

Ventura County Grand Jury 2009 - 2010



Final Report

Ventura Port District Contracting Procedures

June 11, 2010

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Ventura Port District Contracting Procedures

Summary

The 2009-2010 Ventura County Grand Jury (Grand Jury) chose to investigate alleged improper contracting procedures at the Ventura Port District (District). The Grand Jury found contracting procedures which did not conform to either the District's own administrative policy for contracting or the California Public Contracting Code (PCC). In addition, there were procedures being used which, while not improper, were not standard business practices.

The Grand Jury recommends that the District adhere to the PCC with respect to not incrementing or splitting work to avoid contracting authority limitations. The Grand Jury also recommends the District provide adequate detailed written procedural information to ensure compliance with the PCC as well as with existing District policy. In addition, it is recommended that periodic training of staff in contract administration be conducted to avoid future problems.

Background

The Grand Jury became aware of multiple alleged improper contracting procedures through the public complaint system in place for the Grand Jury. The Grand Jury opened an investigation based upon the information in the complaint.

The District operates a commercial and recreational boat harbor within the City of Ventura (City), organized as an Independent Special District under California state law. The District is the owner/operator of the harbor, consisting of 122 acres of water area and 152 acres of land, deriving the bulk of its revenue from leases of marinas, buildings, and facilities at the harbor. The District is governed by a Board of Port Commissioners (Board) appointed by the mayor and City council. The Board selects and appoints the General Manager who is responsible for the day-to-day operations of the District.

Methodology

The Grand Jury requested information from the District regarding the District's policies and procedures for contracting, the level of authority delegated to District staff to contract for services and materials, and a listing of projects completed between January 2007 and September 2009. The Grand Jury visited the District offices to review completed project files and other procurement documents. In the course of these visits, Grand Jury members spoke with the District General Manager, the Harbor Master, and several administrative assistants. The Grand Jury reviewed project files associated with contracts as well as other files on procurement actions taken by the District. After a brief examination of all the files provided by the District, three files were picked at random for further review.

The Grand Jury investigation did not include an exhaustive search of all files associated with recent contract or other procurement actions. It also did not include a review of hours expended by District employees to see if there was any District labor used to execute the project work reviewed beyond that associated with the administration of contracts and other purchasing actions.

Findings

- F-01.** The District's Board on November 16, 2005 adopted an administrative policy titled, *Contract Administration, Competitive Bidding Procedures, Purchasing & Procurement, and Professional Service Agreement (Policy)*. (Att-01)
- F-02.** For some of the District's job titles, the Policy includes the approval levels for purchasing and contracting for these positions. (Att-01)
- F-03.** The entire Policy is a three-page attachment to a District Administrative policy. (Att-01)
- F-04.** The District is a California Port District and, as such, receives its contracting authority under the PCC §20750-20753. [Ref-01]
- F-05.** During the period January 2007 through September 2009, there were 15 major projects which were accepted and awarded by the District's General Manager or by the Board's Chair on behalf of the District. These projects ranged in size from \$20,300 to \$1,020,700 for a total value of \$3,257,500.
- F-06.** The Board Policy specifies that contracts must be let by competitive bidding where the amount of the contract exceeds the following thresholds: (a) \$10,000 for new construction work; (b) \$25,000 for acquisition of supplies and equipment; or (c) \$10,000 for maintenance of buildings and improvements. (Att-01)
- F-07.** PCC §20751 is the authority upon which the Board Policy of F-06 above is formulated. [Ref-01]
- F-08.** The Board Policy allows the General Manager to approve and execute any change order not exceeding \$10,000 to a contract previously approved by the Board. (Att-01)
- F-09.** The General Manager shall obtain authorization from the Board before executing change orders in excess of \$10,000. (Att-01)
- F-10.** The Board Policy gives the General Manager authority in the area of contract administration. The General Manager may approve and execute any contract with a value of less than \$10,000 without competitive bidding, provided at least two proposals are obtained. (Att-01)
- F-11.** The Board Policy also allows the General Manager to approve proposed purchases of services, supplies, materials, or equipment in the amount of \$25,000 or less, provided that the purchases are included in the District's budget. The General Manager shall obtain at least three written proposals from different vendors whenever possible. The

General Manager may also make purchases in the normal course of business not to exceed \$5,000. (Att-01)

- F-12.** The Board Policy allows the General Manager to approve Professional Service Agreements (architectural, engineering, project management, and inspection) for \$25,000 or less, provided that the services have been included in the District's budget. (Att-01)
- F-13.** Certain authority to sign purchase requisitions and contracts has been delegated verbally to District Department heads and others for amounts less than the District General Manager's authority. There is no requirement in the Board Policy that contract authority delegated by the General Manager be in writing.
- F-14.** Numerous procurement documents were reviewed for the three projects noted in this report. These documents contained signatures and/or initials of persons unknown to the reviewers, unless a typed signature block was utilized.
- F-15.** The Board Policy has a strict prohibition against making expenditures, or executing contracts, or structuring transactions in a serial or cumulative manner (incrementation) to avoid the requirement of approval by the Board. (Att-01)

Project: Refurbish Restrooms at 1559 Spinnaker Drive

- F-16.** The District undertook work referred to in the District files as Refurbish Restrooms at 1559 Spinnaker Drive (Refurbish Restrooms) during the period February 2007 through June 2007.
- F-17.** The Board approved \$40,000 in the Fiscal Year (FY) 06-07 budget to accomplish the Refurbish Restrooms work. [Ref-02]
- F-18.** The final cost of the Refurbish Restrooms work was approximately \$59,000, which was roughly broken out as \$27,000 in materials and \$32,000 in labor.
- F-19.** Although it was a facilities maintenance or construction project, no record was found to show this Refurbish Restrooms work was competitively bid as a contract as required by the Board Policy.
- F-20.** The Refurbish Restrooms work was completed using more than 90 individual procurement documents with 18 different vendors/contractors. One vendor who provided strictly labor was issued 32 separate procurement documents (ranging from \$300-500) on almost a daily basis for a total of \$14,000. One material supplier had 22 separate procurement documents for approximately \$8,400.
- F-21.** It is unknown if the Refurbish Restrooms procurement action, as noted above, were considered to be purchases or contracts by the District. However, in neither case does this meet the letter or intent of Board policy with respect to incrementation of work as noted in Board Policy of F-15, above.

Project: Village Dock Improvements “C” dock and portions of “G” and “H” docks

- F-22. The District had repairs and improvements made to various docks during the period September 2007 through June 2008. This work was generally referred to in the District files provided as “Village Dock Improvements ‘C’ dock and portions of ‘G’ and ‘H’ docks”. In addition, there was also work performed on “D” dock. This total work is referred to as “Dock Improvements” (Dock Improvements).
- F-23. The District Board approved \$100,000 in the FY 07-08 budget to make the Dock Improvements. [Ref-03]
- F-24. The final cost of the Dock Improvements work was approximately \$116,000 based on records that were provided and reviewed. The cost was broken out as roughly \$62,000 in labor, \$52,000 in materials, and \$2,000 in equipment rentals.
- F-25. Whether it is considered new construction or maintenance, the Policy threshold for competitively bidding the work is \$10,000. No record was found showing that the Dock Improvement work was competitively bid in accordance with District policy. (Att-01)
- F-26. The Dock Improvement work was completed using over 40 individual procurement documents to 20 different vendors/contractors to obtain the labor, materials, and equipment needed to perform the work. As noted in Refurbish Restrooms, it is unknown for this work whether or not the procurement actions to receive services and material were considered by the District to be contracts or purchases.
- F-27. No single procurement action exceeded either the \$10,000 contract or \$25,000 purchase authority of the General Manager for the Dock Improvement work; however, five vendors/contractors had one or more purchases/contracts that ranged in total from \$10,000 to almost \$34,000. These five vendors/contractors alone constituted approximately \$99,000 of the \$116,000 total for all the performed work. [Ref-06]

Project: Ventura Harbor Village Exterior Repainting

- F-28. In May 2007, a request for proposal was initiated by the District with a local architectural firm to provide professional services in conjunction with a planned Ventura Harbor Village Exterior Repainting (Village Repainting) contract. No record was found in subsequent Board agendas through July 2007 approving a professional services contract for the proposed professional services work. [Ref-04]
- F-29. The District put the Village Repainting contract out to bid and in the course of the bidding period issued three addenda that made changes to the bidding documents. A contract was subsequently awarded by the Board in September 2008 in the amount of \$105,000 for all bid item numbers 1 through 8 inclusive shown in the contract. The Board subsequently approved \$71,560 in change orders over the term of the contract for a total contract value of \$176,560. [Ref-05]

- F-30.** The scope of the Village Repainting contract included exterior painting, replacement of signs, awnings, and lighting and accessory items at buildings located at 1431, 1449, 1559, 1567, 1575, 1583, 1591, and 1691 Spinnaker Drive, Ventura, CA.
- F-31.** District Resolution No. 3128 was adopted by the Board on June 24, 2009 accepting the work of the Village Repainting contract. [Ref-06]
- F-32.** The District made payments to the Village Repainting contractor in the amount of \$178,760, including \$2,200 not documented by a change order.
- F-33.** The District made \$39,000 in payments for professional services between May 2007 and February 2009 to a local architectural firm for this Village Repainting project. The services included planning, pre-design, and design work as well as services provided during the execution of the contract. All services were paid by invoices under \$25,000 each.
- F-34.** The District, by separate procurement documents, bought over \$2,500 in paint for the Village Repainting project. The project contract specifications included a requirement that the contractor provide paint samples and all paint associated with the work.
- F-35.** In the month before the Village Repainting contract bid opening, the District completed a separate \$10,500 painting contract with a contractor for painting building "C" at 1567 Spinnaker Drive. Building "C" is identified on sheet A3 of the Village Repainting contract drawings and included in bid item number 4 of the contract bidding documents. None of the three addenda provided to the Grand Jury show that this building was removed from the contract scope of work prior to bid opening. Subsequently, about five months into the Village Repainting contract work, the staff recommended to the Board Change Order Number 3 (\$11,500) to the contract. This change order was to repaint building "C" because the previous color scheme was unsatisfactory. Staff indicated that during the pre-bid walk-through the building was removed from the Village Repainting contract bidding process. The Board approved the change order. [Ref-07]

Other Findings

- F-36.** The District does not contract out all facilities work, but instead have District facilities staff perform some work themselves.
- F-37.** Notwithstanding the requirements of the PCC and the Board's policy, there was no evidence or analysis provided by the District to show that the District was saving money by not following bidding or proposal requirements for the work reviewed.
- F-38.** There is nothing in writing regarding the authority and monetary limits of District staff below the General Manager to sign or approve purchases or contract documents.

- F-39.** The relationship of the District's Dredging Program Manager and that individual's other duties as the District's Project Manager (collectively, Project Manager) is documented by the District's Board agreement signed on September 28, 2005 and as amended on June 26, 2008 (Agreement).
- F-40.** The Agreement provides that the Project Manager is not an employee, partner, agent, or principal of the District, but is an independent contractor.
- F-41.** The Agreement provides that the Project Manager will serve as the District's Project Manager within the Harbor as directed by the District's General Manager.
- F-42.** The Agreement provides that the Project Manager will arrange such meetings needed to conduct the duties of the position at the offices of the District. The Agreement also provides the Project Manager with access to District files and permission to retain working copies of files, as well as providing the Project Manager with business cards, District stationery, secretarial support, and office space at the District's offices.

Conclusions

- C-01.** The District's adoption of a policy prohibiting serial or cumulative structuring of transactions to avoid monetary limits is commendable. Other jurisdictions, such as counties, have this policy explicitly articulated in PCC §20123.5 for counties. [Ref-08]
- C-02.** No single procurement action for the Refurbish Restrooms or the Dock Improvement works exceeded the General Manager's authority, that is, the \$10,000 or the \$25,000 authority to approve a contract or purchase, respectively. However, no records were found for either project to show whether the District received two proposals for contracts under \$10,000, or three proposals where feasible for purchases under \$25,000 as required by Board Policy. (F-20, F-26, F-27)
- C-03.** Two work files that were reviewed (Refurbish Restroom and Dock Improvements) contain work that falls within the guidelines for competitive bidding, based on District policy and the PCC, but were not competitively bid. (F-19, F-25)
- C-04.** The Refurbish Restroom and Dock Improvement work contained elements of work which could and should have been done at the same time to provide for efficient and economical execution of work in a competitive bidding environment. (F-20, F-21, F-26, F-27)
- C-05.** Both the Refurbish Restroom and Dock Improvement work show execution of work through individual procurement actions. (F-21, F-27)
- C-06.** The Refurbish Restroom and Dock Improvement work give the appearance of being performed in a manner to avoid the District's policy and PCC requirement to competitively bid certain types of work above a specified cost threshold. (F-20, F-26)

- C-07.** Purchase requisitions/contracts for the Refurbish Restroom and Dock Improvement work are all individually within the authority of the District General Manager or his designees to approve. It gives the appearance that these procurement actions were incremented to avoid the requirement for competitive bidding. (F-20, F-27)
- C-08.** The lack of written authority to sign contracts and purchases for individuals below the District General Manager creates the potential for misunderstanding or misuse of such authority. (F-13, F-14, F-38)
- C-09.** Based upon the review of two of the three projects in this report, it is evident that new construction work, building maintenance, and improvements are not consistently being competitively bid in accordance with the PCC and the Board's own policy. (F-19, F-25)
- C-10.** The Village Repainting contract contains several examples of lax contract administration procedures. Examples include the approval of a contract change order for work already specified in the awarded contract documentation, but for which the staff verbally deleted the work. Other examples include payments made to the contractor without an approved contract change order and the District's payment for materials which are specified for the contractor to provide in the bid. (F-29, F-32, F-34, F-35)
- C-11.** The sequential procurement documents for professional services to one consultant for Village Repainting support services, each document within the authority limit of the General Manager, but in aggregate exceeding the General Manager's authority, gives the appearance of incrementation of work to avoid authority limits. (F-28, F-33)
- C-12.** Material suppliers, contractors, and other vendors are not consistently being afforded the opportunity to bid in a competitive environment for work. It is unknown if payments for labor under the two projects not competitively bid met prevailing wage requirements as established by law. This is a basic requirement of expending public funds in execution of public work contracts. (F-20, F-26)
- C-13.** Based upon the review of three projects sequentially completed during a 2½-year period, there appears to be a persistent lack of following PCC and Board policy by the District. (F-17, F-19, F-23, F-25, F-28, F-29, F-35)
- C-14.** There appears to be a lack of adequate oversight by the Board in enforcing the PCC and the Board policy with respect to competitive bidding requirements and the prohibition against incrementation of work to avoid monetary approval limitations. (F-17, F-19, F-23, F-25, F-28, F-29, F-35)
- C-15.** The Board Policy for contracting and procurement lacks sufficient detail to guide staff on proper procedures and provides insufficient checks and balances in implementation. (F-03)
- C-16.** District staff fails to consistently follow PCC and District policy as a matter of routine practice. (F-20, F-26, F-35)

C-17. The Agreement for the District's Project Manager appears to be defective. The Agreement provides that the District's Project Manager is an independent contractor for the District. The Agreement also contains elements of services and authority normally associated with an employee of the District, which may be in conflict with the Internal Revenue Service Publication 15-A of January 2006 criteria for differentiating between independent contractors and employees. (F-39 through F-42)

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. (C-02 through C-10, C-15)
- R-02.** 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. (C-09, C-10, C-16)
- R-03.** The Board should require an annual audit of major project expenditures to ensure compliance with the Board and PCC requirements. (C-02, C-09, C-13, C-16)
- R-04.** 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. (C-08, C-09, C-11, C-12, C-14)
- R-05.** 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. (C-17)

Responses

Responses Required From:

Board of Commissioners, Ventura Port District (R-01 through R-05)

References

- Ref-01.** California Public Contract Code §20750-20753
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&group=20001-21000&file=20750-20753>
- Ref-02.** District Adopted budget of FY06-07 (CIP page 5 of 5) approved on May 10, 2006 (Agenda item number 5)
<http://www.venturaharbor.com/files/6.pdf>

- Ref-03.** District Adopted budget of FY07-08(CIP page 5 of 5) approved on May 23,2007 (Agenda item number 6)
<http://www.venturaharbor.com/files/23.pdf>
- Ref-04.** VPD staff report at Board meeting of May 23, 2007 (Agenda item Staff Reports Dredging Manager) <http://www.venturaharbor.com/files/23.pdf>
- Ref-05.** VPD Board meeting of November 19, 2008 (Agenda item number 4)
<http://www.venturaharbor.com/files/61.pdf>
- Ref-06.** VPD Board meeting of June 24, 2009 (Agenda item number 4)
<http://www.venturaharbor.com/files/84.pdf>
- Ref-07.** VPD Board meeting of February 25, 2009 (Agenda item number 8)
<http://venturaharbor.com/files/65.pdf09>
- Ref-08.** California Public Contract Code § 20123.5
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&group=20001-21000&file=20120-20145>

Attachments

- Att-01. Ventura Port District Administrative Policy “Contract Administration, Competitive Bidding Procedures, Purchasing & Procurement, and Professional Service Agreement” adopted November 16, 2005**

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Att-01

Ventura Port District Administrative Policy "Contract Administration, Competitive Bidding Procedures, Purchasing & Procurement, and Professional Service Agreement" adopted November 16, 2005

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**VENTURA PORT DISTRICT
ADMINISTRATIVE POLICY**

Policy Title: *Contract Administration, Competitive Bidding Procedures, Purchasing & Procurement, and Professional Service Agreement*

Contract Administration

The Ventura Port District routinely utilizes the services of outside contractors for a variety of operational needs. These include acquisition of equipment and supplies, materials, maintenance services, and construction or renovation of District facilities. All contracts should include the following provisions:

- (a) The term or length of contract
- (b) Description of work to be performed or services/products to be provided.
- (c) Schedule for performance.
- (d) Indemnity, insurance and bonding requirements.
- (e) Payment schedule.
- (f) Conditions for termination of contract.

The General Manager shall have the authority to approve and execute on behalf of the District any contract with a value of less than \$10,000 without competitive bidding, provided at least two proposals are obtained. The General Manager is authorized to approve those contracts that are included in the District's current budget.

Unless subject to competitive bidding requirements, all contracts are to be negotiated by the General Manager or his/her designee. All contracts should be negotiated within established budget parameters and shall comply with applicable legal requirements. Contracts not encompassed by the current fiscal year's budget, will require the approval of the Board of Port Commissioners.

Competitive Bidding Procedure

As provided in the Public Contract Code, contracts for construction work or acquisition of services or supplies, must be let by competitive bidding where the amount of the contract exceeds the following thresholds:

- (a) \$10,000 for new construction work;
- (b) \$25,000 for acquisition of supplies and equipment; and
- (c) \$10,000 for maintenance of buildings and improvements.

Pursuant to the Public Contract Code Section 20751, when a construction or repair project is contemplated, the General Manager will make a recommendation to the Board of Port Commissioners with a cost estimate and other supporting documentation appropriate for the size and scope of the proposed project.

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Upon approval by the Board of Port Commissioners, the General Manager shall cause to be prepared the appropriate plans, specifications and other descriptive information for the publication of a notice inviting sealed bids for performance for the proposed work. The notice shall be published in a newspaper of general circulation in accordance with the Public Contracts Code.

The contract documents shall be prepared utilizing the District's standard forms, with such modifications as may be appropriate for the particular work or unit of work, for the acquisition of materials or equipment. In the event of an emergency, applicable Public Contract Code provisions will be followed.

All bids shall be presented under sealed cover on forms furnished by the District, and, in the case of a bid to perform work for the District, it shall be accompanied by one of the following forms of bidder's security: (1) cash, (2) a cashier's check made payable to the District, (3) a certified check made payable to the District, or (4) bidder's bond executed by an acceptable surety insurer made payable to the District.

Sealed bids shall be opened at the time and place stated in the advertisement for bid with no less than two representatives of the District in attendance. When all bids have been evaluated, the General Manager shall make a recommendation to the Board of Port Commissioners regarding award of the contract.

If the lowest bidder is disqualified for any reason, or if the bids exceed the cost estimates previously approved, the General Manager shall evaluate the options available and make a recommendation to the Board of Port Commissioners. The Board of Port Commissioners will make the final decision regarding the award of contract. At the direction of the Board of Port Commissioners and after legal counsel review, the General Manager shall execute the contract.

The General Manager shall have the authority to approve and execute on behalf of the District any change order to a contract previously approved by the Board of Port Commissioners with a value of \$10,000 or less.

For change orders in excess of \$10,000, the General Manager shall obtain authorization from the Board of Port Commissioners before executing the change order.

Purchasing Policy

The General Manager is responsible for determining the amount and timing of the District's purchases, based on Department requests, and consistent with the District's fiscal year budget. The General Manager shall have authority to make purchases in the normal course of business in amounts not exceeding \$5,000.

The General Manager is authorized to approve proposed purchases of services, supplies, materials or equipment in the amount of (\$25,000), or less, provided the purchases are included in the District's budget. The General Manager shall obtain at least three written

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proposals from different vendors whenever possible. Prospective purchases over \$5,000 not encompassed by the current fiscal year's budget require the prior approval of the Board of Port Commissioners.

Professional Service Agreements

Architectural, engineering, project management, inspection and other such professional services may be required and shall be awarded using the District's standard Professional Services Agreement.

The Board of Port Commissioners shall approve all Professional Services Agreements over the amount of \$25,000. The General Manager is authorized to enter into a Professional Services Agreement in an amount of \$25,000 or less, provided the services have been included in the fiscal budget.

Any Professional Services Agreement not included in the District's current fiscal year's budget, requires the approval of the Board of Port Commissioners.

Emergencies

The General Manager may approve non-budgeted expenditures when the safety of the public or property reasonably requires such action or in other emergency situations as allowed by law. The General Manager shall provide a written report to the Board of Port Commissioners describing the nature of any such expenditure and its justification.

Prohibition Against Serial or Cumulative Expenditures

The authority for making expenditures or executing contracts as provided in this policy is intended to enable the General Manager and District Staff to understand the scope of this authority when contracting on behalf of the District. The structuring of transactions in a serial or cumulative manner so as to avoid the requirement of approval by the Board of Port Commissioners is strictly prohibited and will not be tolerated.

Adopted and Effective Date: Nov. 16, 2005