

August 2, 2010

Ventura County Grand Jury
800 S. Victoria Avenue L#3751
Ventura, CA 93009

Subject: Grand Jury Report *Ventura Port District Contracting Procedures*

The Ventura Port District Board of Port Commissioners ("the Board") in collaboration with Port District staff ("staff") has reviewed the June 8, 2010 Grand Jury Report entitled, *Ventura Port District Contracting Procedures*. An Ad Hoc Subcommittee of two commissioners, Chairman Keith Turner and Vice-Chair Nicholas Deitch, met with the General Manager and key staff members on July 13, 2010, to discuss the findings, conclusions, and recommendations of the Grand Jury's investigation of alleged improper contracting procedures in the District.

The Grand Jury's report was very thorough in its review of the project files and procurement documents evaluated. Many of the findings and recommendations will be helpful in considering changes to the District's administrative policy entitled, *Contract Administration, Competitive Bidding Procedures, Purchasing and Procurement and Professional Service Agreement*. This administrative policy reflects the same requirements in which contracts must be let by competitive bidding where the amounts of the contract exceed the following thresholds:

- 1) \$10,000 for new construction work;
- 2) \$25,000 for acquisition of supplies and equipment; and
- 3) \$10,000 for maintenance of buildings and improvements.

These thresholds are always a factor when the Board considers available resources, planning objectives and implementation strategies. As a small public agency, the Board must use its financial resources wisely and ensure that District staff adheres to the California Public Contracting Code ("PCC") and allow contractors through the public bidding process an opportunity to offer services at a competitive rate.



In some situations, the District utilizes its own work force to perform certain functions that may include, for example, electrical and plumbing services within the Harbor. Provided staff stays within the parameters of the Board's Administrative Policies (as outlined above) and the PCC, the Board supports utilizing the skill set of its employees. This can be a challenge as the Grand Jury's report disclosed; the projects which they reviewed may not have met the requirements.

The current thresholds established by the PCC have not been increased since 1984 and are unrealistically low. Any change in the Public Contracts Code Section 20751 requires legislative action. In June 2004, the Board directed the General Manager to communicate this issue to Assemblyman Nava and Senator McClintock (see Attachment #1). Staff also collaborated with Santa Cruz Harbor and the Port of Stockton to gain their support in securing an amendment to Section 20751 of the PCC. These other Ports and Harbors expressed an interest to advocate for this kind of change. Unfortunately, economic pressures changed the focus of our representatives in Sacramento and we were not successful in implementing any changes.

We are committed to pursue an amendment to Section 20751 when economic factors improve and state government can focus on other important issues.

The Ad Hoc Subcommittee Members agreed with many of the findings in the Report. There are some findings on which the Board did not agree with the Grand Jury. Additionally, there is one conclusion reached by the Grand Jury that deserves explanation. The Report indicated that District staff failed to consistently follow the PCC and District policy. District staff reported to the Ad Hoc Subcommittee that mistakes were made with the improvement projects reviewed by the Grand Jury. Further, collectively those errors may give the appearance of being performed in a planned manner to avoid the District's policy and PCC requirements; however, the General Manager believes staff acted honestly and in good faith in the implementation of those improvement projects believing that the phasing or segmenting of the projects was proper.

The General Manager reminded the Ad Hoc Subcommittee that the District has made some organizational changes with its management team which should improve the District's contracting procedures in the future.

On February 25, 2009, the Board accepted the recommendations of a Human Resource Consultant to restructure a portion of the District's management team. This organizational change has minimized overlaps in responsibilities, consolidated efforts and clarified who is in charge of projects and providing direction to the maintenance staff. There were multiple recommendations on the proposed restructuring of the organization; however, the main element was combining the essential duties of the property manager and the facilities

manager into one position. This decision allowed the District to recruit and find an individual who has the experience and skill set to perform those duties (see Attachment # 2).

Port District Response

The Grand Jury's Report has allowed the Board to re-examine the following projects:

- A) Refurbish Restrooms at 1559 Spinnaker Drive;
- B) Village Dock Improvements, "C" dock and portions of "G" and "H" docks;
- C) Ventura Harbor Village Exterior Repainting.

Below is the District's response to the findings described in the Grand Jury's Report.

The Board agrees with the Grand Jury's findings F-01 through F-15, which generally describe the Board's administrative policy that relates to contracting procedures and the PCC.

Project: Refurbish Restrooms at 1559 Spinnaker Drive

The Board approved \$40,000 in the 2006-07 Fiscal Year budget to refurbish the public restrooms located at 1559 Spinnaker Drive. The District staff attempted to refurbish this restroom facility (Men's/Women's Restrooms) within the parameters of the Board's policy but was not successful. The Grand Jury made six (6) findings related to this category; the Board concurs with Findings F-16 through through F-21. The Ad Hoc Subcommittee Members counseled the District staff on alternatives to in-house projects and reminded them of the PCC requirements and the need for strict adherence to the Board's policy.

Project:

Village Dock Improvements - "C" Dock and portions of "G" and "H" Docks

The Grand Jury made six (6) findings related to this project. The Board concurs with Findings F-22 through F-27. As concluded by the Grand Jury on this project, no single procurement action for the Dock Improvement Project exceeded the General Manager's authority to approve a contract or purchase; however, District staff did not obtain two proposals for contracts under \$10,000 or three proposals (where feasible) for purchases under \$25,000 as required by Board policy.

In the meeting with the Ad Hoc Subcommittee, staff explained that the work performed on "C", "G" and "H" Docks was divided into parts to accommodate the tenants leasing slips in the marina. Work was done in phases and performed over a seven (7) month period to enable the Marina Manager to temporarily relocate tenants from one dock to another. The primary objective with the project was to replace 25 year-old deck boards.

The Ad Hoc Subcommittee advised staff to improve its performance in obtaining the required proposals as outlined in the District's administrative policy.

Project: Ventura Harbor Village Exterior Repainting

The Grand Jury made eight (8) findings related to this project. The Board concurs with findings F-29, F-31, F-33 and F-35.

The Board disagrees with findings F-28, F-30, F-32 and F-34.

Explanations

F-28: For clarification purposes, staff indicated to the Ad Hoc Subcommittee that a proposal was obtained in May 2007 from a local architectural firm to provide professional services in conjunction with Harbor Village renovations. At that time staff could not narrow the scope of services to a particular project. As a result, the architectural firm supplied a rate sheet outlining its hourly rates for various professional services. Staff never submitted the architectural firm's May 2007 "time and material" proposal to the Board, and that is why the Grand Jury could not find a professional service agreement approved by the Board for this improvement project.

F-30: The scope of the Village Repainting contract did not include replacement of signs, awnings and lighting. Unfortunately, there were one or two billings associated with signs or awnings in the file reviewed by the Grand Jury; however, those were not part of the repainting project with Astro Painting Company. For this reason, the Board does not concur with this finding.

F-32: The Board concurs in part with this finding. The payment of \$178,760 is correct. The General Manager has the authority to approve and execute on behalf of the District any change order to a contract approved by the Board with a value of \$10,000 or less. In this situation, the General Manager approved an expenditure of \$2,200.

The General Manager believed he was operating within the parameters of the Board's policy. In the future, the administrative policy will be expanded to describe the procedure required in these situations.

F-34: Although the contract with Astro Painting did include the cost of material and labor, during the course of the repainting contract, District staff, in collaboration with Perennial Designs, considered other paint color combinations for the complex and tested various colors for consideration by the Board's Harbor Village Ad Hoc Subcommittee. Consequently, District staff purchased additional paint in the total amount of \$2,500 for testing various colors for consideration by Perennial Designs. The paint was applied by District staff; Astro Painting was not involved in the testing.

Other Findings

In this category, the Grand Jury made seven (7) findings. The Board concurs with F-36, and F-38 through F-42.

The Board concurs in part with F-37.

Explanation

F-37: Notwithstanding the requirements of the PCC and the Board's policy, the Grand Jury may not have found evidence or analysis provided by the District to show that the District was saving substantial sums of money by performing various tasks with its own work force; however, the Board is confident with the experience of its management team and field supervisors. In many cases these seasoned employees have been performing maintenance functions for 15 to 20 years. The Board concurs that it is prudent to provide analysis to support staff's assumption that the District is saving money by utilizing its own work force and will implement this process immediately.

Board Conclusions

The Board was disappointed to learn of the findings that were contrary to the District's policy and the PCC. In the meeting with the Board's Ad Hoc Subcommittee and District staff, staff also expressed disappointment in the planning and management of the Restroom Refurbishment and Dock Improvements projects. The General Manager believes that it was clearly the intention of the Facilities Manager to stay below the financial thresholds required by the Board's policy and the PCC. Regretfully, this was not accomplished with those projects.

As previously stated, there have been some organizational changes that the Board feels confident will improve the Port District's contracting procedures. The Ad Hoc Subcommittee suggested that the Property Manager work closely with the General Manager and that project expenditures be reviewed more carefully during the planning and implementation of each project. Another suggestion was to consider a policy that would allow the prequalification of contractors. This could offer staff more options to satisfy the competitive bidding requirements. The Ad Hoc Subcommittee advised staff to follow the Board's policy to obtain two proposals for contracts under \$10,000 and three proposals whenever possible for purchases between \$10,000 and \$25,000, provided the purchases are included in the District's budget. Additionally, the Ad Hoc Subcommittee asked the General Manager to work with the Property Manager to evaluate the need for monetary limits and identify which supervisors should have authority to sign contracts.

Grand Jury Recommendations

R-01: The District should significantly revise its administrative procedures for contracting and purchasing to provide adequate detail on the various types of procurement actions and limitations, clear documentation on the authority being used in procurement actions, checks and balances of procurement functions and adequate oversight of staff.

Response: The Board will review its administrative procedures as recommended by the Grand Jury and implement any necessary changes. Following Board review of any modifications, such changes can be incorporated into the Board's policy before the end of the calendar year.

R-2: The District should require ongoing training of staff regarding the basic requirements of the PCC, as well as on the recommended revised District administrative policies.

Response: The Board agrees with the Grand Jury's recommendation and will develop a training plan and implement it immediately.

R-3: The Board should require an annual audit of major project expenditures to ensure compliance with the Board and PCC requirements.

Response: The Board does not agree with the requirement of an annual audit of major expenditures. Instead, major projects should be carefully reviewed by the General Manager on an on-going basis and a report should be issued to the Board to ensure that major expenditures are in compliance with Board policy and PCC requirements. This will be implemented immediately.

R-4: The Board should cause a review of all major projects completed over the last several years to evaluate the scope of apparent contracting irregularities noted in this review of three projects.

Response: The Board will review with the General Manager all major projects from 2008 to the present to ensure compliance with Board policy and PCC requirements. The General Manager and the Ad Hoc Subcommittee will report any irregularities to the Board on or before October 27, 2010.

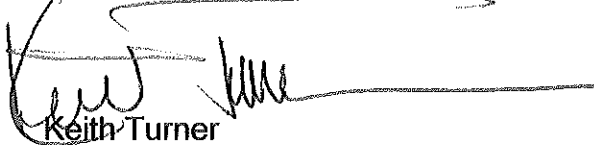
R-5: The District Board should review the provisions of the Agreement regarding the District's Project Manager to ensure it meets the requirements of an independent contractor and the criteria specified by IRS Publication 15-A of January 2006.

Response: The Board does not agree with conclusion #17 of the Grand Jury which states the agreement with the District's Dredging Program Manager

appears to be defective. The General Manager did instruct the District's Legal Counsel to review the Dredging Program Manager's contract to ensure its compliance with legal requirements for independent contractor status. It was determined that no modifications are necessary.

If the Grand Jury has any questions or comments regarding the Port District's response, please contact the Clerk of the Board, Pamela "P.J." Casey at (805) 642-8538, extension 310.

Yours truly,

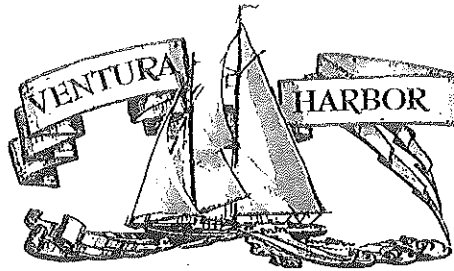
A handwritten signature in black ink, appearing to read "Keith Turner", is written over a horizontal line. The signature is stylized and somewhat cursive.

Keith Turner
Chairman, Board of Port Commissioners
Ventura Port District

KT:pjc

Attachments: #1 Letter to Pedro Nava and Tom McClintock dated 6/13/2008
#2 Agenda Item 6, 2/25/2009 Board Meeting

c: Honorable Kevin J. McGee, Presiding Judge
Superior Court of California, Ventura County
P. O. Box 6489
Ventura, CA 93006



June 13, 2008

The Honorable Pedro Nava
Member, California State Assembly
P. O. Box 942849
Sacramento, CA 94249-0035

The Honorable Tom McClintock
Member, California State Senate
State Capitol, Room 3070
Sacramento, CA 95814

Subject: Public Contracts Code Section 20751

I am writing on behalf of the Board of Port Commissioners of the Ventura Port District to request your assistance in securing an amendment to Section 20751 of the California Public Contracts Code that would raise the expenditure thresholds above which the Port District must secure competitive bids for work or equipment. The existing limits as set forth in Section 20751 are as follows:

- More than \$10,000 for new construction work;
- More than \$25,000 for acquisition of supplies and equipment;
- More than \$10,000 for maintenance of buildings and improvements.

Those limits were established 24 years ago in 1984 (at that time the limits were in the Harbors and Navigation Code Section 6272) and are now rather impractical. It can cost several thousand dollars just to have an architect or engineer prepare bid documents. To incur that kind of cost and the 45 to 60 days that the entire bidding process requires just to paint a building borders on the ridiculous.

Inflationary pressures over the past 24 years have more than doubled the cost of living and as a consequence it is time to increase the expenditure thresholds set forth in Section 20751. Thus, the Ventura Port District respectfully requests your support in securing an amendment to Section 20751 of the Public Contracts Code providing that competitive bidding is required only for work, maintenance or purchases exceeding \$50,000.

Your assistance in this matter would be greatly appreciated.

A handwritten signature in black ink, appearing to read 'Oscar F. Peña', written in a cursive style.

Oscar F. Peña
General Manager

pc: Ventura Port District Board of Port Commissioners
California Special Districts Association
Jesús Torres, Field Representative, Assemblymember Nava



VENTURA PORT DISTRICT
BOARD COMMUNICATION

Item 6
Meeting Date: February 25, 2009

TO: Board of Port Commissioners
FROM: G. Scott Miller, Harbormaster
SUBJECT: Gerald McGuire Report: "Evaluation of Organizational Framework"

Recommended Action

It is recommended that the Board of Port Commissioners approve by motion to:

- Accept the Gerald McGuire report "Ventura Port District – Evaluation of Organizational Framework";
- Direct the General Manager to immediately proceed with implementation of all aspects of "Option #2" as outlined in Mr. McGuire's report;
- Direct the General Manager to work with the District's legal counsel to establish an exit strategy for the District's Facilities Manager that could include a severance package including outplacement assistance, or consider other alternatives.

Summary

At the December 11, 2008 Board of Port Commissioners Meeting, the Board authorized Staff to enter into a professional service agreement with Gerald McGuire to evaluate the Organizational Framework as it relates to the position of Property Manager and some related Classifications. He has completed all three phases of his evaluation and has submitted his final report.

Phase 1: In this phase, the consultant reviewed the job classifications and essential duties of the following positions:

- Property Manager
- Facilities Manager
- Marketing Manager
- Administrative Assistant/Clerk
- Marina Manager

Mr. McGuire interviewed each of these employees to determine how each position interacted with the Property Manager position. Following this exercise, the consultant was able to consider reassigning Essential Functions to other Classifications.

Phase II: The consultant presented the General Manager and the Harbormaster with his preliminary findings and ideas. At this phase, Mr. McGuire was directed to move forward with his concept to consider possible organizational changes.

Phase III: In early January, Mr. McGuire was able to present to the General Manager and the Harbormaster a draft of new class specifications for the Property Manager position and other positions. He also presented a proposed Organizational Chart showing the revised organization based on Option #2.

On February 19, 2009, he presented his final draft report to the Harbormaster.

Discussion

With the Property Manager position currently vacant, the District has the opportunity to evaluate the duties and responsibilities of the position, expand the duties to include property management throughout the entire Harbor, and then recruit to find an individual who has the experience and skill set to perform those duties.

At the conclusion of his evaluation, Mr. McGuire provided the District with two options:

Option #1: Maintain the existing framework

Option #2:

- Increase the duties of the Property Manager to include Risk Management and Leasehold inspection;
- Expand the functions of the Marketing Manager to include recruiting new lease tenants;
- Change the Part-time Marketing Assistant position to full-time status;
- Eliminate the position of Facilities Manager.

Eliminating the position of the Facilities Manager would minimize overlaps in responsibilities, consolidate efforts, and clarify who is in charge of projects and Maintenance Staff. It would also result in an overall savings to the District.

The General Manager and Harbormaster have met with the Facilities Manager to advise him of the recommended action. There has been some preliminary discussion regarding possible exit strategies if Option #2 is approved by the Board.

Fiscal Impact

The District could reduce its personnel expenses by approximately \$78,000 annually by implementing Option #2.

The District does not have a policy on severance pay; therefore, the cost of implementing any exit strategy could vary.

Alternatives

The Board could approve all three of the recommended actions, approve only a portion of the recommended actions, direct the staff to make no changes to the organizational framework, or consider other alternatives.