



# Washington State Auditor's Office

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## Accountability Audit Report

# Port of Brownsville

Kitsap County

For the period January 1, 2012 through December 31, 2014

Published November 30, 2015

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## Washington State Auditor's Office

November 30, 2015

Board of Commissioners  
Port of Brownsville  
Bremerton, Washington

### Report on Accountability

Thank you for the opportunity to work with you to promote accountability, integrity and openness in government. The State Auditor's Office takes seriously our role of providing state and local governments with assurance and accountability as the independent auditor of public accounts. In this way, we strive to help government work better, cost less, deliver higher value and earn greater public trust.

Independent audits provide essential accountability and transparency for Port operations. This information is valuable to management, the governing body and public stakeholders when assessing the government's stewardship of public resources.

The attached comprises our report on the Port's compliance and safeguarding of public resources. Our independent audit report describes the overall results and conclusions for areas we examined. We appreciate the opportunity to work with your staff and we value your cooperation during the audit.

Sincerely,

A handwritten signature in blue ink, reading "Jan M. Jutte".

JAN M. JUTTE, CPA, CGFM  
ACTING STATE AUDITOR  
OLYMPIA, WA

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## AUDIT SUMMARY

### Results in brief

In most areas we audited, Port operations complied with applicable requirements and provided adequate safeguarding of public resources. The Port also complied with state laws and regulations and its own policies and procedures in the areas we examined.

However, we identified areas in which the Port could make improvements.

We recommended the Port establish and follow policies and procedures to ensure it maintains bid documents and is in compliance with state and local bid laws.

These recommendations were included in our report as a finding.

We also noted certain matters that we communicated to Port management in a letter dated November 12, 2015, related to cash receipting. We appreciate the Port's commitment to resolving those matters.

### About the audit

This report contains the results of our independent accountability audit of the Port of Brownsville from January 1, 2012 through December 31, 2014.

Management is responsible for ensuring compliance and adequate safeguarding of public resources from fraud, loss or abuse. This includes the design, implementation and maintenance of internal controls relevant to these objectives.

Our audit involved performing procedures to obtain evidence about the Port's uses of public resources, compliance with state laws and regulations and its own policies and procedures, and internal controls over such matters.

In keeping with general auditing practices, we do not examine every transaction, activity or area. Instead, the areas examined were those representing the highest risk of fraud, loss, abuse, or noncompliance. The following areas were examined during this audit period:

- Open Public Meetings Act
- Financial condition
- Accounts receivable
- Cash receipting
- Third party cash receipting
- Procurement for public works projects

## SCHEDULE OF AUDIT FINDINGS AND RESPONSES

**2014-001    The Port did not follow State procurement laws, which limited competition and its ability to receive the best possible price and service.**

### *Background*

Governments are required to comply with numerous state requirements for public works projects. These governments must adopt policies to ensure they comply with these laws, which may vary from project to project.

For example, governments must:

- Estimate project costs including materials, supplies, equipment, labor and applicable sales and use taxes.
- Pay prevailing wage for contracted public works
- Obtain performance bonds or withhold retainage to ensure work is acceptable and all tax obligations are met.
- Procure services through a competitive negotiation process to select the most qualified service provider.
- Use a formal sealed bid process for public works projects that exceed the small works roster threshold.

### *Description of Condition*

During the audit period, the Port contracted out for various public works projects relating to construction of new docks within its marina. We reviewed these public works projects and noted the following instances of non-compliance with bid law requirements:

- The formal bid packages from the first bidding for the construction of C, D, & E Docks were not retained.
- A bid tabulation form was not retained for the second bidding of the C, D, & E Docks project that had a contract award total of \$1,740,000, so we were unable to confirm if the lowest bidder was actually selected.

- The Port did not retain evidence from the State's "Debarred Contractor List" proving that the contractors selected for the C, D, & E Dock project were not disqualified from bidding at the time contracts were entered into.
- The Port did not obtain a "Statement of Intent to Pay Prevailing Wages" from any contractors it had entered into a contract with.
- The Port utilized the Small Works Roster for a project with a contract award of \$324,132, which is over the \$300,000 threshold, instead of following the formal bid procedures required by RCW53.08.120.
- The Port utilized the "Sole Source" exemption from bidding inappropriately.

### ***Cause of Condition***

The Port did not have adequate policies and procedures in place, or adequate knowledge to ensure compliance with state laws related to public works and bid requirements.

### ***Effect of Condition***

The Port cannot demonstrate it adequately safeguarded public resources by ensuring it received the best price and contracted with the lowest responsible or most highly qualified bidder, as applicable. In addition, the Port cannot demonstrate that contractors selected weren't disqualified from bidding at the time contracts were negotiated.

### ***Recommendation***

We recommend the Port ensure responsible staff receive adequate training and understand bid law requirements.

We further recommend the Port establish and follow policies and procedures to ensure it maintains bid documentation, and is in compliance with state and local bid laws and records retention requirements.

### ***Port's Response***

The Port in general agrees with the audit finding and thanks the Auditor's Office for the recommendations offered to correct the Port's procurement policies. We will implement and follow those recommendations in the future.

Although we agree in principle with the finding, we also feel adequate steps were taken at the time of contract award to ensure that public funds were not used

irresponsibly or recklessly. However, as the finding states, during the course of this audit we were not able to produce the backup documentation from almost four years ago to support this statement. This oversight will be corrected for any future contracts.

### *Auditor's Remarks*

We thank the Port for their commitment to addressing these issues in a timely fashion. We will review the Port's corrective action during our next scheduled audit.

### *Applicable Laws and Regulations*

RCW 53.08.120 Contracts for labor and material — Small works roster.

(2)(a) All such contracts for work meeting the definition of "public work" in RCW 39.04.010(4), the estimated cost of which exceeds three hundred thousand dollars, shall be awarded using a competitive bid process. The contract must be awarded at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder.

RCW 39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid — Alternative procedure.

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

(i) The contractor's registration certificate number; and

(ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefilled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. On a public works project where no retainage is withheld pursuant to RCW 60.28.011(1)(b), the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authorizing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five

hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.011. Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section.

RCW 39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited.

No agency of the state or any of its political subdivisions may execute a contract:

(1) With any contractor who is not registered or licensed as may be required by the laws of this state other than contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance; or

(2) For two years from the date that a violation is finally determined, with any person or entity who has been determined by the respective administering agency to have violated RCW 50.12.070(1)(b), 51.16.070(1)(b), or \*82.32.070(1)(b). During this two-year period, the person or entity may not be permitted to bid, or have a bid considered, on any public works contract.

RCW 39.04.280 Competitive bidding requirements — Exemptions.

This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

(b) Purchases involving special facilities or market conditions;

(c) Purchases in the event of an emergency;

(d) Purchases of insurance or bonds; and

(e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will

likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

RCW 40.14.070 Destruction, disposition, donation of local government records – Preservation for historical interest – local records committee, duties – Record retention schedules – Sealed records.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee.

## RELATED REPORTS

### **Financial**

Our opinion on the Port's financial statements is provided in a separate report, which includes the Port's financial statements. That report is available on our website, <http://portal.sao.wa.gov/ReportSearch>.

## INFORMATION ABOUT THE PORT

The Port of Brownsville was formed by a vote of the people in 1920 to enhance the economic development in Kitsap County. The original pier, built in 1902 by locals to accommodate small steamer ships and ferries transporting goods, people and mail, was upgraded. In the 1940's the ships and ferries became uneconomical and the Port became a small boat basin. The Port now consists of a marina for approximately 320 permanent boats, which includes 48 privately owned boathouses plus 45 moorage slips and 350 linier feet for guest boaters. The Port has a fuel dock, launch ramp, fishing dock, upland and waterfront park.

An elected, three-member Board of Commissioners governs the Port. The Board hires a Manager to oversee the Port's daily operations as well as its five full-time employees. For 2012, 2013 and 2014, the Port operated on annual budgets of approximately \$2.9 million. The Port received approximately \$360,000 in yearly tax revenue and generated approximately \$1,500,000 annually from moorage, fuel sales and related fees.

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*Information current as of report publish date.*

## Audit history

You can find current and past audit reports for the Port of Brownsville at <http://portal.sao.wa.gov/ReportSearch>.

## ABOUT THE STATE AUDITOR'S OFFICE

The State Auditor's Office is established in the state's Constitution and is part of the executive branch of state government. The State Auditor is elected by the citizens of Washington and serves four-year terms.

We work with our audit clients and citizens to achieve our vision of government that works for citizens, by helping governments work better, cost less, deliver higher value, and earn greater public trust.

In fulfilling our mission to hold state and local governments accountable for the use of public resources, we also hold ourselves accountable by continually improving our audit quality and operational efficiency and developing highly engaged and committed employees.

As an elected agency, the State Auditor's Office has the independence necessary to objectively perform audits and investigations. Our audits are designed to comply with professional standards as well as to satisfy the requirements of federal, state, and local laws.

Our audits look at financial information and compliance with state, federal and local laws on the part of all local governments, including schools, and all state agencies, including institutions of higher education. In addition, we conduct performance audits of state agencies and local governments as well as [fraud](#), state [whistleblower](#) and [citizen hotline](#) investigations.

The results of our work are widely distributed through a variety of reports, which are available on our [website](#) and through our free, electronic [subscription](#) service.

We take our role as partners in accountability seriously, and provide training and technical assistance to governments, and have an extensive quality assurance program.

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