

OFFICE OF THE COUNCIL AUDITOR
Suite 200, St. James Building



October 18, 2006

#625 Special Report

Councilmember Lad Daniels
117 West Duval Street, Suite 425
Jacksonville, Florida 32202

Dear Councilmember Daniels,

In response to your request, we have completed a review of the Jacksonville Port Authority's (JPA) maintenance dredging contracts for the October 1, 2005 through September 30, 2006 Fiscal Year. JPA contracted with Sea Tech Marine International (Sea Tech) and Subaqueous Services Incorporated (Subaqueous) (contract #s 1168 and 1191 respectively) to perform maintenance dredging for this time period. We are providing this special written report in accordance with Ordinance Code Section 102.102. This report does not represent an audit or attestation conducted pursuant to Government Auditing Standards. We also reviewed for completeness the contract files for all 13 dredging contracts executed by JPA since the Florida Legislature split the Port into separate Aviation and Maritime authorities effective October 1, 2001.

Background

JPA has three marine terminals (Blount Island, Dames Point, and Talleyrand) with a total of 15 ship docking berths. These berths require routine maintenance dredging to maintain their advertised depth of 40 feet. JPA Engineering oversees the procurement of engineering contracts, whereas JPA Procurement oversees the procurement of non-engineering contracts.

Overall Conclusion

Based on our review of JPA's contract files for Sea Tech and Subaqueous, it appears that JPA Engineering Services has been lacking in its administration and oversight of JPA's dredging activities. As evidenced in the chronology of events listed below, the actions of JPA Engineering Services appear to be reactive rather than proactive and have cost JPA financially and damaged its reputation. We believe that new leadership is needed in JPA Engineering Services to proactively manage JPA's dredging activities.

Chronology of Events

September 24, 2005	Sea Tech, JPA's maintenance dredger for the period from October 1, 2004 through September 30, 2005 breached the dike between cells A and B at Bartram Island, which resulted in the release of dredge spoil into the St. Johns River. The breach occurred because Sea Tech did not maintain three feet of freeboard (the distance between the top of the cell
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	wall and the water line in the cell) as required by the contract.
October 1, 2005	Commencement date for maintenance dredging contract 1168 between JPA and Sea Tech for the period of October 1, 2005 through September 30, 2006.
November 8, 2005	Email from JPA Director of Engineering to JPA's Blount Island/Dames Point Terminal Director stating that Berth 18 used by Martin Marietta would not be at a 40' depth in time for Martin Marietta's next ship call on November 23, 2005. Therefore, JPA will issue a "Request for Emergency Dredging Services".
November 11, 2005	Request for Procurement of Emergency Dredging Services is initiated by JPA's Director of Engineering.
November 14, 2005	Two bids (one from Subaqueous and one from Sea Tech) were received by JPA in response to the Emergency Dredging request. The contract was awarded to Subaqueous who was determined to be the low bidder.
November 15, 2005	Letter from Sea Tech attorney to JPA objecting and threatening litigation for issuing the emergency dredging bid request on the basis that Sea Tech was the contracted maintenance dredger for the fiscal year.
November 21, 2005	Email from JPA's Chief Financial Officer (CFO) requesting the status of the emergency dredging. The email states that Martin Marietta is complaining due to having to light load its ships to dock at Berth 18.
November 22, 2005	Email from JPA Director of Engineering to JPA CFO stating "The emergency no longer exists at Berth 18." The email also states that since Subaqueous is proposing to use a clamshell dredge, there is no advantage to using Subaqueous instead of Sea Tech.
December 5, 2005	JPA issues an \$80,000 credit to Martin Marietta due to Berth 18 not being maintained at 40' depth.
December 7, 2005	Subaqueous gets "Notice to Proceed" for Emergency Dredging.
December 30, 2005	Letter from Sea Tech stating that they are actively pursuing a solution for the dike breach. Sea Tech also states liability for the breach is not clear cut.
January 4, 2006	JPA's Director of Procurement placed United Fire Casualty (Sea Tech's Surety Company) on notice that it intended to file a claim against Sea Tech's performance bond for the September 24, 2005 dike breach on Bartram Island.
January 18, 2006	Follow-up letter from JPA Director of Procurement to United Fire Casualty inquiring about the claim for the dike breach on Bartram Island.
January 19, 2006	Letter from Sea Tech's attorney to JPA stating that JPA is misconstruing the maintenance dredging contract by interpreting it as a volume-based contract, rather than a maintenance contract for a specified period of time.
January 25, 2006	Pre-dredge survey for Subaqueous for Berth 18 shows depth is 36 feet.
February 8, 2006	Letter from JPA's Director of Engineering to Subaqueous stating that Berth 18 requires immediate dredging. The letter also states that permission has been received from Atlantic Marine for Subaqueous to

	run a pipeline through Atlantic Marine property into the FIND dredge spoil site.
March 20, 2006	JPA letter to Subaqueous directing Subaqueous to demobilize from Berth 18 and await further instructions.
March 21, 2006	JPA and Sea Tech reach a Pre-Suit Mediation Settlement Agreement regarding their differences over JPA's hiring of a second maintenance dredging contractor (Subaqueous) and each party's obligations relative to the dike breach. Among other things, the Agreement gives Sea Tech exclusive use of Cells F and G on Bartram Island through September 30, 2006.
March 29, 2006	Letter from Subaqueous to JPA Executive Director requesting use of Cells F and G on Bartram Island to deposit dredge spoil. Letter requests use of Cell B at Buck Island if Cells F and G on Bartram Island are not available.
April 5, 2006	JPA signs consent order with Department of Environmental Protection (DEP) for dredge spoil released into the St. John's River as a result of the dike breach by Sea Tech. The consent order requires JPA to pay DEP \$25,000. JPA recovered \$12,500 from Sea Tech pursuant to the Pre-Suit Mediation Settlement Agreement.
May 22, 2006	Letter to Subaqueous from JPA Project Engineer authorizing Subaqueous to mobilize and start dredging Berth 18 as soon as Cell B on Bartram Island becomes available to received dredge spoil (estimated to be June 15, 2006)
July 10, 2006	Letter from Subaqueous to JPA Project Engineer stating that Subaqueous has been on "standby" from May 23, 2006 through July 10, 2006 and that Subaqueous intends to invoice JPA for \$960,000 for standby (48 days at \$20,000 per day).
July 19,2006	Bartram Island Cell B is once again available after repairing the dike breach and a project to raise the dike walls from 30 to 37 feet. According to JPA Cell A will not be available until the first quarter of 2007.

Finding #1

Based on our review, it appears that three out of five of the change orders to Sea Tech Contract 1168 were questionable in that items for which Sea Tech received additional compensation were included on the contract bid sheet as being part of the base contract. In addition, another change order was for work performed in excess of the terms listed in the Pre-Suit Mediation Settlement Agreement. The total dollar amount paid to Sea Tech for these items was \$592,246. Approving change orders for work already covered in the base contract allows a vendor to "lowball" its bid to win the contract and then change order the price of the contract to higher amounts. This is unfair to the other contract bidders and costs JPA more in dredging expenditures than budgeted.

Recommendation for Finding #1

We recommend that JPA include more specific language in its contracts to reduce ambiguity that could lead to requested change orders. We also recommend that all contracts and change orders to contracts require the approval of JPA's Board of Directors.

Finding #2

For Contract 1168 (Sea Tech), the contractor performed the work prior to approval of the change authorizing the work for four of the five contract change orders.

Recommendation for Finding #2

All change orders should be approved in writing prior to the performance of the work.

Finding #3

On March 21, 2006, JPA entered into a "Pre-Suit Mediation Settlement Agreement" with Sea Tech. The Agreement was entered into to avoid litigation between JPA and Sea Tech, due to the fact that JPA hired an additional dredge contractor because Sea Tech was not able to keep up with the silting of the river. The Agreement was entered into on the advice of the Office of General Counsel (OGC) because OGC believed Sea Tech would prevail in the event of litigation. However, the Agreement appears to reward Sea Tech by granting Sea Tech exclusive use of dredge spoil Cells F and G on Bartram Island through September 30, 2006 and awarding Sea Tech with additional work including that of building up the dike walls on Cells F and G. The Agreement also capped the environmental penalties at \$12,500 for Sea Tech for causing the dike breach between Cells A and B on Bartram Island allowing dredge spoil to flow back into the river. The environmental fines from the Department of Environmental Protection (DEP) totaled \$25,000 so JPA paid the other \$12,500. The exclusive use of Bartram Island cells F and G gave Sea Tech a competitive advantage over other dredging contractors because Bartram Island cells A and B were out of use due to the dike breach and a project to increase the height of the cell walls. Because Buck Island is reserved for spoil such as sand that can be used in construction projects, the only site available to Subaqueous and other dredgers for a period of six months, was the Florida Inland Navigation District (FIND) spoil site which is considerably more expensive to use than the Bartram Island spoil cells.

Recommendation for Finding#3

JPA should consult legal counsel prior to taking action, when drafting new contracts and when interpreting existing contracts where the contract language is not clear.

Finding #4

Subaqueous' insurance policy covering general liability, auto liability, excess/umbrella liability, and vessel pollution, which listed JPA as an additional insured for Contract 1191 expired on February 28, 2006, even though the contract was in effect through September 30, 2006.

Recommendation for Finding #4

Ongoing contracts should be reviewed by contract administration personnel to ensure that insurance policies have been revised when needed and that coverage extends through the contract completion date.

Finding #5

JPA's Director of Engineering is not licensed in the State of Florida as a Professional Engineer (P.E.), however, we noted emails, signed correspondence to contractors, and various other documents including a Consent Order between JPA and the Department of Environmental Protection in which the Director of Engineering held himself out to be a P.E. Florida Statutes Chapter 471 states "No person other than a duly licensed engineer shall practice engineering or use the name or title of "licensed engineer", "professional engineer", or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer in this state." While we found that JPA's Director of Engineering is licensed as a P.E. in the State of Georgia, he is not licensed in the State of Florida. Violation of this statute is a first degree misdemeanor.

Recommendation for Finding #5

JPA should review the professional credentials of all employees to verify that they are valid and up to date.

Finding #6

In reviewing the 13 dredging contracts since the Port split in 2001, we noted that all the contract files were complete, except for two (C-1002 and C-1040), which did not have a Notice of Substantial Completion listing the actual completion date for the contract. JPA contract administration personnel indicated that the documents were most likely misfiled by someone reviewing the files.

Recommendation for Finding #6

Contract administration personnel should contact the contractors and obtain a copy of the missing documents for JPA's files. Contract administration personnel might also consider establishing a sign-out policy for contract files so that they have a record of those persons who have accessed a file.

Finding #7

Based on the procedures listed below and the fact that JPA sent out formal bid advertisements, JPA did not follow their Procurement policies with regard to emergency procurements for contract C-1198. Emergency procedures were not followed as an "Invitation for Bids" was sent out to contractors on November 10, 2005 and a "Request for Emergency Procurement was not prepared until November 11, 2005. Section 3-106, Subsection 5 of PUR 224, Procurement Code for JPA states, "Exceptions to required formal advertisement methods. Procurements that meet the criteria of Emergency Procurement (3-106, Par. 1) and which exceed the small purchase threshold (amount specified in JAXPORT charter), do not have to be formally advertised as either an Invitation for Bid or a Request for Proposal."

Recommendation for Finding #7

JPA should follow its procurement code regarding emergency procurements.

Internal Control Weakness #1

The award of JPA contracts and change orders to contracts do not require approval of the Board of Directors.

Recommendation for Internal Control Weakness #1

We recommend that JPA amend its procurement code to require that the Board of Directors approve all contracts and all change orders to contracts. (See Recommendation to Finding #1.)

Internal Control Weakness #2

The procurement of construction type contracts or engineering services is made by JPA's Engineering Department instead of its Purchasing Department.

Recommendation for Internal Control Weakness #2

We recommend that **all** procurement be made through the Purchasing Department.

Internal Control Weakness #3

JPA dredging contracts C-1168 and C-1191 do not contain a "right to audit" clause.

Recommendation for Internal Control Weakness #3

We recommend that all JPA contracts contain a "right to audit" provision. This will enable JPA or its designee to examine contractor files to determine compliance with contract provisions and specifications.

We would like to thank the Executive Director, the Deputy Director/CFO and the staff of the Jacksonville Port Authority for their cooperation and assistance during the completion of this review.

Respectfully Submitted,

Kirk A. Sherman

Kirk A. Sherman, CPA
Council Auditor

November 21, 2006

Mr. Kirk Sherman, CPA
Council Auditor
Office of the Council Auditor
117 West Duval Street
Suite 200, St. James Building
Jacksonville, Florida 32202

Dear Mr. Sherman,

We would like to thank you and your staff for the professionalism displayed throughout the entire review of our dredging contract files. At JAXPORT we strive to continuously improve and manage our affairs efficiently and effectively while keeping our expenses and costs at a minimum and welcome any suggested process improvements.

Effective June 2006, JAXPORT realigned various areas of responsibility within the organization. This realignment included the consolidation of engineering and procurement under the newly created position of Director of Contract Administration, Procurement and Engineering Services. This position reports directly to the Deputy Executive Director and Chief Financial Officer and will provide greater accountability in these areas.

The responses to the recommendations are noted below.

1. **Agree** that JAXPORT include more specific language in contracts to reduce ambiguity that could lead to requested change orders. JAXPORT issued a revised and enhanced dredging contract effective October 1, 2006. Additionally, all upcoming contract renewals and any new projects will be reviewed for language enhancements that will reduce potential change orders.

Disagree that all contracts and change orders require the approval of the Board of Directors. JAXPORT believes that adding another step by having the Board of Directors approve all contracts and change orders would seriously delay the process. Effective October 2006, JAXPORT implemented a Professional Services Evaluation Committee (PSEC) that is responsible for reviewing and approving all formal contracts and change orders. Further, we propose reporting all contract changes to the Board each month regardless of the dollar amount.

2. **Agree** that all change orders should be approved in writing prior to the performance of work. JAXPORT has implemented measures to ensure that no work will be performed prior to the execution of change orders. One measure includes language in the payment terms and conditions of the contracts.
3. **Agree** that JAXPORT should consult legal counsel prior to taking action, when drafting new contracts and when interpreting existing contracts where the contract language is not clear. Effective May 2006, JAXPORT has retained an in-house Office of General Counsel representative to consult for matters regarding drafting new contracts and interpreting or taking action on existing contracts.
4. **Agree** that contracts should be reviewed to ensure that insurance policies have been revised when needed and that coverage extends through the contract completion date. With the recent realignment of personnel, the Risk Manager under the direction of the Director of Administration has responsibility for ensuring that insurance policies are up to date and in the contract files.
5. **Agree** that the credentials of all employees should be reviewed to verify that they are valid and up-to-date. JAXPORT has addressed the issue of the P.E. designation and it has been resolved. Additionally, JAXPORT will develop a process whereby professional credentials are verified and kept-up-to-date.
6. **Agree** that JAXPORT should contact the contractors and obtain a copy of the missing documents and that a sign out policy for contract files be established. The contractor has been notified to obtain copies of the missing documents for JAXPORT's files. As of the date of this response, JAXPORT has been unable to obtain copies due to the contractor being sold and the contractor not cooperating with JAXPORT regarding our request. It should be noted that in accordance with JAXPORT's procedures the Notice of Substantial Completion is required for final payment. It is possible with the files being utilized on several occasions that they were misplaced or misfiled. JAXPORT will continue to try to obtain a copy of the Notice of Substantial Completion for the files. Currently commodity and services contracts are kept in locked file cabinets and a sign out policy is in place. Engineering contracts will follow the same procedure.
7. **Agree** that JAXPORT should follow its procurement code regarding emergency procurements. JAXPORT will provide training for appropriate JAXPORT personnel on all aspects of the procurement code with an emphasis on emergency procurements. Further, in cases whereby clear violations of the procurement code are noted, disciplinary action will take place as deemed appropriate by management and in compliance with the existing procedure on Employee Discipline.

Internal Control Weaknesses

1. **Disagree** - See response to Finding #1 regarding Board of Directors approval of contracts and change orders.
2. **Agree** that all procurement be made through the purchasing department. All purchasing is now done through one department as a result of the recent organizational realignment.
3. **Agree** that all contracts should have a right to audit clause. JAXPORT will begin including a “Right to Audit” provision in all contracts.

We appreciate the review of the dredging contract files and will take the necessary steps to improve this aspect of our business. If there are any questions or you require additional information please do not hesitate to contact me. We would like to meet with you to review those items that we have taken a different approach (disagree with your findings) and would like to offer our logic in each instance. Please let me know when we can meet to discuss such issues.

Respectfully submitted,

Rick Ferrin, Executive Director

cc: Ronald M. Baker, Deputy Executive Director & CFO