

**CITY OF OAKLAND**  
**Public Ethics Commission**

Ralph Kanz, *Chair*  
Andrew Wiener, *Vice-Chair*  
Kathryn Kasch  
Caryn Bortnick  
Sukey Wilder  
Fredericka (Ricka) L. White



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4<sup>th</sup> Floor, Oakland, CA 94612

(510) 238-3593

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**TO:** Public Ethics Commission  
**FROM:** Daniel Purnell  
**DATE:** April 4, 2005

**RE: A Report And Action To Be Taken Whether To Initiate A Commission Complaint Against The Oakland Port Board Of Directors In Connection With A Closed Session Meeting Held On February 18, 2005**

At the Commission's regular meeting of March 7, 2005, the Commission directed staff to prepare a memorandum to assist the Commission in determining whether to initiate a formal complaint against the Oakland Port Board of Directors ("Port Board") regarding the Port Board's reported conduct of a closed meeting on February 18, 2005.

**I. BACKGROUND**

According to various news accounts, the Port Board convened a special closed meeting at the Waterfront Plaza Hotel on February 18, 2005. The meeting was reportedly called for the purpose of conducting a job evaluation of Port executive director Jerry Bridges, and to discuss the Port Board's goals and objectives. Apparently, the Port Board provided no advance notice for the meeting. Port Attorney David Alexander reportedly stated that the Port staff, which normally ensures proper public notice of meetings, was not involved with scheduling the February 18, 2005, meeting.

In an attempt to determine when and how the meeting was scheduled, reporters from the Oakland Tribune reportedly submitted a public records request to the Port Board requesting writings pertaining to the meeting. The only writing provided by the Port Board was an invoice in the amount of \$746.72 to pay for costs associated with the off-site meeting. There were no other records produced showing how the Port Board came to organize the meeting or decide what was to be discussed.

ATTACHMENT   1  

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## II. APPLICABLE LAW AND COMMISSION JURISDICTION

As a general rule, meetings of public agencies like the Port of Oakland must be conducted publicly with adequate notice given in advance of the meeting. Under the Oakland Sunshine Ordinance, all local bodies must post and file a copy of the agenda at least 48 hours before a special meeting. Copies of the agenda must also be sent to the members of the local body, to each local newspaper of general circulation, to each agenda subscriber and to each media organization that has previously requested notice in writing. In addition, if a special meeting is called for a location other than at the regular meeting place, the local body must give notice at least ten days before the meeting.

Not all portions of a meeting must be conducted in public. The Sunshine Ordinance incorporates provisions of the state's Ralph M. Brown Act which permits certain actions to be conducted in closed session. Among the actions permitted in closed session are personnel matters, such as employee job evaluations. However, the fact that the Brown Act and Sunshine Ordinance permit a particular topic to be considered in closed session does not excuse the local body from providing public notice. The public must still be advised that a closed session hearing will be taking place at the date, place and time specified on the agenda. Agency goal-setting "retreats" are considered by the California Attorney General to be subject to open meeting and notice requirements.

The Commission is authorized to oversee compliance with the Sunshine Ordinance. The provisions of the Sunshine Ordinance expressly apply to the Port Board. If the Commission finds that a local body has violated a material provision of the Sunshine Ordinance, the local body is required to agendize for immediate determination whether to correct and cure the violation by either affirming or superseding the challenged action after first taking any new public testimony.

## III. COMMISSION CONSIDERATION

On February 25, 2005, the Port Board published and posted a belated agenda for the February 18, 2005, special meeting. **Attachment 1**. The notice states in relevant part:

"The purpose of the [February 18, 2005] Special Meeting was to provide for a Closed Session for public employee performance evaluation. No action was intended or taken, nor was public participation intended or permissible in Closed Session. No other business was calendared or intended.

"This notice of Special Meeting, which occurred on Friday, February 18, 2005, is intended to cure and correct inadvertent failure to post timely notice of Special Meeting and to provide public notice that the Closed Session occurred at such time and place."

On March 18, 2005, the Port Board conducted another special meeting to review the executive director's job performance and discuss "Port-wide goals and objectives." The

agenda for that meeting notices the performance evaluation as a closed session item and the Port-wide goals and objectives as a part of the open meeting. **Attachment 2.**

On March 24, 2005, Mark Morodomi and Michelle Abney of the City Attorney's Office are conducting a review of public meeting requirements with Port staff. Their presentation was sought by Port executive director Jerry Bridges who reportedly acknowledged the failure to provide public notice as an "error" and a "mistake".

Based on the information readily and publicly available in this matter, the Commission has the option of initiating a formal complaint to determine ultimately whether the Port Board violated material provisions of the Sunshine Ordinance. If so, the Port Board would be required to notice a cure and correction at a subsequent meeting. The investigation may provide additional information about how and why the February 18, 2005, occurred in the manner it did. From an enforcement perspective, there may be little more the Commission can order the Port Board to do (if the Commission determines a violation occurred) that the Port Board has not already done voluntarily.

The Commission's General Complaint Procedures require all complaints brought under the Sunshine Ordinance to commence within sixty days of the alleged violation. The Commission will need to decide whether to initiate any complaint at the April 4, 2005, meeting.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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### AGENDA REPORT

**TITLE:** Authorization for the Executive Director to Negotiate and Enter Into a Professional Services Agreement with Red Oak Consulting in the Amount of \$115,000.00 to Provide Strategic Development Services.

**AMOUNT:** \$115,000.00

**PARTIES INVOLVED:**

Corporate Name	Location
Red Oak Consulting	Carlsbad, CA
Hy Pomerance, PhD. Vice President	

**TYPE OF ACTION:** Resolution

**SUBMITTED BY:** Executive Office

**COMMITTEE ASSIGNED:** Administration

**HEARD BY COMMITTEE:** March 22, 2005

**APPROVED BY:** *J* Jerry A. Bridges, Executive Director

#### FACTUAL BACKGROUND

Red Oak Consulting has been assisting the Executive Office in Strategic Development Services under Purchase Order 143151. Within the framework of the Strategic Business Plan, this work has included an examination of the governance of the Port, the leadership and teamwork abilities of the senior management, and the strategic initiatives of the organization.

This initial work has proven beneficial, and staff now requests permission for the Executive Director to negotiate and enter a Professional Services Agreement with Red Oak Consulting to continue and expand the scope of this project.

#### ANALYSIS

In addition to the work currently in process, Red Oak Consulting will:

- Conduct a comprehensive Organizational Assessment.
- Establish a Strategic Development Process.
- Review and suggest revisions to the Strategic Business Plan.

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- Develop a senior management Performance Management Process.
- Conduct an assessment of the Core Business Practices.
- Suggest Business Process Improvement Strategies.
- Design a comprehensive approach to Leadership Development.

**BUDGET & FINANCIAL IMPACT**

The project will be funded from Port Cash, and will be budgeted during Fiscal Year 2005/2006 from the Executive Office.

**STAFFING IMPACT**

There is no staffing impact associated with this Professional Services Agreement.

**SUSTAINABILITY**

There are no immediate sustainability benefits achieved by this Professional Services Agreement.

**ENVIRONMENTAL**

The execution and implementation of this Professional Services Agreement is not considered a project under Section 21065 of the California Environmental Quality Act (CEQA).

**MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA), and the provisions of the MAPLA do not apply.

**OWNER CONTROLLED INSURANCE PROGRAM (OCIP)**

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Owner Controlled Insurance Program (OCIP), and the provisions of the OCIP do not apply.

**GENERAL PLAN**

This project is for professional services, and will not directly include any alteration of property. Therefore, provisions of the General Plan do not apply.

**LIVING WAGE**

As the consultant has fewer than twenty-one employees, living wage requirements set forth in Section 728 of the Charter of the City of Oakland and Port Ordinance Number 2666 as amended do not apply.

**OPTIONS**

1. The Board may choose to not authorize the Executive Director to negotiate and enter into a Professional Services Agreement with Red Oak Consulting at this time. However, staff believes that significant benefit has been achieved to date, and continuing and expanding the consultant's services will provide benefits staff alone cannot provide.
2. The Board may choose to instruct staff to solicit bids for Strategic Development Services as defined by the Executive Director. While other entities may be qualified to provide these services, there would be an immediate loss of continuity and a delay in initiating the Strategic Development Services programs.
3. The Board may choose to authorize the Executive Director to negotiate and enter into a Professional Services Agreement with Red Oak Consulting for Strategic Development Services at a total maximum cost of \$115,000 that will include the work previously conducted under Purchase Order 143151.

**RECOMMENDATION**

Staff recommends the Board authorize the Executive Director to negotiate and enter into a Professional Services Agreement with Red Oak Consulting for Strategic Development Services at a total maximum cost of \$115,000 that will include the work previously conducted under Purchase Order 143151.

**From:** DAYERSJ@ [mailto:DAYERSJ@ ]

**Sent:** Saturday, February 19, 2005 7:48 AM

**To:** Scatesp@; johnp@; DKramer@; Fkiang@; aabatarse@; kkatsoff@; Scatesp@; jbridges@

**Subject:** NEWSPAPER ARTICLE BY PAUL ROSYNSKY - SATURDAY, FEB. 19TH

Dear President Scates, Commissioners, and Executive Director,

After reading the unfortunate article published in the *Oakland Tribune* Edition for Saturday, February 19th, I would like to offer the following suggestions:

- i) We should go on the **offensive**, rather than to take a **defensive** posture. We need to get ahead of this article before it snowballs into a bigger issue than is necessary.
- ii) That the Port Attorney should earn his keep and work on the behalf of the Commissioner. The Port Attorney should spend this weekend engaged in crafting a legal memorandum regarding **exceptions to the Brown Act**. I recall that the Brown Act does not apply for "educational instruction" purposes that includes seminars on topics as raised at the February 18 off-site. Our gathering was led by a non-Port group leader/facilitator on matters that **did not involve substantive issues that pertained to Port policy or Port business decisions**. Instead, the meeting dealt with "**Organizational dynamics,**" "**team work,**" "**strategic thinking,**" "**communications,**" "**critical thinking**" and **building a framework to enable our body to operate more efficiently.**

The Port Attorney, who was not available for comment regarding the subject article, could easily refute the allegation of illegality as stated in the tribune article.

- iii) The Port Attorney's memorandum should be delivered to the Board President and the Communication Director on Sunday evening. By Monday evening a Press Release should be delivered to the Tribune that articulates that the February 18th off-site pertained to general educational matter, and issues (that is the evaluation of the Port Executive Director) for which no Notice to the Public need be given. No notice of such is required because such matters are **not open to public concern, or public interest.**

- iv) On Monday a letter should also be sent to the Mayor, and the President of the City Council so that they are in a position to understand our actions. This understanding will better enable them to respond to the press and other regarding February 18th gathering.

Respectfully submitted,

Darlene Ayers-Johnson

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February 22, 2005

John Russo, City Attorney  
City of Oakland  
Oakland City Hall  
One Frank H Ogawa Plaza  
Oakland, CA 94612

Dear City Attorney Russo:

As you are aware, the Board of Port Commissioners recently met in closed session on February 17, 2005. We made a serious mistake in not properly noticing this meeting. Although we feel that this mistake was an administrative oversight, we do not want this error to ever occur again.

The Board of Port Commissioners and its Secretary make every effort to comply with all requirements of the Public Meetings Law and, in fact, have gone beyond the requirements of the law in many instances, even publicly posting on its website audio transcripts of our committee and Board meetings. This instance was a rare occurrence and was a mistake that we will correct.

Accordingly, we are asking your assistance in setting up a staff session to go over requirements set forth in the Public Meetings Law and the City of Oakland's Sunshine Ordinance. We would also like to discuss any new developments that may have come about in the law about which we should be aware.

Please advise when you or a member of your staff would be able to hold such a session with us. If you wish to speak further, please contact me directly.

Respectfully,

Jerry A. Bridges  
Executive Director

cc: Patricia A. Scates, Board President  
David Alexander, Port Attorney

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**PATRICIA A. SCATES**  
President

**FRANK KIANG**  
First Vice President

**ANTHONY A. BATARSE, JR.**  
Second Vice President

**DARLENE AYERS-JOHNSON**  
Commissioner

**KENNETH KATZOFF**  
Commissioner

**DAVID KRAMER**  
Commissioner

**JOHN PROTOPAPPAS**  
Commissioner

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**JERRY A. BRIDGES**  
Executive Director

**DAVID L. ALEXANDER**  
Port Attorney

**JOHN T. BEVERTON**  
Secretary of the Board

**SPECIAL MEETING**  
**AGENDA**

2  
FEBRUARY 25 PM 3:11  
PLANNERS

The President of the Board, Patricia A. Scates, called a Special Meeting for February 18, 2005, at 9 a.m. at the Waterfront Plaza Hotel, 10 Washington Street, Oakland, California.

**ROLL CALL:**

Commissioner Ayers-Johnson, Vice President Batarse, Commissioner Katzoff, Vice President Kiang, Commissioner Kramer, Commissioner Protopappas and President Scates.

The purpose of the Special Meeting was to provide for a Closed Session for public employee performance evaluation. No action was intended or taken, nor was public participation intended or permissible in Closed Session. No other business was calendared or intended.

This notice of Special Meeting, which occurred on Friday, February 18, 2005, is intended to cure and correct inadvertent failure to post timely notice of Special Meeting and to provide public notice that the Closed Session occurred at such time and place.

**CLOSED SESSION:**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION.** Government Code Section 54957(b):

Title: Executive Director

**CLOSED SESSION REPORT**

**OPEN FORUM**

**ADJOURNMENT**

The next regular meeting of the Board of Port Commissioners is scheduled for Tuesday, March 1, 2005.

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**Public Statement  
of  
Patricia A. Scates, President  
Board of Port Commissioners**

**Re: February 18, 2005 Meeting of Port Commissioners**

On Friday, February 18, 2005, the Board of Port Commissioners held a meeting with its' Executive Director. This was a scheduled meeting consisting of one closed session item. The meeting, however, was inadvertently omitted from the Port Calendar and subsequently, proper meeting notice was not made.

The Port of Oakland has never intentionally held an illegal meeting and proper precautions have been put in place to insure that this type of oversight does not occur in the future. Executive Director, Jerry Bridges, has written a letter of apology to the City Attorney requesting assistance in setting up a staff session to go over requirements set forth in the Public Meetings Law and the City of Oakland's Sunshine Ordinance. We have also requested that the City Attorney discuss with us any new developments that may have come along in the law about which we should be aware.

There is no one within the Port organization who would jeopardize the confidence bestowed upon the Board of Port Commissioners or the overall integrity of this fine organization.

We certainly regret this unfortunate occurrence and I want to re-assure the public that this Commission is taking every precaution to prevent anything like this from happening in the future.

**PATRICIA A. SCATES**  
President

**FRANK KIANG**  
First Vice President

**ANTHONY A. BATARSE, JR.**  
Second Vice President

**DARLENE AYERS-JOHNSON**  
Commissioner

**KENNETH KATZOFF**  
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**JERRY A. BRIDGES**  
Executive Director

**DAVID L. ALEXANDER**  
Port Attorney

**JOHN T. BETTERTON**  
Secretary of the Board

**SPECIAL MEETING**

**AGENDA**

**The President Of The Board Of Port Commissioners, Patricia Scates, Has Called A Special Meeting Of The Board Of Port Commissioners For Friday, March 18, 2005, At The Hour Of 12:00 P.M. in the Board Room, 530 Water Street, Oakland, California.**

**ROLL CALL:**

Commissioner Ayers-Johnson, Vice President Batarse, Commissioner Katzoff, Vice President Kiang, Commissioner Kramer, Commissioner Protopappas and President Scates.

**CLOSED SESSION:**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION.** Government Code Section 54957(b):

Title: Executive Director

*JB*  
2005 MAR - 18 AM 11:30

**CLOSED SESSION REPORT**

**OPEN SESSION**

- 1. Port-wide Goals and Objectives.

**OPEN FORUM**

**ADJOURNMENT**

The next regular meeting of the Board of Port Commissioners is scheduled for Tuesday, April 19, 2005.

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