catch basin structures. During the construction of this system, the Construction Manager (CM), Centex, encountered buried debris/objects and an abandoned, three-foot thick, concrete seawall/bulkhead with steel sheet piling running north-south that formerly was used for a slip. Centex issued a Request For Information (RFI) to request how to proceed. PB reviewed the RFI together with the Development Team and it was decided it would be necessary to breach the buried seawall. A new 60 foot line and "T" connection running parallel to the seawall on its east side was also needed to avoid breaching the wall twice as depicted in the original alignment. Centex has submitted two change requests (Nos. 38 & 39) totaling \$90,550.33 to cover this extra work. The Seaport and the Development Team have approved Request For Change Order (RCO) No. 39 for \$13,359.79, resulting in Change Authorization (CA) No. 19 for the installation of the pipe and "T" connection. According to the Seaport Program Manager, RCO No. 38 is still awaiting the approval for funding which is expected to become available due to scope reductions and savings on the projects.

The PSA between the Seaport and PB states in Section 1 - Owner Obligations "the Seaport Department... shall furnish to the ENGINEER any plans and other data available in the COUNTY files pertaining to the work to be performed under this Agreement." Contracts Administration staff contends that the drawings showing this abandoned seawall were sent to PB to alert them to this existing condition. PB asserts never receiving such drawings.

The PSA goes on to state in the same section: "Information shown on such plans or data shall be that which has been made available to the COUNTY, and shall be provided to the ENGINEER without guarantee regarding its reliability and accuracy. The ENGINEER shall be responsible for independently verifying such information if it shall be used by the ENGINEER to accomplish the work." It seems reasonable therefore that PB should have verified site conditions in some manner and discovered the seawall before selecting an alignment and design of the drainage system; and not to have done so may constitute a design omission. If after proper consideration during the design it had been found that this alignment was unavoidable, the work could have been included in the baseline scope of work, eliminating the need for extra work and delay to the construction contract. The County should consider a backcharge to PB to recover these additional construction costs.

c) Conflict of Interest

This item also highlights another issue uncovered by OIG oversight staff. The Sr. Project Manager overseeing and responsible for recommending approval of extra work and pay applications for Centex's Bid Item #3a - Phase 1 Container Yard Development (Wharves 6 & 7) is employed by PB. This individual is "on loan" to the Seaport and consequently under the direct supervision of the Seaport's Program Manager Consultant--The Development Team. (See above discussion regarding applicability of the 1.75 multiplier.) However, we question the judgment of the Program Manager to assign the "on loan" PB employee to the same projects that were designed by PB. To re-emphasize what we stated above, a PB employee, albeit on loan and under the supervision of the Seaport, is charged with evaluating and making recommendations to resolve issues arising from his employer's (PB's) design work on the project. If nothing else, this is a perceived conflict of interest that could have easily been avoided through re-assignment.

Moreover, there is certainly cause for concern over a potential conflict of interest this individual faces between carrying out the duties of his position within the Seaport Development Team and his loyalty to his employer. This is not to say that the OIG believes or has found instances where this Sr. Project Manager's actions regarding the yard development work were compromised by the fact he is employed by the design consultant. However, as noted in subsection (b) above, Centex has submitted two change requests (Nos. 38 & 39) totaling \$90,550.33 to cover extra work required because of the possible design omissions. Moreover, Centex has also requested additional contract time and associated general conditions and other costs relative to these design issues. On the other hand, we have not seen any evidence of officially putting the designer, PB, on notice that the Seaport may consider pursuing backcharges. We believe that these reviews, evaluations and recommendations would necessarily be made by the Sr. Project Manager assigned to the project. And while we recognize that an individual of a senior project manager level may not be the person who ultimately approves or authorizes a specific action that individual's review is meant to be relied upon by even more senior levels above him.

The OIG recommends that the Seaport refer all CORs, which are based in whole or in part on possible design errors or omissions to an independent consultant coordinated with the assistance of the County Attorney's Office. The direction should be to independently assess the applicability of backcharges. The OIG also recommends that each assessment or justification must be presented to the Seaport in writing.