

SAN DIEGO UNIFIED PORT DISTRICT

It Should Change Certain Practices to Better Protect the Public's Interests in Port-Managed Resources

Audit Highlights . . .

Although many San Diego Unified Port District (Port) actions we reviewed were in accordance with state law and Port policies, we noted the following exceptions:

- The Port did not disclose that it offered below-market rental payments to one hotel, potentially lowering the Port's revenue by \$7.4 million over 10 years.*
 - For three major developments, the Port did not seek competition by issuing requests for proposals or qualifications.*
 - The Port's contracting practices sometimes do not ensure fair and open awards of its contracts and purchases.*
 - The Port lacks postemployment guidelines for its officials and often failed to meet its timelines for employee discipline appeals.*
 - The Port can improve its compliance with open meeting laws.*
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San Diego Unified Port District's response as of April 2003

The Joint Legislative Audit Committee requested that we review the San Diego Unified Port District's (Port's) contracting and personnel policies and procedures as well as the public's access to the Port's records and decision-making process.

Finding #1: The Port has not always done enough to seek fair market value in its leases.

The Port earns some of its revenue by leasing the property it manages around the San Diego Bay (bay). Contrary to its leasing policies, when the Port signed a lease with one of its hotels in 1995, it granted a below-market rate for 10 years and did not disclose that it was doing so. The below-market rate may result in the Port receiving \$7.4 million less in rental payments over a 10-year period.

The Port may also be charging below-market rates to the marinas around the bay. When setting rental rates, the Port rejected rates suggested by an independent appraiser. Instead, the Port selected an appraisal methodology that did not consider rents paid by comparable properties, such as the City of San Diego's Mission Bay marinas. As a result of its decision to adopt a methodology that did not consider rates paid by nearby marinas, Port revenues between July 1999 and June 2001 were approximately \$600,000 lower than what they would have been had they used an alternative methodology.

We recommended that the Port obtain market value rent when awarding leases or disclose and provide appropriate justification for offering below-market rent when the Board of Port Commissioners (board) considers approval of the lease. We further recommended

that the Port consider adopting an appraisal methodology for its marinas that combines economic analysis with a review of rents paid on comparable properties.

Port Action: Corrective action taken.

The Port created an advisory committee to review the Port's proposed policies governing real estate leases and rentals. The board adopted the advisory committee's recommendation and instituted a policy that requires market value rent but the board retains the right to grant rent discounts, waivers, or other concessions. In addition, another adopted policy requires using appraisals that comply with the Uniform Standards or Professional Appraisal Practice to assist in determining market rent for new flat-rent leases and for rent reviews in existing leases.

Finding #2: The Port pursued some major development projects without publicly soliciting proposals.

The Port did not issue requests for proposals or qualifications on three major development projects and therefore may have missed opportunities to receive additional proposals from qualified developers. For one hotel development project, the Port chose to conduct a negotiating session over a holiday weekend, instead of issuing a request for proposals or qualifications. In another case, the Port received four unsolicited proposals to develop a hotel on Harbor Island but did not issue a request for proposals or qualifications to identify other interested parties. The Port also chose not to issue a request for proposals or qualifications for a third development project because it believed a tenant with a lease on an adjoining property would be best suited for the development. By not using a more open and competitive process for developing these projects, the Port has made itself vulnerable to claims that it has acted unfairly and not in the public's best interests.

We recommended that the Port solicit competition through requests for proposals or qualifications when developing major projects, unless there is a compelling public interest not to do so.

Port Action: Corrective action taken.

The Port agrees with our recommendation and has implemented a policy consistent with our recommendation.

Finding #3: The Port's contracting practices do not always match its policies or follow best practices

Some of the Port's actions in awarding contracts and making purchases have not been in line with best practices or its own policies. The Port amended two information technology contracts totaling more than \$1.7 million when significant changes in the scope of work indicated that the projects should have been bid separately and issued as separate contracts. Because it did not open this work to the competitive bidding process, the Port denied other consultants the opportunity to compete for these projects and has no assurance that it obtained the services at the best possible price and terms.

In addition, we found that the Port did not apply best practices in awarding the \$1.6 million contract because it allowed the consultants that had helped develop the requirements for the project to also bid on that project. Prudent practices would not allow consultants to bid on projects for which they had developed the requirements because it leaves the Port open to claims of favoritism and unfair competition.

In addition, because the purchasing department treated service contracts according to the approval rules for supply purchases, certain service purchase orders between \$50,000 and \$75,000 did not receive the board approval that Port policy required. The purchasing department was also failing to notify the board of service purchase orders between \$25,000 and \$50,000 as required by Port policy. Without board approval or notification, commissioners missed the opportunity to provide some oversight of these contracts or request additional information when they had questions.

We recommended that the Port competitively bid new contracts instead of amending existing contracts when the scope of work changes significantly. We also recommended that the Port adopt a policy that would prohibit contractors that have developed specific requirements for a project from subsequently bidding on that project. We further recommended that the Port follow its policy requiring board notification and approval of certain service purchases.

Port Action: Corrective action taken.

The Port agrees that it should bid new contracts instead of amending existing contracts when the scope of work changes significantly and is now reviewing each contract to ensure compliance. The Port has revised its policies to prohibit contractors that have developed specific requirements for a project from subsequently bidding on that project. Also, the Port reports that it is now complying with board policies concerning board involvement in approving contracts.

Finding #4: The Port needs to better adhere to conflict-of-interest laws and may need to adopt additional guidelines.

The Political Reform Act of 1974 requires that public officials disclose personal interests that might be affected while performing their duties and also requires that they disqualify themselves from any governmental decisions that would affect their financial interests. We found that one commissioner did not report real estate within two miles of the Port's jurisdiction as required by law. Although he corrected the error in his fiscal year 2001–02 disclosure statement, we believe that the Port's commissioners and employees required to file disclosure statements should reexamine their statements to ensure that they are complete and accurate.

Furthermore, although both the federal and state government have adopted post-employment guidelines for elected officials and government employees, the Port's conflict-of-interest policy does not include similar requirements for its officials. As a result, the Port has left itself open to claims that the actions of its exiting and former officials could constitute an improper influence on Port decisions. In particular, a former commissioner represented several clients in actions before the board less than a year after leaving the board.

We recommended that the Port encourage its commissioners and employees that file disclosure statements to review their current and past statements for completeness and accuracy. We further recommended that the Port consider adopting post-employment guidelines similar to those in place at the State and federal levels.

Port Action: Corrective action taken.

The Port has adopted a comprehensive ethics code that contains post-employment restrictions that are more restrictive than those of the Fair Political Practices Commission.

Finding #5: The Port has not always followed its policies and procedures for appeals of personnel actions.

The Port does not always conduct appeals of personnel actions as required in its rules and regulations. Based on our review of employees' appeals of disciplinary actions, we found that the Port almost always exceeds the time frames established in its appeal procedures. Because these procedures cause the Port's employees to have certain expectations about how the Port will act on disciplinary appeals, it is important for the Port's practices to match its policies.

We recommended that the Port ensure that personnel appeals are conducted according to Port procedures.

Port Action: Corrective action taken.

The Port has revised its policies and procedures to ensure that it either complies with timelines or documents employees' consent when extensions of time are granted.

Finding #6: The Port can improve its compliance with open meeting laws.

The Ralph M. Brown Act (Brown Act) states that a local legislative body may not take action or discuss any item that has not been publicly identified in the agenda or added by a vote of the body. However, in one instance, the board discussed an issue in closed session even though it had not given appropriate notice that the issue was being continued from a prior meeting. The impact on the public's access to the decision-making process was mitigated by the fact that the board did not act on this and one other issue at the meetings where they were discussed. In addition, we found three instances in which the Port's agenda descriptions for closed-session personnel discussions failed to provide sufficient information to meet the requirements of the Brown Act.

The Brown Act also allows local legislative bodies to recover their costs for providing agendas to individuals or groups that request an agenda be sent to them before each meeting. However, the Brown Act indicates that the fee charged cannot exceed the costs of providing the service. Yet the Port has not analyzed its costs for providing this service in over 10 years, even though it now faxes most agendas instead of mailing them. Without this analysis, the Port cannot ensure that the fees it charges for providing this service do not exceed the costs it incurs.

We recommended that the Port ensure it properly notifies the public of all board discussions, as required by state law. We further recommended that the Port reevaluate the fees it charges for distributing agendas to ensure the fees do not exceed the cost of distributing the agendas.

Port Action: Corrective action taken.

The Port agrees with the recommendation and has established additional procedures to ensure proper public notice of board discussions.