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**Office of the Inspector General**  
**Miami-Dade County**

## COVER MEMORANDUM

To: Mr. George Burgess, County Manager

Received by \_\_\_\_\_ Date \_\_\_\_\_

From: Christopher Mazzella, Inspector General

Date: August 11, 2004

Re: OIG's Final Audit Report of the Cargo and Cruise Project of the Miami Seaport  
Redevelopment Program (MSRP) at the Miami-Dade County Seaport

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Attached please find the Office of the Inspector General's (OIG) final audit report regarding the above-captioned. Incorporated and fully appended to this report are the Seaport Department and P&O Ports Florida Inc.'s responses to the draft version of this report.<sup>1</sup>

The OIG audit focused on selected MSRP construction projects, from bid proposal to final completion. Overall, the OIG did not observe any significant deficiencies or unallowable costs within the scope of the program. Costs were documented and applicable to the contract, statutes, and regulations. Our audit findings, however, primarily focused on the cancellation of individual projects from the overall Cargo and Cruise Project (C&C Project). The second page of the audit provides a *Results Summary* section, which highlights the main findings of our review.

Additional issues have surfaced since the issuance of the draft report, and thus, the OIG requests that we are provided with a status report in 90 days (November 12, 2004). This report should include a follow-up to the original audit findings and recommendations.

As it relates to cancellation of projects, it is noted that Project 19 - *Relocating Rail Lines*, which was a "shadowed" project during the end phase of our audit fieldwork, has since been cancelled from the MSRP C&C Project. Project 19 had a signed GMP in December

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<sup>1</sup> Even though P&O Ports Florida Inc., the project developer was terminated on 4/01/04, as the project developer of the MSRP, the OIG provided it a copy of the draft audit for comment. A copy of the draft audit report was also sent to The Haskell Company (Haskell), the construction manager of the project. An independent response was not received from Haskell. Haskell stated that they participated in the Seaport's review and concurred with the Seaport's response. The OIG would have preferred an independent response from Haskell as it is the construction manager of the project. DMJM Harris, while participating in the program's decision making process, is the Seaport's Department's consultant and therefore was not directly provided a draft copy by the OIG.

2003 for \$629,165. Estimated construction cost as of the *June 2004 Monthly Report* budget forecast was approximately \$94,000. Therefore, there is approximately \$535,000 in savings by canceling this project. The OIG would like the Seaport Department to provide a response in the 90 days status report how this "cost saving" amount will be spent.

As it stands, the current scope of the C&C Project consists of a total of twenty-two (22) active and/or completed projects; its scope having been reduced by a total of eleven (11) projects and numerous sub-projects. These 22 remaining projects all have either signed GMPs or are in the pipeline of being signed and according to Seaport representatives, no projects are being "shadowed." The OIG would request that as part of the 90 day update, that the Department provide information on any additional projects and/or sub-projects that have been since cancelled and the re-programming of those budgeted costs.

Last, the OIG must emphasize that the \$2.4 million spent on cancelled projects, as identified in audit finding no. 3, does not represent the total dollar amount spent on cancelled sub-projects. As noted throughout the report itself, we focused on the cancellation of whole projects and not the various sub-components of an enumerated project. We found that the pay documentation did not always provide adequate documentation supporting cost breakdowns. In other instances, not necessarily involving outright cancellation of a project, significant costs were incurred for designs that were not utilized. Therefore, the true amount spent on cancelled projects, sub-projects, designs, and other soft costs is not known. The OIG requests that the Seaport include in the 90 day report a listing of cancelled sub-projects not captured in Table 4 of the OIG's report.

**The OIG appreciates and thanks the staffs of the Seaport Department, DMJM Harris, P&O Ports and The Haskell Company for their courteousness and cooperation extended to the OIG during the course of this audit.**

**It is respectfully requested that County management provide the OIG with this status report by November 12, 2004.**

cc: Honorable Chairperson Barbara Carey-Shuler, Ed.D, Board of County Commissioners  
Honorable Katy Sorenson, Vice Chairperson, Board of County Commissioners  
Honorable Dennis Moss, Chair, Transportation Committee  
Mr. Charles Anderson, Commission Auditor, Board of County Commissioners  
Mr. Bill Johnson, Assistant County Manager  
Mr. Charles A. Towsley, Director, Miami-Dade Seaport Department  
Mr. Roger Hernstadt, Director, Office of Capital Improvements Construction Coordination  
Ms. Cathy Jackson, Director, Audit and Management Services

Clerk of the Board (copy filed)

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*A draft version of this report was issued on June 30, 2004. P&O and the Seaport Department provided their responses to the draft, which are attached in their entirety. A copy of this report was sent to The Haskell Company (Haskell), the construction manager of the project. An independent response was not received from Haskell. Haskell stated that they participated in the Seaport's review and concurred with the Seaport's response. The Seaport's specific responses to individual findings have been inserted into this document (indented). Portions of P&O's response have also been inserted into this document. OIG passages, including rejoinders, new to this final report are italicized.*

*As a follow-up on this audit and to monitor the implementation of the recommendations, the OIG requests that the Seaport Department provide a status report in 90 days. As highlighted in the cover memorandum accompanying this report, and as can be found throughout this report, the OIG respectfully requests updates on these specific issues.*

## SYNOPSIS

The Office of the Inspector General (OIG) conducted an audit of the Miami Seaport Redevelopment Program (MSRP), developed and administered by P&O Ports Florida, Inc., under the Master Development Agreement, dated September 13, 2001. The audit focused on selected construction projects, from bid proposal to final completion. The audit also includes a review of construction administration, budget, payment applications, as well as other documentation supporting payments made under the contract.

The parties to the Master Development Agreement (the Agreement) are Miami-Dade County, the Seaport Department, P&O Ports Florida, Inc., Carnival Cruise Lines, and the Port of Miami Terminal Operating Company (POMTOC). P&O Ports Florida (P&O), Carnival Cruise Lines and POMTOC are the Port's tenants. P&O is the service provider for container and general cargo operations, baggage handling and other terminal services. POMTOC is a stevedoring company and is the operator and manager of the Port of Miami's common carrier terminals. POMTOC is 50% owned by P&O.

The individual projects, which comprise the MSRP, are classed into two groups: the "Cargo and Cruise Project" and the "Cruise Terminal Project." P&O serves as the developer of the Cargo and Cruise Project. Miami-Dade County (the County) serves as the developer of the Cruise Terminal Project. On April 1, 2004, the County terminated

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P&O as the program developer and assumed developer responsibilities of the Cargo and Cruise Project. The OIG audit covers the Cargo and Cruise Project (C&C Project) only. The OIG did not audit or review any records or documentation for the Cruise Terminal Project, other than what is stated in the Agreement.

The C&C Project initially had a maximum project cost of \$111.23 million and consisted of thirty-three (33) projects. The Agreement was amended and the C&C Project's maximum project cost was increased to \$128.55 million and the number of projects reduced to twenty-seven (27). As of April 30, 2004, the budget remains at \$128.55 million (the amended amount); however, four (4) additional projects and several sub-projects have been cancelled. At present, the scope of the C&C Project consists of a total of twenty-three (23) active and/or completed projects. Each individual project has its own guaranteed maximum price (GMP).

**Summary Results**

During our review of the program, we noted the following:

1. Cancelled projects lacked sufficient documentation to support the procedures used for the cancellation process.
2. Use of the "shadowing"<sup>1</sup> principle was ineffective and did not serve its intended purpose of prioritizing projects.
3. Approximately \$2.4 million was spent on ten (10) projects cancelled from the C&C Project.
4. Several "approved" internal change orders were not properly approved or supported.

Overall, the OIG did not observe any significant deficiencies or unallowable costs within the scope of the program. Costs were documented and applicable to the contract, statutes, and regulations.

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<sup>1</sup> "Shadowed" projects were projects put on hold that were to be completed at a later date in the program without impacting the progress of other projects.

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*The Seaport Department, in its response, explicitly agreed with both recommendations. However, they did not state specifically how they would implement the recommended actions. P&O disagreed with certain statements made and issues raised by the OIG auditors. Overall, P&O neither agreed nor disagreed with the findings. P&O did not respond to the recommendations, either. The OIG did not include the majority of P&O's responses within our report since they no longer have the authority to implement any recommendations due to their termination. Please see P&O's response attached in the appendix.*

*In general, the OIG recommends that the Seaport Department maintain proper documentation on all aspects of the program. The Department should establish authoritative and written approval for the cancellation and reallocation of funds to other projects. Details on the implementation of these procedures should be provided in the requested 90 day status report.*

**ABBREVIATED TERMS USED IN THIS REPORT**

(A&E) Architect/Engineer  
(BCC) Miami-Dade Board of County Commissioners  
(C&C Project) The Cargo and Cruise Project  
(County) Miami-Dade County  
(CM) Construction Manager  
(GMP) Guarantee Maximum Price  
(Haskell) The Haskell Company  
(Agreement) Master Development Agreement  
(MSRP) Miami Seaport Redevelopment Program  
(OIG) Office of the Inspector General  
(P&O) P&O Ports Florida, Inc.  
(POMTOC) Port of Miami Terminal Operating Company  
(Port) The Dante B. Fascell Port of Miami-Dade

**GOVERNING AUTHORITY**

In accordance with Section 2-1076 of the Code of the Miami-Dade County, the OIG has the authority to review present, past and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. This authority includes conducting contract audits regardless of whether the contract contains an OIG random audit fee.

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**Florida State Statute**

Florida Statute §125.012(24) allows the County to enter into contracts with its tenants to design or construct any projects or improvements, extension or enlargement thereof, on such terms and conditions as the County shall determine by resolution. Such contracts may provide for the hiring of professional services, including hiring of architects and engineers and the award of construction contracts by such tenants or users. Tenants shall be reimbursed upon audit of their reasonable and necessary expenses incurred on behalf of the project. Such reimbursement may, at the option of the County, be provided from the proceeds or issuance of revenue bonds, loans, or by any other method authorized by law.

**BACKGROUND**

In recent years, the Dante B. Fascell Port of Miami-Dade (the Port) has experienced significant growth in both its cargo and cruise operations. To keep up with current demand, the Seaport Department embarked on a capital improvement program.<sup>2</sup> The capital improvement program identifies construction improvement needs over the next several years to enhance the Port's facilities. Several projects from the capital improvement program were selected and grouped together under the Miami Seaport Redevelopment Program (MSRP) according to their completion time requirements.

**Selection of the parties and terms of agreement**

The Agreement was executed under the expedite process and a competitive selection process was not initiated. The Agreement was ratified by the Miami-Dade Board of County Commissioners (BCC) under Resolution No. 925-01 on July 26, 2001. The Resolution authorized the County Manager to execute the Agreement, on behalf of the County, with P&O, Carnival and POMTOC. The Agreement was signed September 13, 2001.

The Agreement was amended in September 2003, which extended the C&C Project's construction completion date from December 31, 2003 to June 30, 2004. Amendment No. 1 also increased the maximum projects cost for the C&C Project from \$111.23 million to \$128.55 million and reduced the number of projects from thirty-three (33) to twenty-seven (27). There were no changes made to the Cruise Terminal Project. OIG Table 1 (attached) provides a flowchart of the Agreement.

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<sup>2</sup> The Port's capital improvement program is included in the County's annual budget. Funding is an on-going process, which includes borrowing monies and applying for and receiving grants.

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P&O served as the developer and program administrator of the Cargo and Cruise Project from the contract date until April 1, 2004. Among its duties, P&O was responsible for selecting the program's architect, engineer and construction firms via a competitive selection process. Carnival operates as the principal cruise terminal operator and provides assistance and input into the cruise-related improvements. POMTOC operates as the principal cargo terminal operator and provides assistance and input in planning the improvements to the cargo terminal facilities.

DMJM Harris, under a separate consulting contract with the County, acts as the owner's representative. On behalf of the County, DMJM Harris, along with the Seaport Department representatives, oversee and make decisions on the MSRP, such as overseeing all construction activities and approving designs, individual project GMPs, internal change orders and payment applications.

**Cargo and Cruise Project**

As outlined above, the Cruise and Cargo Project (C&C Project) had a maximum project cost of \$111.23 million and a completion date of December 31, 2003. The ceiling was later increased to \$128.55 million with an extended completion date of June 30, 2004. P&O, through competitive selection processes, selected Foster Wheeler as the architect and engineer (A&E) and The Haskell Company (Haskell) as the at-risk construction manager (CM) and design/builder.<sup>3</sup> According to the amended budget, Foster Wheeler is being paid \$10 million for A&E services and Haskell is being paid approximately \$16 million for construction management and design/builder services. OIG Table 2 (attached) provides a breakdown of the program's budget<sup>4</sup> of \$111.23 million and the amended budget of \$128.55 million.

**AUDIT OBJECTIVES, SCOPE AND METHODOLOGY**

The OIG's objectives were to review P&O's administration of the program, as well as documentation supporting payments made under the Agreement. The scope of the OIG's review encompasses the MSRP Agreement, the C&C Project budget, deleted projects, internal change orders and payment applications. The audit period covers January 2002 to June 2004. OIG auditors attended meetings and toured construction sites to gain an understanding of the program. OIG auditors also reviewed weekly and

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<sup>3</sup> Haskell designed/built several of the projects and \$3.2 million in the amended budget is for these services.

<sup>4</sup> The budget prepared in July 2001 was revised in January 2002 to reallocate funds among the projects within the same budgeted amount of \$111.23M.



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monthly reports, as well as other documents, including the contract, budget, GMPs, and payment applications. OIG auditors also interviewed personnel from DMJM Harris, Haskell, P&O and the Seaport Department.

**CURRENT PROGRAM STATUS**

***Termination of P&O as Program Developer***

P&O's services were extended to June 30, 2004 by way of Amendment No. 1. However, on April 1, 2004, the County terminated P&O as the program developer. According to the *Termination and Assignment Agreement between the County and P&O*, the County assumes developer responsibilities and assigns P&O's rights and interests to the County. The termination agreement states that P&O will remain on site until April 30, 2004, or later, at the County's written request, to assist DMJM Harris (the Seaport's consultants) and the Seaport Department with management transitions. P&O remained on-site with a minimal staff until May 31, 2004.

***Additional delays in the construction period***

Amendment No.1 granted a six-month extension for the construction period to be completed by June 30, 2004. However, according to the *Weekly Schedule Exception Report* dated June 25, 2004, the program is now estimated to be completed by July 5, 2005. **This is a new twelve (12) month delay from the June 30, 2004 completion date.** As explained to the OIG, the delay is related primarily to scope changes, budget controls, delays in obtaining permits, and relocation of tenants. According to Seaport staff, Haskell has requested additional time to complete the work. Determinations of time and cost responsibility are the topics of current negotiations and, at present, there is no additional amendment to extend the contract period or to extend the construction manager services for the additional twelve-month period. A change order to the contract will likely be prepared as a result of the negotiations.

*Subsequent to the date of P&O and the Seaport's responses, the Seaport Department provided the OIG with a copy of a memorandum dated June 30, 2004, sent by the Seaport Director to the County Manager's Office for approval by the County Manager. The memo requests an extension to the Agreement completion date from June 30, 2004 to June 30, 2005.*



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**Payments made on C&C Project**

As of February 2004<sup>5</sup>, construction costs and services under the C&C Project amounted to approximately \$81.23 million, which is 63% of the \$128.55 million maximum project cost. This amount includes \$50.84 million for Haskell construction costs and construction management services, \$12.85 million for owner direct purchases, and \$1.75 million for P&O's developer fee. Therefore, as of February 2004, approximately \$47.32 million of the total allocation remains to complete the C&C Project. This may be of issue in light of the latest projected completion date of July 5, 2005.

**Claims from the Architect/Engineer and the Construction Manager**

In the *February 2004 Monthly Report*, and in additional documentation reviewed by OIG auditors, there are potential claims from both Haskell and Foster Wheeler. Haskell intends to claim approximately \$3.4 million in costs for additional services and time. Foster Wheeler intends to claim approximately \$300,000 in costs for time, material and work outside of its agreement. P&O, DMJM Harris and the Seaport Department are in discussion with both parties to ensure that the claims prove to be a contractual entitlement, are of sufficient detail, and accurate in their amounts. Since these claims have not yet been resolved or agreed to, estimated amounts were not included in the March 2004 estimates.

**The March 2004 Monthly Report**

Amounts reported in the *March 2004 Monthly Report* show that the estimated budget shortfall of \$4.5 million, as noted in the February 2004 (previous month's) report, was eliminated. According to DMJM Harris' accounting representative, P&O's administrative duties were terminated and the March 2004 budget estimates were finalized by DMJM Harris. P&O had originally reduced its estimates from the \$4.5 million February 2004 shortfall to \$2.2 million for March 2004. The reduced \$2.2 million shortfall was then reviewed by DMJM Harris and, based on its estimates, it eliminated the budget shortfall altogether.

As explained to the OIG auditors, DMJM Harris believed that some P&O estimates were overestimated and exaggerated. DMJM Harris' accounting representative also stated that P&O was not aware that some costs were already recognized in the budget and were, therefore, counted twice by P&O, resulting in the redundant reporting of these costs. Through DMJM Harris' review and adjustment of anticipated costs for the

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<sup>5</sup> The most recent cost data available was February 2004.

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completion of the program, the shortfall was eliminated and the program's estimated cost of completion is now back within the \$128.55 million budget. OIG Table 3 (attached) provides a comparison of the amended budget and the estimated cost of completion as of March 2004. The April 2004 and the May 2004 estimated costs of completions are also within budget.

While eliminating the reported budget shortfall, the *March 2004 Monthly Report* that was issued by DMJM Harris and Haskell did not adequately provide information on the overall MSRP percentage of completion, estimated MSRP completion date, number of projects completed, cancelled or shadowed, or potential change order estimates, etc. This information was reported by P&O in its previous monthly reports. OIG auditors requested this additional information from DMJM Harris and we were provided with it. For example, the sixty-five (65) percent completion of the program and the twenty-two (22) projects and sub-projects<sup>6</sup> currently in progress were not stated in the March 2004 report.

The OIG questioned DMJM Harris about the information not included in the March report, as noted above. DMJM Harris stated that in the future they would include similar information to reflect the progress of the construction program. The OIG believes that the information should be included to provide a complete picture of the program and to provide adequate information for parties outside of the program.

**Active and Completed Projects – Payment Processing**

The OIG auditors also reviewed costs incurred and documents maintained for several active and completed projects within the MSRP. Criteria used included reviewing several payment applications to determine whether charges were properly supported and whether payment applications were properly approved, whether retainage withheld agreed to contract terms and whether Haskell was paid timely. Other criteria included reviewing the close out documents maintained for the completed projects. These documents included written performance of a final inspection, certificate of final acceptance by owner, certificate of occupancy and final waiver and release of liens.

The payment applications reviewed by the OIG were properly supported and properly approved. The retainage amounts withheld agreed to the contract terms and Haskell was paid timely. The close out documents reviewed were properly documented and completed. No exceptions were noted.

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<sup>6</sup> Sub-projects are projects that are broken into phases.

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**FINDINGS AND RECOMMENDATIONS**

***Part A. Cancelled Projects***

Cancelled projects are projects that are deleted from the MSRP scope. Specifically, our review focused on projects deleted from the C&C Project's scope. When Amendment No. 1 was approved in September 2003, six (6) projects were deleted from the C&C Project. Since then, an additional four (4) projects and several sub-projects<sup>7</sup> have been deleted. As explained to the OIG by P&O's commercial manager, these projects were cancelled mainly through budget controls and project redesigns. Some of these projects will be completed in the future as part of the Port's ongoing capital improvement program.

**Finding No. 1: Projects cancelled lacked sufficient documentation to support the procedures used for the cancellation process.**

The OIG auditors noted that there was not sufficient documentation maintained to track the process of a project from being "shadowed"<sup>8</sup> to cancellation. There was not sufficient authoritative record or written approval for a project's cancellation or reallocation of its funds to other projects. The OIG auditors asked P&O if any approval documents were maintained for cancelled projects. P&O's commercial manager stated that there are no signed documents demonstrating approval to cancel a project. Information on the cancelled projects was gathered by the OIG auditors mainly from reviewing monthly and weekly reports and comparing the listed projects from report to report.

The OIG auditors also requested documentation from P&O and DMJM Harris to determine the process used to cancel projects. P&O and DMJM Harris provided the following items:

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<sup>7</sup> The OIG reviewed cost incurred and reasons for cancellation on the deleted projects. However, the OIG did not review cost incurred and reasons for cancellation on sub-projects. It was difficult to determine costs associated with the cancelled sub-projects. Budgets and estimated amounts did not adequately provide cost breakdowns. On some documents, such as the payment application schedules, the budgeted amounts for these sub-projects were listed at zero. Also, the OIG noted that on the *February 2003 Payment Application No.14*, several projects were separated into sub-projects, however, the amended budget in Table 3 (prepared October 2003) does not state any cost allocation for sub-projects.

<sup>8</sup> See Footnote #1 and Finding No. 2 for additional information on the "shadowing" principle.

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1. A letter from the Seaport Engineer to P&O dated November 1, 2002, stating the cancellation of four projects and one sub-project from the MSRP. These projects are three (3) of the six (6) that were subsequently deleted from the original scope by Amendment No. 1. According to P&O's commercial manager, this letter was meant to confirm previous discussions between P&O and the Seaport Department regarding changes to the Port's facilities.

This letter, however, does not provide adequate information outlining the process used to cancel the projects. It requests the deletion of several projects but does not provide any explanation or approval for the deletion. And while, as explained to the OIG, the proposed deletion was not for budgetary reasons, the letter states that the deletion of two of the projects and the one sub-project "should reduce the P&O out-of-budget forecast by approximately \$8 million." The letter also acknowledges P&O's "budget control" efforts.

2. A summary report prepared by Seaport staff and provided to P&O, dated May 30, 2003, titled *Comparison of Initial Project to Forecast Outcome*, which explains the individual projects' original budgets, budget increases, decreases, scope reductions and deletions of projects. The six projects subsequently deleted (September 2003) via Amendment No. 1 are listed in the report with zero budget amounts.

This report is the only item that provided some explanation; however, it was used to justify the budget increase needed in Amendment No. 1. The summary report does not include the deletion of the additional four cancelled projects.

3. A start-up document folder maintained by DMJM Harris for one project. This folder is intended to include the project GMP, budget, notices, schedules, plans, survey, permits, bond, insurance, and other documents.

DMJM Harris' accounting representative stated that a start-up document folder is used for every project. This process normally starts with the approval of the individual project's GMP. The OIG auditors were presented with only one start-up folder for all ten cancelled projects. When the OIG auditors questioned DMJM Harris about the additional start-up folders, the accounting representative stated that most of these projects were cancelled before a folder was established or before the project's GMP was approved.

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4. Four final account reconciliations. The final account reconciliation provides a breakdown of all costs related to the projects, such as direct costs, design fees and Haskell's costs.

A final account reconciliation was prepared for each of the four projects cancelled after Amendment No. 1. Haskell prepares the reconciliation only when it incurs construction management costs related to the project and only after the project is considered completed or cancelled. Only one final account reconciliation stated that the project was cancelled. There were no Haskell costs for the other six projects, thus no final reconciliation was completed.

In summary, the items provided to the OIG auditors as documents relating to the cancellation process were not sufficient as being adequate authoritative records or written approval to support the processes used to cancel these projects. Also, the justification to cancel a project is not memorialized, in a consistent format. The lack of adequate documentation to support an approval process is of concern to the OIG as it is not readily apparent who finally authorizes the deletion of a project, and ultimately, the reprogramming of those monies to fund other projects.

The reprogramming of monies due to the impact of project cancellation is not great when compared to total dollar amount. For example, the January 2002 construction (hard) costs budget was \$83.55 million and the October 2003 revised budget amount for these costs is \$92.06 million, which is an increase of \$8.5 million. These budget amounts do not include Haskell's CM and design/build service fees. The \$8.5 million are the additional funds that were provided under Amendment No. 1. However, the January 2002 budget listed 33 active projects whereas the October 2003 budget listed only 23 active projects. This is a decrease of 10 projects. In other words, ten (10) fewer projects were completed for an additional \$8.5 million in budgeted costs.

This "net" approach, however, obscures the fact that the \$24.32 million from the ten (10) cancelled projects was reallocated to the remaining 23 projects. Thus, another statement describing the C&C Project is that the 23 remaining projects that were originally listed in the January 2002 budget at \$57.93 million were later listed in the October 2003 budget at \$90.76 million. This increase of \$32.83 million for these 23 projects includes the \$8.5 million from Amendment No. 1 and the re-allocated \$24.32 million.<sup>9</sup>

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<sup>9</sup> Approximately \$1.3 million remains allocated to some of the cancelled projects under the October 2003 budget (\$92.06 million less \$90.76 million).

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**Seaport Department's Response to Finding No. 1**

We agree that there was no single document or procedure used to "cancel" projects or components that were removed from the Development program. In the future this will be incorporated into our oversight processes for all ongoing and new construction.

Program costs did exceed anticipated costs. In the areas of security measures, where the Port has received \$12 million of Federal Transportation Administration grants, significant cost overruns occurred due to the extensive fiber cabling necessary to network the project security infrastructure. Additionally, during the course of the contract, some steel prices have risen 40% and cement has become very difficult to obtain. These are some of the more significant unanticipated events, which continue even today to affect the overall final project cost.

***OIG Rejoinder***

*The Seaport Department, in its response, agreed to the finding and stated that in the future they will incorporate procedures for all ongoing and new construction programs. However, the Department did not explain or list the procedures they will implement. Also, for the \$12 million received in federal grants to fund security projects, as mentioned in its response, the OIG would like an explanation whether this grant or any other grants received supplement the MSRP budget, i.e. if the grants received increase the budgeted amount above \$128.55 million or are to be included in the maximum project cost.*

*The OIG requests that the Department provide in the 90 day status report the following: (1) a list of procedures or forms that they will implement to support project cancellation and reallocation of funds to other projects; and (2) clarification on whether the grants received supplement the budget.*

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**Finding No. 2: Use of the “shadowing”<sup>10</sup> principle was ineffective and did not serve its intended purpose of prioritizing projects.**

According to P&O’s commercial manager, early into the MSRP, when the collective cost of the projects started to exceed the approved MSRP budget, P&O and the Seaport Department adopted the “shadowing principle.” The principle came about in early 2003 when it was anticipated that a budget increase would be necessary to complete all original projects and their work scopes. The shadowing principle was used to identify projects that could be put on hold until monies could be found to pay for them, either through grants, scope reductions or cost savings. These shadowed projects were considered to be projects that could be completed later in the program and not have an impact on the progress of the C&C Project. As costs continued to increase, some of the shadowed projects were eventually removed from the original MSRP scope entirely, thus being cancelled.

The Seaport Department concurred that the objective of shadowing projects was to prioritize projects in the program. The C&C Project original budgeted amount was established with the assumption that all 33 projects would be completed within the budget. However, as design work progressed, it was evident that the budget could not be maintained.

The OIG auditors were presented with a shadowing schedule, which was included in the *April 2003 Monthly Report*. The schedule listed eight (8) projects and three (3) sub-projects with projected costs of \$13.44 million for shadowing. This amount was “shadowed” pending the additional funding from Amendment No. 1. Only one of the projects was later cancelled in Amendment No. 1.<sup>11</sup> The OIG notes that the additional ten (10) of the eleven (11) remaining projects and sub-projects on the shadowing schedule were not deleted in Amendment No. 1 and are currently listed as active and / or completed projects.

As of April 2004, Project 19 was re-shadowed. This project was first reported as being shadowed in the *April 2003 Monthly Report*, but was re-listed as an active project with a signed GMP as of December 2003. Additionally, according to the most recent GMP Summary Log provided to the OIG, two of the cancelled projects (project nos. 3 and

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<sup>10</sup> “Shadowed” projects were projects put on hold that were to be completed at a later date in the program without impacting the progress of other projects.

<sup>11</sup> The other three (3) projects cancelled through Amendment No. 1 are the three mentioned in the November 1, 2002 letter. See Finding No. 1, paragraph 1. These three cancelled projects were not selected for cancellation through a shadowing process.



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32) are shown as having “signed” GMPs and are not listed in the “cancel/shadow” section of the log report.

The Agreement states that the County and the Seaport Department have the right to add, delete or modify the MSRP or adjust any project phase, provided that the MSRP total cost is not increased above the maximum approved budget. As observed by the OIG with respect to the lack of documentation relating to cancellation, this shadowing process raises concerns about the procedures used to control the budget and delete projects. P&O’s commercial manager further stated that the shadowing principle histories could be traced to the meeting minutes, monthly reports and other available documentation. The principle used to shadow projects was not effective and may be seen merely as a process to camouflage cancelled projects, in order to maintain the budget.

*As the shadowing principle was a principle that was adopted and implemented by P&O, the OIG believes that for this finding, P&O’s Response be inserted herein.*

**P&O’s Response to Finding No. 2:**

As stated in Item 1 above, the ‘shadowing’ principle adopted by P&O Ports Florida Inc. was a device necessitated by the approximate nature of the conceptual projects and their budgets, and the obligation imposed by the MDA that P&O Ports Florida Inc. could not enter into any agreement that would exceed the budget ceiling of \$111,230,000. As the project evolved, the GMP’s started to be signed and P&O had to be aware of the value of committed works at all times, remembering that some GMP’s were less than \$1m, but that others were multi-million and 4 of them were in excess of \$10m.

When the value of the works started to exceed the fixed budget, it was necessary to identify those works that P&O Ports considered could be shadowed or put on hold until monies could be found to pay for them. Generally, these were later projects and those which did not have an impact on the rest of the works. When P&O had identified these projects, they were agreed with the Port and, in the early days, it was relatively simple for the Port to take action. This they did, often by omitting works from the scope – Projects 8, 20, 24, 25 and 28 (part) to name a few. However, as

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the costs continued to increase, and the opportunities to omit works diminished, it became harder to hold the budget ceiling, and eventually impossible. It was this that instigated the application to the County Commissioners in 2003 to increase our budget.

We strongly disagree that the shadowing principle was not effective. In April 2003, the Roads projects were ready for signing and, group together, were valued in excess of \$25m. Without an increase in the budget, P&O could not sign those GMP's, so, in conjunction with The Haskell Company, their Roads subcontractor and the Port, we agreed to 'shadow' part of the Roads works (those to be completed in 2004), so that we could sign the GMP's before the increased budget was approved, and avoid any delays to the project. This worked extremely well, the GMP's were signed in June 2003, the works progressed, the budget increased in September 2003 and the balance of the Roads works was released in late October 2003.

As to the OIG's comment about shadowing being seen as process to camouflage cancelled projects, nothing could be further from the truth. "Shadowing" specifically highlighted projects that could be cancelled. The fact that projects had to be cancelled was because the MDA set a fixed cost, yet we had 33 variable scopes of work evolving. As those scopes were finalized and the cost increased, either money HAD to be found or projects HAD to be cancelled. Shadowing helped select those projects which could be cancelled with minimal impact on the remainder of the program. "Shadowing" stopped construction cost being incurred and maintained the budget ceiling at all times.

P&O Ports believe the shadowing principle worked extremely well and the MSRP works (and other programs) benefited from its implementation.

**Seaport Department's Response to Finding No. 2:**

The Shadowing principle was used to identify projects for which a GMP had not yet been issued, and which, if constructed, based

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on then current information, could cause the entire program to exceed the total budget. At one point Wharf 6 was shadowed. This project is a key component of the program and today is in the final stages of completion. However, at one point, it was shadowed so that Port staff would understand that the development program could exceed the program approved amount should the wharf contract be let. Shadowed projects had two criteria; first, they were projects that were not yet under contract and therefore could be cancelled, second, at the point in time when a particular report was prepared they were shadowed to denote that there were insufficient funds in the program to let the contract. This was an alert to Port staff that decisions may need to be made regarding prioritization of projects.

***OIG Rejoinder***

*P&O states that shadowing specifically highlighted projects that could be cancelled which would stop construction costs from being incurred and thus maintaining the budget ceiling at all times. The Seaport Department, in its response, stated that the shadowed projects had two criteria: (1) projects that were not yet under contract and therefore could be cancelled and (2) projects with insufficient funds.*

*By their responses, it would appear that both P&O and the Seaport Department are saying that the shadowing principle objective was to cancel projects in order to maintain the budget and not necessarily prioritize projects for completion. While that may have been the objective, the OIG re-affirms our finding by noting that three of the cancelled projects did have signed GMPs (projects 3, 32 and 19) and, therefore, their cancellation would logically result in savings.*

*Finally, it is noted by the OIG that Project 19 - Relocate Rail Lines, discussed above in the body of this finding, was a shadowed project that eventually had a signed GMP and has since nevertheless been canceled resulting in \$535,000 of cost savings. The OIG would like the Seaport Department to include in the 90 days status report a response to how this "cost saving" will be spent in the C&C Project scope.*

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**Finding No. 3:**        **Approximately \$2.4 million was spent on ten (10) projects cancelled from the C&C Project.**

As of the *February 2004 Payment Application No. 26*, there are approximately \$2.4 million of incurred costs for the ten (10) cancelled projects. This amount includes design fees, permit fees, survey and engineering costs, construction manager's fees and materials purchased. Designs were 100% completed on five (5) of the ten (10) projects. No construction hard costs were incurred on any of these projects, except for approximately \$383,000 to Haskell for design/build services, survey costs and construction management fees. The OIG auditors did not review cost incurred and reasons for cancellation for sub-projects, as previously stated in Footnote No. 7.

OIG Table 4 (attached) provides an outline of the ten cancelled projects, including reasons for cancellation, total cost incurred to date and the probability of these projects being completed in the future. There was no uniform document that captures reasons for cancellation and approval to cancel, therefore, information on Table 4 was gathered from interviewing personnel from P&O and DMJM Harris; and from reviewing additional information.

Also noted in Table 4, approximately \$970,000 of total project costs will either be completed by the Port's tenants or will not be completed at all. Projects 24 and 25, which amount to \$494,090, will be constructed by the tenants and Projects 9, 20 and 31, which amount to \$475,586, will not be completed in any future program. There is concern that the A&E designs and the survey inspection and testing services completed for these five projects will not benefit the Port. For example, Project 24, where the stevedores could not agree on the designs prepared under the MSRP, will complete the project using their own design. In essence, these costs and designs may be seen as a waste of funds and poor planning.

The OIG also questioned P&O and DMJM Harris to determine if the Port will benefit from the \$2.4 million spent on the cancelled projects. P&O and DMJM Harris stated that most of the projects will be completed in the future. Most of the costs were for necessary design work. The design work completed in this program will be used in the future when these projects are funded for completion. As noted in Table 4, it is likely that only five (5) of the ten (10) cancelled projects will be completed under future programs. New funds will have to be allocated to complete these projects.

The OIG is concerned that since the Seaport's capital improvement program, as referred to in Footnote No. 2, is an ongoing funded program, there is no assurance or guarantee that funds will be available to complete these projects in the future. Thus,

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the Seaport Department will need to find funds to fund these projects. Therefore, at this time, *in the future* is not a determinable period.

For four (4) of the cancelled projects, the OIG auditors reviewed charges noted on several payment applications to determine whether costs were properly supported, were agreeable with previous payment applications and were applicable to the contract. The charges reviewed were properly supported and agreed to the payment applications. The payment applications were properly approved and applicable to the Agreement.

**P&O's Response to Finding No. 3:**

As stated above, the process of firming up scopes and agreeing costs meant that, as costs increased, some projects had to be cancelled. However, these were almost always cancelled during the design stage and the OIG acknowledge that no construction hard costs were incurred. The project was set up as 'fast track' and the Architect's contract acknowledged that this process meant that some abortive design costs were inevitable. Whilst \$2.4m is a significant sum of money, it is still less than 2.2% of the original budget, and it is likely that many of the completed designs and surveys both provided the Port with a quantifiable asset, and may be used if any of these projects do progress in the future.

**Seaport Department's Response to Finding No. 3:**

We agree with this, but would respectfully point out that of the \$2.4 million only approximately \$800,000 will not provide future benefit to the Port. The remaining \$1.7 million comprising mainly design costs will be used by the Port to complete the project either at a later time, or under a different contract. Of the \$800,000, \$220,000 will probably not be used as the Port has determined not to build Shed F. The balance of \$580,000 spent for design of a terminal user's new maintenance facility may not be useful either. However, as the terminal operators have determined to build their own, the Port will save another \$2 million in cancelled construction costs.

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We agree with all of the Inspector General's recommendations regarding cancelled projects. We believe that the Seaport Department and Development group have performed a difficult task well. This program was a large program based on customers' needs here at the Port. In some cases those needs shifted while the program was underway with the Port responding in the most economical efficient manner under the circumstances.

***OIG Rejoinder***

*The Seaport Department agreed that \$2.4 million was spent on cancelled projects including approximately \$800,000 that will not provide benefit to the Port. P&O characterized these "abortive design costs" as being inevitable. The OIG continues to be concerned that these costs were a waste of funds and the result of poor planning.*

**Recommendation to Part A. Cancelled Projects Findings Nos. 1, 2, and 3:**

There should be reasonable support to justify project cancellation, along with authoritative records and written approval for the cancellation or reallocation of funds to other projects. The "shadowing" principle should be used as a tool to properly manage the program and not to counteract cost (overages) on other projects. The Seaport Department should assure that monies spent on cancelled projects should have some future benefit to the Port's improvement program and not go to waste.

*The Seaport Department agreed to the recommendation, therefore, no rejoinder is necessary.*

***Part B. Internal Change Orders***

**Finding No. 4:        Several "approved" internal change orders were not properly approved or properly supported.**

Each enumerated project in the MSRP has its own GMP. If there are changes to the individual project's scope or estimated costs, then an internal change order is issued to reflect these changes. The internal change order either adds to or subtracts from the project's GMP. Internal change orders include a description of the changes, the estimated dollar amount and justification for the change. These change orders are issued pursuant to the authority granted to parties under the Agreement and they are

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internal to the MSRP and are not presented to BCC for approval. These internal change orders are approved by Haskell, P&O, DMJM Harris and the Seaport Department. As of March 2004, \$2.8 million were estimated in potential internal change orders. Per DMJM Harris, this estimated cost is currently covered by the MSRP scope reduction of \$3.5 million.

The OIG auditors reviewed fifteen (15) "approved" internal change orders based on the GMP/Change Order schedule maintained by P&O. The OIG auditors review process included, but was not limited to, examining whether the internal change orders were properly supported and properly approved, whether the internal change orders were already accounted for in the individual project's GMP and whether the internal change orders resulted from unforeseeable conditions. Based on the OIG review, P&O did not maintain proper support for some of these internal change orders. For the fifteen (15) internal change orders reviewed, four (4) were not properly supported<sup>12</sup>, two (2) were not properly approved<sup>13</sup> and one (1) was not presented to the OIG for almost a month, suggesting that the documentation could not be located.

P&O's commercial manager and project manager explained to the OIG auditors that the internal change orders were properly approved; they just could not locate the approved copies. P&O also stated that at the beginning of the construction period they were not maintaining copies of all the internal change orders. The OIG auditors, therefore, requested both additional support and approved copies of the internal change orders from Haskell. Eventually, support was provided for all fifteen internal change orders.

The internal change order that could not be located was received almost a month after requested by the OIG auditors. DMJM Harris' accounting representative stated that P&O did not realize that the change order was misplaced until the OIG requested a copy. Therefore, another copy was sent out for approval after the OIG requested that particular internal change order.

The OIG auditors eventually received proper support and approval for all the internal change orders requested. As part of its normal business practices, P&O should have maintained properly documented and properly approved internal change orders. In light of P&O's termination as the MSRP developer, the Seaport Department needs to maintain proper custody of the internal change orders.

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<sup>12</sup> Not properly supported means that support for the amounts were incomplete, such as the subcontractors' cost, or the cost break down of amounts were not included.

<sup>13</sup> Not properly approved means that some of the authorized signatures, such as P&O, DMJM Harris and the Seaport Department, were not noted on the change order.



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**Recommendation to Part B Internal Change Order, Finding No. 4:**

The OIG recommends that the Seaport Department itself, or through its consultant, DMJM Harris, gather support for all internal change orders that have been approved and assure that they are properly supported and properly approved.

**Seaport Department's Response to Finding No. 4:**

Based on the final documentation provided by the Developer, the requested support for change order was received.

We fully agree with the recommendations for Part B.

*The Seaport Department agreed to the recommendation, therefore, no rejoinder is necessary.*

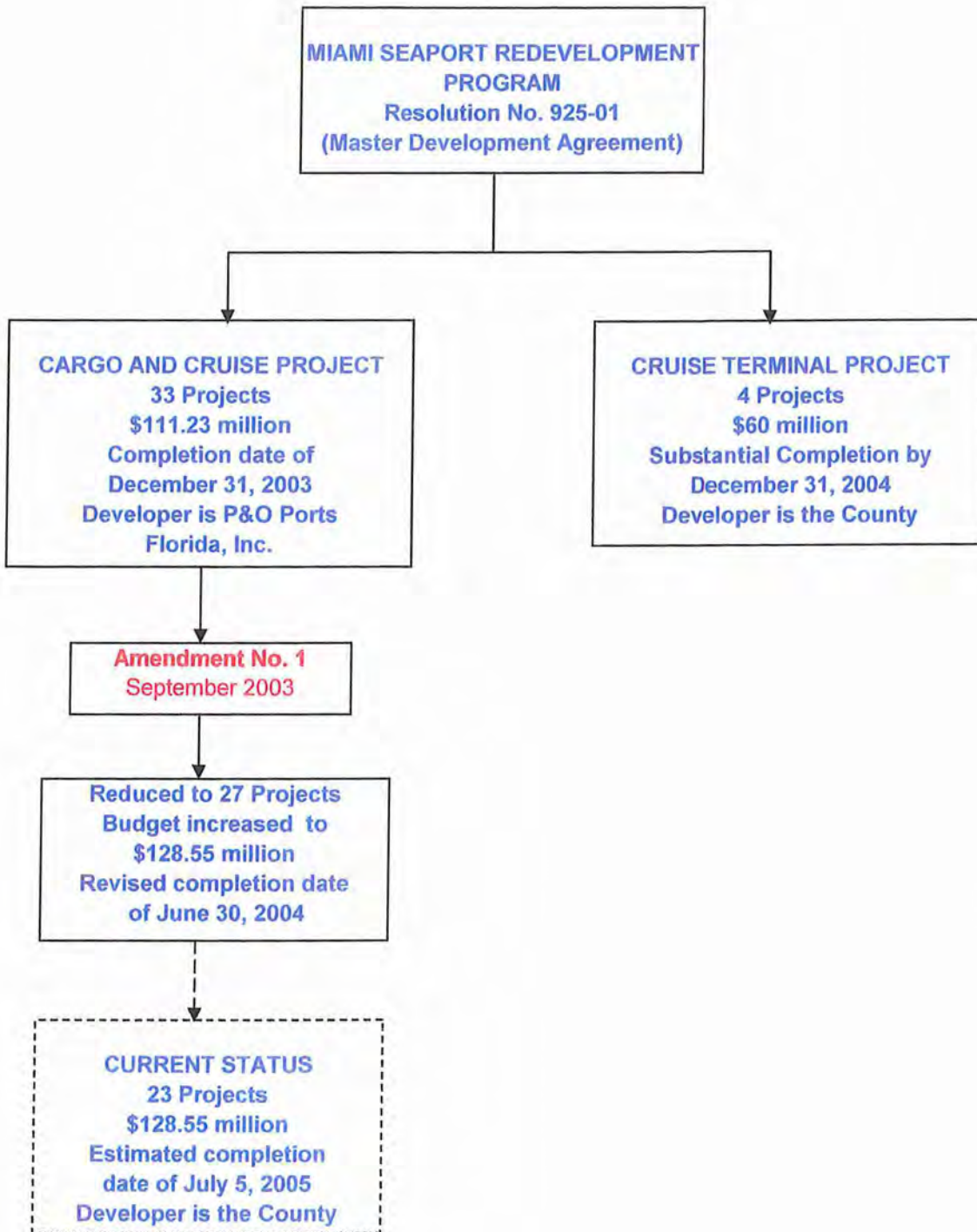
**CONCLUSION**

Overall, the Seaport Department should maintain proper documentation on all aspects of the program. The Department should maintain authoritative records and written approval for a project's cancellation and reallocation of funds to other projects. Through its own staff or through the Department's consultant, the Seaport should properly monitor individual projects in the program, so as not to exceed the program's budget, thus resulting in canceling projects. The MSRP program originated with thirty-three (33) projects, ten (10) have been cancelled, thus resulting in (23) active and completed projects as of June 2004.

The OIG is not indicating that there were not legitimate reasons for some cancellations. For example, the MSRP was affected by the new Homeland security mandates, which may have resulted in scope changes, redesigns and security-related needs. However, the lack of proper support and authoritative records has precluded us from determining that proper procedures were used.

**The OIG appreciates and thanks the staffs of the Seaport Department, DMJM Harris, P&O Ports and The Haskell Company for their courteousness and cooperation extended to the OIG during the course of this audit.**

**Table 1  
MSRP Flowchart**



**Table 2  
Cruise and Cargo Budget**

Miami Seaport Redevelopment Program P & O Project Budget Summary Seaport Cargo & Cruise Zones			
Project Description - Hard Costs	Revised Budget (Jan 02)	Amended Budget (Oct 03)	% Increase Decrease
1 Relocation of Fumigation Yard	\$ 63,000	\$ 300,755	377%
2 Demo Shed C, Improve Drainage, Move Electric Vault	\$ 549,000	\$ 181,152	-67%
3 Intermodal Center, Terminal 10 ††	\$ 1,432,000	\$ 170,566	-88%
4 Roadway, Sheds A & B	\$ 1,200,000	\$ 5,032,192	319%
5 Gangway & Bridge, Terminal 10	\$ 1,400,000	\$ 5,813,134	315%
6 Intermodal Center, Terminal 11 ††	\$ 1,432,000	\$ 206,129	-86%
7 Parking Garage, Terminals 8,9 & 11	\$ 8,628,000	\$ 10,046,820	16%
8 INS Facility, Terminal 12 †	\$ 1,200,000	\$ -	-100%
9 Passenger Bridge & Gangway Relocation, Terminal 12 †	\$ 628,000	\$ -	-100%
10 Bulkhead Realignment, Berth 19	\$ 2,600,000	\$ 3,554,519	37%
11 Intermodal & Roadway Improvements, Terminals 8 & 9	\$ 1,964,000	\$ 437,521	-78%
12 Cruise Entry Gate/Command Centre	\$ 3,600,000	\$ 956,071	-73%
13 Parking Controls System	\$ 1,000,000	\$ 611,100	-39%
14 Relocate Seaboard Car Lot, Construct Surface Lots	\$ 550,000	\$ 2,422,056	340%
15 Sitework & Landscape †	\$ 1,940,000	\$ -	-100%
16 Eastern Port Boulevard	\$ 1,740,000	\$ 4,181,744	140%
17 Cargo Gate Facility	\$ 4,515,000	\$ 8,781,465	94%
18 Western Roadway, Flyover & Port Signage, incl VMS	\$ 3,915,000	\$ 12,305,173	214%
19 Relocate Rail	\$ 609,000	\$ 368,553	-39%
20 Construct Shed F, 110,000sf †	\$ 2,500,000	\$ -	-100%
21 Shed E, New Roof	\$ 587,000	\$ 1,114,277	90%
22 Shed G, New Roof	\$ 992,000	\$ 1,381,023	39%
23 New Refrigerated Yard, Relocate Chiquita	\$ 1,100,000	\$ 242,007	-78%
24 Construct New Terminal Equip. Maint. ††	\$ 2,250,000	\$ 245,058	-89%
25 Construct New Gantry Crane Maint. Fac. †	\$ 740,000	\$ -	-100%
26 Construct New Port Maint. Fac.	\$ 2,000,000	\$ 3,465,258	73%
27 Sewer Line Force Main & Utility Improvements	\$ 2,610,000	\$ 4,098,454	57%
28 Demolish Shed D	\$ 170,000	\$ 1,076,127	533%
29 Customs Fac./Seamen's Station/Comfort Stations	\$ 1,740,000	\$ 980,766	-44%
30 Wharf 6/Part Wharf 7	\$ 10,500,000	\$ 14,384,892	37%
31 Remainder of Wharf 7 †	\$ 10,500,000	\$ -	-100%
32 Mooring Improvements ††	\$ 3,000,000	\$ 676,729	-77%
33 Security Improvements	\$ 5,900,000	\$ 9,022,642	53%
<b>Sub-total - Hard Construction Cost</b>	<b>\$ 83,554,000</b>	<b>\$ 92,056,183</b>	<b>10%</b>
<b>Construction Manager at Risk Cost</b>	<b>\$ 11,300,000</b>	<b>\$ 12,930,339</b>	<b>14%</b>
<b>Design Build Fees</b>		<b>\$ 3,200,000</b>	<b>-</b>
<b>Sub-total Construction Cost</b>	<b>\$ 94,855,000</b>	<b>\$108,186,522</b>	<b>14%</b>
<b>A/ E Fees, Impact Fees &amp; Soft Costs</b>			
Architectural & Engineering Design Fees	\$ 6,166,000	\$ 10,000,000	62%
Insurance	\$ -	\$ 609,000	-
P&O Developer Fee	\$ 1,750,000	\$ 1,900,000	9%
P&O Staffing Resources	\$ 1,288,000	\$ 2,110,000	64%
Site Office Costs	\$ 700,000	\$ 800,000	14%
Seaport Representatives	\$ 1,800,000	\$ 1,900,000	6%
Surveys, Inspectors & Testing	\$ 250,000	\$ 500,000	100%
Art in Public Places	\$ 1,087,000	\$ 250,000	-77%
Impact Fees	\$ 900,000	\$ 450,000	-50%
Interest on Construction Draws	\$ 300,000	\$ 99,925	-67%
IPSIG Fee	\$ 238,000	\$ 321,379	35%
Contingency - 2 %	\$ 1,897,000	\$ 1,423,174	-25%
<b>Sub-total Design &amp; Soft Costs</b>	<b>\$ 16,375,000</b>	<b>\$ 20,363,478</b>	<b>24%</b>
<b>TOTAL PROJECT COST</b>	<b>\$ 111,230,000</b>	<b>\$ 128,550,000</b>	<b>16%</b>
<b>Cancelled Project Summary</b>			
† Six projects cancelled within Amendment No 1	\$ 17,508,000	\$ -	\$ 17,508,000
†† Four projects cancelled after Amendment No 1	\$ 8,114,000	\$ 1,298,482	\$ 6,815,518
	<b>\$ 25,622,000</b>	<b>\$ 1,298,482</b>	<b>\$ 24,323,518</b>



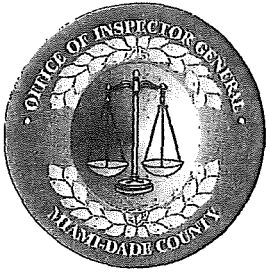
Table 3

MIAMI SEAPORT REDEVELOPMENT PROGRAM			
CARGO AND CRUISE PROJECT			
ANTICIPATED FINAL COSTS - March 2004 Estimates			
11-Aug-04 8:28 AM			
Project Description	Amended Budget Oct 03 <sup>1</sup>	Total Est. Const. Cost	BUDGET VARIANCE
<b>HARD COSTS</b>			
1 Relocation of Fumigation Yard	359	356	-3
2.2 Drainage Improvements	150	150	0
2.6 Signage & Pavement Markings	58	42	-16
3 Intermodal Center, Terminal 10 ††	193	11	-182
4 Cruise Loop Road	5,762	6,381	619
5.1 Gangway Relocations	1,800	1,978	178
5.2 CT Utilities	2,962	1,286	-1,676
5.3 Demo T1	614	678	64
5.4 Demo Shed A	988	1,233	245
5.5 Relocate Fire Station	224	552	328
6 Intermodal Center, Terminal 11 ††	234	15	-219
7 Parking Garage, Terminals 8,9 & 11	11,493	11,100	-393
10 Bulkhead Realignment, Berth 19	4,129	4,129	0
11 Intermodals, Terminals 8 & 9	496	505	9
12.3 Command Centre/TCR	1,084	1,416	332
13 Parking Controls System	693	1,311	618
14 Relocate Seaboard Car Lot	2,787	2,824	37
15 Sitework & Landscape †		0	0
16 Eastern Port Boulevard	4,792	6,330	1,538
17 Cargo Gate Facility	9,950	9,691	-259
18 Western Roadway/Flyover/Port Signage	14,084	13,121	-963
18a VMS Signs		1,000	1,000
19 Relocate Rail	418	623	205
21 Shed E, New Roof	1,272	1,279	7
22 Shed G, New Roof	1,578	1,624	46
23 Relocate Chiquita	281	434	153
24 New Terminal Ops. Maint. Facility ††	268	268	0
26 Construct New Port Maint. Facility	3,972	4,519	547
27.1 Sewer Line Force Main - Ph 1	3,038	3,006	-32
27.2 Sewer Line Force Main - Ph 2	1,606	1,774	168
28 Demolish Shed D	1,219	1,145	-74
29 Comfort Stations/Truckers Rest Stop	1,111	1,364	253
30.1 Wharf 6 - Marine	14,457	13,365	-1,092
30.2 Wharf 6 - Civils	1,924	357	-1,567
32.2 Mooring Improvements - Ph 2 ††	767	728	-39
33 Security Improvements incl. Fibre Grid	10,224	13,650	3,426
Haskell Design Build Fees <sup>2</sup>	3,200	0	0
<b>TOTAL PROGRAM CONSTRUCTION COST</b>	<b>108,187</b>	<b>108,245</b>	<b>58</b>
<b>SOFT COSTS</b>			
Architectural & Engineering Design Fees	10,000	10,000	0
Design Build Fees		0	0
Insurance Premium	609	669	60
P&O Developer Fee	1,900	1,915	15
P&O Staffing Resources	2,110	2,110	0
Site Office Costs	800	800	0
Seaport Representatives	1,900	1,900	0
Surveys, Inspectors & Testing	500	450	-50
Art in Public Places	250	250	0
Impact Fees	450	450	0
Interest on Construction Draws	100	100	0
IPSIG Fee	321	322	1
Contingency - 2 %	1,423	1,339	-84
<b>TOTAL PROGRAM SOFT COSTS</b>	<b>\$20,363</b>	<b>\$20,305</b>	<b>-58</b>
<b>TOTAL PROGRAM COST</b>	<b>\$128,550</b>	<b>\$128,550</b>	<b>\$0</b>
† Project cancelled within Amendment No 1			
†† Project cancelled after Amendment No 1			
1 Amended budget amounts for individual projects include Haskell construction management fees.			
2 Haskell's Design Build Fees are allocated to the individual projects in the Total Estimated Construction Cost.			

Amounts are stated in thousands.







OFFICE OF THE  
INSPECTOR GENERAL  
MIAMI-DADE COUNTY

CHRISTOPHER R. MAZZELLA  
INSPECTOR GENERAL

ALAN SOLOWITZ  
DEPUTY INSPECTOR GENERAL

PATRA LIU  
ASSISTANT INSPECTOR GENERAL  
LEGAL COUNSEL

June 30, 2004

Mr. Charles A. Towsley, Director  
Miami-Dade Seaport Department  
1015 North American Way, 2<sup>nd</sup> Floor  
Miami, Florida 33132

FILE COPY

RE: Response to OIG Draft Audit Report

Dear Mr. Towsley:

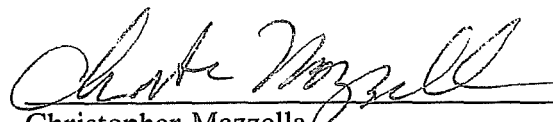
Attached please find a copy of the Office of the Inspector General's (OIG) Draft Audit Report regarding the Cargo and Cruise Project of the Miami Seaport Redevelopment Program at the Miami-Dade County Seaport. We are providing this draft in accordance with the Board of County Commissioners' mandate of advance notification.

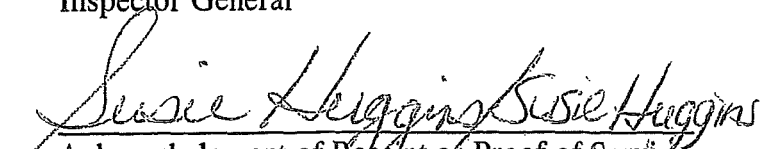
Additionally, please be advised that draft copies of this report are being provided, under separate cover, to P&O Ports Florida, Inc. and The Haskell Company, as the Developer and Construction Manager, respectively, on the Cargo and Cruise Project.

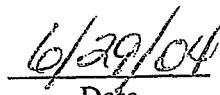
The OIG requests your response to this Draft Report. If you would like your response to be included in the final report, you must submit it to the OIG by close of business on July 16, 2004. If you wish, you may provide your response by fax to (305) 579-2656.

Please do not hesitate to call should you have any questions.

Yours truly,

  
\_\_\_\_\_  
Christopher Mazzella  
Inspector General

  
\_\_\_\_\_  
Susie Huggins  
Acknowledgment of Receipt or Proof of Service

  
\_\_\_\_\_  
Date

cc: Bill Johnson, Assistant County Manager

APPENDIX A



# MEMORANDUM

MDC-OFFICE OF THE  
INSPECTOR GENERAL

2004 JUL 16 PM 1:35

Christopher R. Mazzella  
Inspector General

DATE: July 16, 2004

SUBJECT: Response to OIG Draft Audit  
Report

FROM: Charles A. Towsley, Director  
Seaport Department

The Seaport Department would like to thank the Inspector General and staff for their review of the Cargo and Cruise Project Redevelopment Program at the Miami-Dade County Seaport Department. Due to the nature of this program, the largest in cost and scope ever undertaken by the Seaport Department, the Department requested that the Inspector General perform a review of this program while in process. Included herein is our response to the review, which we would like to have included in your final report.

## Summary Results

The report of the Inspector General noted four specific findings as a result of their review.

- 1. Cancelled projects lacked sufficient documentation to support the procedures used for the cancellation process.**  
The Seaport Department agrees that overall 10 projects were "cancelled" from this program and either incorporated into other components of the program work, moved to another contract or, in two (three?) cases, were deleted as no longer necessary for the Port's long range development plan. We would like to point out that while there was no single "cancellation" document, Seaport senior management met weekly with the Development Group, and monthly with the Developer, to discuss and approve the status of the various projects and any scope additions or deletions.
- 2. Use of the "shadowing" principle was ineffective and did not serve its intended purpose of prioritizing projects.**  
We believe there is a misunderstanding regarding the term "shadowing". The Developer brought this term to the Department as a means of showing at any given point during the 3 year project, program components that, at that specific time, were not under contract and as estimated, would cause the program to exceed total approved contract dollars.
- 3. Approximately \$2.4 million was spent on ten (10) projects cancelled from the C&C Project.**  
This finding is correct, but does not reflect the fact that of the \$2.4 million only approximately \$800,000 was spent on projects that the Department subsequently determined were no longer needed.
- 4. Several "approved" internal change orders were not properly approved or supported.**  
Based on the detailed report, all internal change order documentation was ultimately provided fully supporting the change orders and the process.

We are particularly pleased that no significant deficiencies or unallowable costs were found and that costs were properly documented and applicable to the contract.  
Current Status of the Project:

PATR A



## FINDINGS AND RECOMMENDATIONS

### Part A. Cancelled Projects

**Finding No. 1: Projects cancelled lacked sufficient documentation to support the procedures used for the cancellation process.**

We agree that there was no single document or procedure used to "cancel" projects or components that were removed from the Development program. In the future this will be incorporated into our oversight processes for all ongoing and new construction.

We would like to point out that this program is the largest Port construction program to date and was contracted on a design build basis with the understanding that there would be field conditions and other circumstances that might dictate changes. Because of the level of complexity in moving the major Port roadway and the cargo gateway, Seaport Management met weekly with the Development Group and Monthly with the Developer to review the program status and to make decisions as necessary based on changing conditions. For example, one of the projects that was deleted entirely was to move a wheeled container yard for Chiquita Banana. Before we began construction, Chiquita's executive branch determined to move their operation to another port for reasons not pertaining to the Port of Miami. Therefore, this project was not longer necessary and was deleted. A similar situation occurred with the terminal operator's maintenance facility, which they decided to build themselves. While some non-recoverable design costs were incurred, the Port saved the \$2 million the building would have cost.

Program costs did exceed anticipated costs. In the areas of security measures, where the Port has received \$12 million of Federal Transportation Administration grants, significant cost overruns occurred due to the extensive fiber cabling necessary to network the project security infrastructure. Additionally, during the course of the contract, steel prices have risen 40% and cement has become very difficult to obtain. These are some of the more significant unanticipated events, which continue even today to affect the overall final project cost.

**Finding No. 2: Use of the "shadowing" principle was ineffective and did not serve its intended purpose of prioritizing projects.**

The Shadowing principle was used to identify projects for which a GMP had not yet been issued, and which, if constructed, based on then current information, could cause the entire program to exceed the total budget. At one point Wharf 6 was shadowed. This project is a key component of the program and today is in the final stages of completion. However, at one point, it was shadowed so that Port staff would understand that the

development program could exceed the program approved amount should the wharf contract be let. Shadowed projects had two criteria; first, they were projects that were not yet under contract and therefore could be cancelled, second, at the point in time when a particular report was prepared they were shadowed to denote that there were insufficient funds in the program to let a contract. This was an alert to Port staff that decisions may need to be made regarding prioritization of projects.

**Finding No. 3:                Approximately \$2.4 million was spent on ten (10) projects cancelled from the C & C Project.**

We agree with this, but would respectfully point out that of the \$2.4 million only approximately \$800,000 will not provide future benefit to the Port. The remaining \$1.7 million comprising mainly design costs will be used by the Port to complete the project either at a later time, or under a different contract. Of the \$800,000, \$220,000 will probably not be used as the Port has determined not to build Shed F. The balance of \$580,000 spent for design of a terminal user's new maintenance facility may not be useful either. However, as the terminal operators have determined to build their own, the Port will save another \$2 million in cancelled construction costs.

**Recommendation to Part A. Cancelled Project Findings Nos. 1, 2, and 3:**

We agree with all of the Inspector General's recommendations regarding cancelled projects. We believe that the Seaport Department and Development group have performed a difficult task well. This program was a large program based on customers' needs here at the Port. In some cases those needs shifted while the program was underway with the Port responding in the most economical efficient manner under the circumstances.

**Part B. Internal Change Orders**

**Finding No. 4:                Several "approved" internal change orders were not properly approved or properly supported.**

Based on the final documentation provided by the Developer, the requested support for change order was received.

**Recommendation to Part B Internal Change Order, Finding No. 4:**

We fully agree with the recommendations for Part B.

**Conclusion**

We would like to again thank the Inspector General and his office for their time and efforts in performing this review. The Department will pursue all of the recommendations herein.



June 30, 2004

FILE COPY

OFFICE OF THE  
INSPECTOR GENERAL  
MIAMI-DADE COUNTY

CHRISTOPHER R. MAZZELLA  
INSPECTOR GENERAL

ALAN SOLOWITZ  
DEPUTY INSPECTOR GENERAL

PATRA LIU  
ASSISTANT INSPECTOR GENERAL  
LEGAL COUNSEL

Mr. Christopher C. Morton  
Vice President  
P&O Ports Florida, Inc.  
1007 North American Way  
Suite 310  
Miami, Florida 33132

RE: Response to OIG Draft Audit Report

Dear Mr. Morton:

Attached please find a copy of the Office of the Inspector General's (OIG) Draft Audit Report regarding the Cargo and Cruise Project of the Miami Seaport Redevelopment Program at the Miami-Dade County Seaport. We are providing this draft in accordance with the Board of County Commissioners' mandate of advance notification. Please be advised that you may provide a written response to these findings, which will be included with our final report. This response must be received by July 16, 2004, should you elect to respond.

If you wish, you may provide your response by fax to (305) 579-2656.

Yours truly,

Christopher Mazzella  
Inspector General

Acknowledgment of Receipt or Proof of Service

6/30/04  
Date

cc: Miami-Dade Seaport Department  
The Haskell Company

APPENDIX B



1007 North America Way # 310, Miami, FL 33132-2180 Tel: +305 381 9624 / Fax: +305 381 9741

---

Date: 16 July 2004

To: **Christopher R. Mazzella**  
**Inspector General**  
**Miami-Dade County**

Fax: + 305 579 2656

From: **Reg Grimston**  
Co: **P&O Ports Florida Inc.**

Fax: + 44 20 7321 0861

Tel. No. + 44 20 7321 4735

Total pages: ( 9 )

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Sir,

We thank you kindly for your letter of 30<sup>th</sup> June 2004 addressed to our Mr Morton offering us the opportunity of commenting on the draft audit report prepared by your office on the MSRP, Cargo & Cruise Project.

We are pleased to attach our response letter and enclosure in the following 8 pages and are most grateful for this opportunity to comment on your findings for input to the final report before publication.

Yours most sincerely

A handwritten signature in black ink, appearing to read 'Reg Grimston', written over a horizontal line.

Reg Grimston  
P&O Ports Florida  
Development Director

SHI/RG

15<sup>th</sup> July 2004

Mr. Christopher R. Mazzella – Inspector General  
Office of the Inspector General  
Miami-Dade County  
19 West Flagler Street  
Suite 220  
Miami, FL 33130

Dear Mr. Mazzella,

**MIAMI SEAPORT REDEVELOPMENT PROGRAM  
P&O RESPONSE TO OIG DRAFT AUDIT REPORT**

P&O Ports Florida Inc. are in receipt of the 'Office Of The Inspector General (OIG) Draft Audit Report for The Miami Seaport Redevelopment Program (MSRP) – Cargo And Cruise Project' forwarded under cover of your letter dated June 30<sup>th</sup> 2004. The letter requested a response from P&O Ports Florida Inc. for incorporation into the Final Report.

This letter and enclosure comprises P&O Ports Florida Inc's response for incorporation into the OIG's Final Report. This response is limited to the 33 projects covered by the MSRP Project and is necessarily tempered by the fact that P&O Ports Florida Inc. is no longer associated with the project nor has access to all the relevant detailed documentation.

We would comment as follows on your Summary Results:

1. Projects were only cancelled on the POM instructions confirmed in writing to P&O. We were not necessarily party to the POM internal processes for reaching such decisions.
2. "Shadowing", introduced by P&O, was the single most effective management tool that avoided the budget ceiling being breached at any time, it was not intended to prioritize projects. "Shadowing" prevented "hard" construction costs being expended on projects before budget availability was confirmed.
3. The "Fast Track" principle instructed by the POM allowed "soft" costs expenditure to be continued on "Shadowed" projects in order that they would be ready for tendering when (MSRP / other) budget availability was confirmed, without causing further schedule impact. In the event some of those projects were cancelled from MSRP but some were transferred to other programs which benefited from the work completed by MSRP.

- 2 -

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4. As part of our cost forecasting process, P&O kept records of the history of all Change Orders from instigation (PCO) through to "Approved" CO. "Approval" was under a POM signature and again, P&O were not necessarily party to the POM internal processes for supporting such "Approvals".

The enclosure provides further detailed comments for consideration by your auditors as clarifications or amendments to their draft report.

Finally, subject to the above, P&O Ports Florida Inc. is pleased to acknowledge the professional nature of the report produced by the Office of the Inspector General, the important though relatively minor nature of the findings and the confirmation that the MSRP project, as managed by P&O Ports Florida Inc. to the end of March 2004, properly complied with the contract, statutes and regulations of the Port of Miami and Miami-Dade County.

We thank you for your services and wish all parties every success with the completion of the MSRP program of works.

Yours sincerely,



**Reg Grimston**  
**Development Director**

Enclosure... (P&O Detailed Comments on OIG Draft Audit Report)

## MIAMI SEAPORT REDEVELOPMENT PROGRAM

### P&O DETAILED COMMENTS ON OIG DRAFT AUDIT REPORT

#### 1. Synopsis – Page 1 – 4<sup>th</sup> Paragraph

We take this opportunity to clarify some of the terminology used here and indeed throughout this Report, specifically the terms and conditions of the Master Development Agreement (MDA) that P&O Ports entered into with Miami Dade County on the 13th September 2001 insofar as they refer to the total cost of \$111,230,000. The MDA was for a Maximum Project Cost of \$111,230,000 however this was NOT a Guaranteed Maximum Price (as stated here). The Maximum Project Cost was based on an \$111m budget compiled by the Port of Miami in July 2001 under the heading of P&O Project Budget Summary which was derived from conceptual information for 33 separate projects. (P&O Ports Florida Inc. had not been engaged at this stage, and had no input into these budget figures.)

It was however known that these projected costs were necessarily approximate; indeed the MDA allows that "The County shall have the right to add to, delete from, or modify the Project, provided that total Project Costs are not increased so as to exceed the Maximum Project Costs" (Clause 1B under Project) and "The parties shall work together in developing the Final Plans consistent with the Project to cause the Maximum Project Costs not to exceed \$111,230,000" (Clause 2.7). The MDA envisages the first tasks being to develop the concepts and firm up the costs and allows for adding, deleting or modifying the Projects to fit the budget ceiling of \$111,230,000.

This distinction between Maximum Project Costs and GMP is very important because it was the approximate nature of these budget costs that necessitated the shadowing and deletion of projects that the OIG highlight throughout their report. These principles were the result of the conceptual nature of the 33 projects at the time the budgets were set and P&O were obligated by the MDA to instigate them.

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**2. Background - Page 4 - 1st Paragraph**

The OIG contend that the amendment approved by the County Commissioners in September 2003 had three objectives; to increase the budget, omit 6 projects and extend the construction Completion Date. P&O believe the amendment was principally to increase the project budget from \$111,230,000 to \$128,550,000. The \$128,550,000 was based on the Contractor's May 2003 estimate for each Project, which also indicated which 6 projects had, at that time, been deleted. We can express no opinion on the extent to which the Commissioners focused upon the deletion of the 6 projects. The amendment extended the validity of P&O Ports MDA from December 31<sup>st</sup> 2003 to June 30<sup>th</sup> 2004 but it should be noted that the C&C project's construction completion date would always have been governed by the schedules included within each signed GMP.

**3. Background - Page 4 - Cargo & Cruise Project**

The selection of Foster Wheeler and The Haskell Company was not solely down to P&O Ports. The selection committee comprised P&O, POMTOC, Carnival, the Port of Miami and Miami Dade County, and its terms of reference are clearly set out in the MDA.

**4. Current Program Status - Page 5 - Additional delays**

As commented previously (Item 2 above) the increased budget / time approved by the County Commissioners in September 2003 did not control the construction completion date. The construction completion date of each project phase is set by the ordinal project schedule included within each signed GMP issued by The Haskell Company. The latest phase completion date would then be the overall program completion date. On the 4<sup>th</sup> September 2003, P&O officially granted The Haskell Company an extension of time for Substantial Completion of the Marine Works of Wharfs 6 & 7 (Project 30) to 31<sup>st</sup> August 2004, based upon the prior approval of the POM to this extension. This was based on the ordinal schedule included within the GMP that had been signed on the 18<sup>th</sup> June 2003. At the time of P&O's termination, the end date was anticipated to have extended into early 2005 but we are not aware of any other extension of time being granted to The Haskell Company.

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**5. Current Program Status - Page 6 - Claims from Architect/THC**

The claim of \$3.4m from The Haskell Company is to the end of 2004 (the anticipated completion date at the time the claim was first compiled). It is likely that Haskell may seek to increase its claim if the contract period extends further into 2005. The claim from Foster Wheeler was addressed at a joint County/Port/P&O/FW meeting held in the P&O Ports Conference Room on the 23rd March 2004. Foster Wheeler was claiming over \$700,000 which was subsequently reduced by negotiation and agreed at \$300,000, subject to Foster Wheeler providing basic services for the remainder of the contract period. Since P&O were terminated a short time later, we have not seen the final signed agreement which was to be drafted by the lawyers following the meeting.

P&O included allowances for the resolution of both claims within each monthly estimate up to and including their final cost forecast in February 2004 and, we would submit, it would be useful to continue that process.

**6. Current Program Status - Page 6 - The March 2004 Monthly Report**

The March 2004 Monthly Report was prepared and presented by The Haskell Company and the Port on the 19th April 2004 and P&O was specifically asked NOT to attend the presentation. P&O are aware of certain scope reductions/omissions that were implemented in March 2004 which would have reduced their projected February 2004 overspend of \$4.5m to some \$2.9m (not \$2.2m) assuming the projected savings were realised. However, at the time we would not have agreed to eliminating the budget shortfall completely, and we have not since become aware of any reason to do so. We were carrying specific, transparent budget items for the resolution of the Haskell Claim, future PCO's/CO's, Port Expenditure, GMP savings and Sales Tax savings. P&O Ports strongly objects to any of it's estimates being categorised as overestimated, exaggerated or 'counted twice'. With the exception of the allowance for the Haskell Claim which was obviously not in the public domain, all our estimates had evolved over the course of the project and had been regularly reported and scrutinized by all parties.

P&O Ports Florida Inc. stand by their reported figures and contend that, at end March 2004, the project outturn was forecast to be some \$2.9m "overbudget." We cannot comment on what has transpired since.

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- 4 -

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**7. Findings - Page 8 - Findings No. 1**

P&O's commercial manager does not recall stating that there were no signed documents demonstrating approval to cancel a project. Projects were only cancelled on POM written instructions - in fact the OIG report goes on to quote some of those signed documents. There are several specific letters from the Port authorising the deletion of projects, and we further note that certain emails, meeting minutes, letters, reports and/or presentations, where documented, were also official approval documents. Where any project was deleted, it was always prompted by an operational or financial need and only deleted after lengthy discussion and review by all parties. That process was itself well documented by the aforesaid minutes, emails, letters etc. so it may be that the significance of the absence of any formal closure letter may have been missed. The later comment about the process not identifying 'who finally authorises the deletion of a project and the reprogramming of those monies to fund other projects' is not understood. Only one person had that authority, P&O's Client, the Port Engineer, Mr. Carl Fielland and it was fully understood by all parties that all instructions to P&O however delivered ultimately came from Mr. Carl Fielland.

**8. Findings - Page 9 - Findings No. 1**

The summary report mentioned in Item 2 on Page 9 is NOT a P&O report - It was the report compiled by Jim Egnew of the Port of Miami as justification for the increased budget application to the County Commissioners. P&O have not seen it, so cannot comment on it.

**9. Findings - Page 10 - Findings No. 1**

(Page 10 - 2<sup>nd</sup> Paragraph) The OIG should be aware that deletion of projects were only authorized by the POM. The later 'net' approach (Page 10 - 4<sup>th</sup> Paragraph) which states that the 23 remaining projects increased by nearly \$33m is misleading. Firstly the 23 projects include several sub-projects so the total number is actually 31 and secondly, as justified to the County Commissioners in September 2003, some of those 23/31 projects had increased vastly in scope - Security (up \$5.5m to cover 9/11 requirements) and Project 5 - now 5 separate projects (up \$4.6m). Whilst they had therefore increased significantly, the reasons were well documented and were the basis for the approval of the additional monies by the County Commissioners.

...../.....

- 5 -

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**10. Findings – Page 11 – Finding No. 2 - Shadowing**

As stated in Item 1 above, the 'shadowing' principle adopted by P&O Ports Florida Inc. was a device necessitated by the approximate nature of the conceptual projects and their budgets, and the obligation imposed by the MDA that P&O Ports Florida Inc. could not enter into any agreement that would exceed the budget ceiling of \$111,230,000. As the project evolved, the GMP's started to be signed and P&O had to be aware of the value of committed works at all times, remembering that some GMP's were less than \$1m, but that others were multi-million and 4 of them were in excess of \$10m.

When the value of the works started to exceed the fixed budget, it was necessary to identify those works that P&O Ports considered could be shadowed or put on hold until monies could be found to pay for them. Generally, these were the later projects and those which did not have an impact on the rest of the works. When P&O had identified these projects, they were agreed with the Port and, in the early days, it was relatively simple for the Port to take action. This they did, often by omitting works from our scope - Projects 8, 20, 24, 25 and 28 (part) to name a few. However, as the costs continued to increase, and the opportunities to omit works diminished, it became harder to hold the budget ceiling, and eventually impossible. It was this that instigated the application to the County Commissioners in 2003 to increase our budget.

We strongly disagree that the shadowing principle was not effective. In April 2003, the Roads projects were ready for signing and, grouped together, were valued in excess of \$25m. Without an increase in the budget, P&O could not sign those GMP's, so, in conjunction with The Haskell Company, their Roads subcontractor and the Port, we agreed to 'shadow' part of the Roads works (those to be completed in 2004), so that we could sign the GMP's before the increased budget was approved, and avoid any delays to the project. This worked extremely well, the GMP's were signed in June 2003, the works progressed, the budget was increased in September 2003 and the balance of the Roads works was released in late October 2003.

As to the OIG's comment about shadowing being seen as a process to camouflage cancelled projects, nothing could be further from the truth. "Shadowing" specifically highlighted projects that could be cancelled. The fact that projects had to be cancelled was because the MDA set a fixed cost, yet we had 33 variable scopes of work evolving. As those scopes were finalized and the costs increased, either money HAD to be found or projects HAD to be cancelled. Shadowing helped select those projects which could be cancelled with minimal impact on the remainder of the program. "Shadowing" stopped construction cost being incurred and maintained the budget ceiling at all times.

P&O Ports believe the shadowing principle worked extremely well and the MSRP works (and other programs) benefited from its implementation.

...../.....

- 6 -

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#### **11. Findings – Page 12 – Finding No. 3 – Cancelled Projects**

As stated above, the process of firming up scopes and agreeing costs meant that, as costs increased, some projects had to be cancelled. However, these were almost always cancelled during the design stage and the OIG acknowledge that no construction hard costs were incurred. The project was set up as 'fast track' and the Architect's contract acknowledged that this process meant that some abortive design costs were inevitable. Whilst \$2.4m is a significant sum of money, it is still less than 2.2% of the original budget, and it is likely that many of the completed designs and surveys both provided the Port with a quantifiable asset, and may be used if any of these projects do progress in the future.

#### **12. Findings – Page 14 – Finding No. 4 – Change Orders**

P&O Ports note that, of the 15 Change Orders selected at random and reviewed by the OIG, support was eventually provided for all 15 to the satisfaction of the OIG. Whilst we regret any delay in furnishing this documentation, we would point out that the PCO and CO procedure has evolved over the course of the project and some documentation now provided may not have been provided for some of the earliest CO's. We are not aware of any CO having to be sent out for re-approval, although this may have occurred after P&O Ports were terminated.

The heading 'Internal Change Orders' is also confusing. P&O Ports were not aware, and did not need to be aware, of any internal Haskell Change Orders (between them and their subcontractors) but P&O Ports did keep records of all Change Orders that necessitated either a time or cost variation to the MSRP program of works.

.....End.....