RESPONSE TO REQUEST
FOR ADDITIONAL REVIEW

COMPETITIVE BIDDING OF CONTRACTS
LAND ACQUISITION ASSISTANCE CONTRACT
DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

PREPARED FOR
THE DETROIT METRO AIRPORT REVIEW COMMITTEE
AND THE
SUBCOMMITTEE ON AIRPORT REVIEW OF THE
STANDING COMMITTEE ON COMMERCE

27-628-00L

August 30, 2001

The Honorable Glenn D. Steil, Chair
Detroit Metro Airport Review Committee
Michigan Senate
1020 Farnum Building
Lansing, Michigan

The Honorable James L. Koetje, Chair
Subcommittee on Airport Review of the
Standing Committee on Commerce
Michigan House of Representatives
N1093 Anderson House Office Building
Lansing, Michigan

Dear Senator Steil and Representative Koetje:

This special report is in response to the June 6, 2000 letter from the Joint Legislative Select Committee on the Wayne County Detroit Metropolitan Airport requesting a more detailed review of the Detroit Metropolitan Wayne County Airport. This special report contains our response to questions in the general issue area of competitive bidding of contracts related to the Airport's land acquisition assistance contract.

Specifically, the Joint Legislative Select Committee asked us to conduct a more detailed review and comment on the extension in time and increase in contract price associated with the contract, as well as the impact on completion of the fourth parallel runway. The Joint Legislative Select Committee also asked that we confirm the accuracy of the representations made in a newspaper article dated April 5, 2000.

Our procedures were of limited scope. Therefore, our review should not be considered an audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

We are available to present this special report to the Detroit Metro Airport Review Committee and the Subcommittee on Airport Review of the Standing Committee on Commerce upon request. If you have any questions or concerns regarding this review, please contact me.

Sincerely,

Thomas H. McTavish, C.P.A.
Auditor General

27-628-00L

This page left intentionally blank.

TABLE OF CONTENTS

COMPETITIVE BIDDING OF CONTRACTS
LAND ACQUISITION ASSISTANCE CONTRACT
DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

	Page
Report Letter	1
Overview of the Land Acquisition Assistance Contract	4
Scope of Review	5
Comments	5
Exhibits*	
Exhibit A - Wayne County Commission No. Resolution 98-646	17
Exhibit B - Wayne County Commission No. Resolution 91-70	18
Exhibit C - Agreement for Property Appraisal Acquisition Services for Fourth Parallel Runway	19
Exhibit D - Wayne County Corporation Counsel Memorandum to the Office of the Auditor General Dated September 20, 2000	21
Exhibit E - Listing of Subcontractors Provided by Contractor Farbman/Stein	23

* *All exhibits of the Wayne County Detroit Metropolitan Airport Preliminary Review Reports are available by contacting the Office of the Auditor General in writing and specifying the exact exhibits that you would like to receive. Your written request, with your name and address, must be sent to: The Office of the Auditor General, 201 N. Washington Square, 6th Floor, Lansing, Michigan, 48913.*

OVERVIEW OF THE
LAND ACQUISITION ASSISTANCE CONTRACT

The Detroit Metropolitan Wayne County Airport awarded a consulting contract to Farbman/Stein to assist Wayne County in the acquisition of approximately 500 acres of land in the City of Romulus for the future construction of a fourth parallel runway (the Runway 4/22 project). The initial contract, dated February 21, 1991, required the contractor to perform various property appraisal acquisition services for certain parcels within 18 months. The property appraisal acquisition services included conducting an environmental inventory, preparing relocation parcels, securing appraisals and appraisal reviews, conducting negotiations, closing transactions with tenants and property owners, acquiring title insurance, facilitating subordination or acquisition of property interests that would adversely affect Airport use, preparing and executing deeds of conveyance, and providing relocation assistance. The County agreed to compensate Farbman/Stein $1,350,000 in four progress payments. The County agreed to additionally compensate Farbman/Stein, without limit, at a rate of $100 per hour plus expenses for any litigation, hearing, or proceeding arising out of the project.

Subsequently, the Airport executed 3 contract amendments. The first contract amendment, dated October 16, 1992, added additional parcels and tenancies that required acquisition services as well as environmental, business relocation, appraisal update, and survey services. The second contract amendment, dated August 31, 1995, added additional services, including environmental, business relocation, appraisal update, expert witness, and survey services. The third contract amendment, dated October 19, 1998, added additional services, including business relocation services and the securing of consultants, appraisers, and subcontractors.

Payment detail provided by the Airport showed that Farbman/Stein was paid a total of $2,424,482 under this contract from the initiation of the contract through January 26, 1999.

SCOPE OF REVIEW

Our procedures were of limited scope. Therefore, our review should not be considered an audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

We obtained and reviewed copies of documentation related to the original contract, contract amendments, and contract payment information. We also reviewed Wayne County Commission and Committee on Roads, Airports, and Public Services meeting minutes at which this contract and amendments were discussed. In addition, we interviewed Airport personnel as well as Airport contractors regarding the contract.

COMMENTS

Request:
Please conduct a more detailed review and comment on the extension in time and increase in contract price associated with this contract, as well as the impact on completion of the fourth parallel runway.

Procedure:
We reviewed the original contract and subsequent amendments for the Farbman/Stein contract. We also reviewed Wayne County Commission approval of the contract and all amendments.

Comment:
A more detailed review of the contract's chronology disclosed:

a. In the original contract, executed February 21, 1991, Wayne County agreed to compensate Farbman/Stein $1,350,000 in four progress payments. The County agreed to additionally compensate Farbman/Stein, without limit, at a rate of $100 per hour plus expenses for any litigation, hearing, or proceeding arising out of the project. Wayne County Commission Resolution No. 91-70 approved the contract in the amount of $1,350,000. The Commission did not approve or make mention in

its resolution of the additional $100 per hour plus expenses of unlimited compensation for any litigation, hearing, or proceeding arising out of the project.

b. The first contract amendment, dated October 16, 1992, added additional parcels and tenancies that required acquisition services for an amount not to exceed $225,000. It also added additional environmental, business relocation, appraisal update, and survey services for an amount up to $200,000 for reimbursement of management and administration at 2.5 times direct salary costs, plus a 5% subcontract administrative fee. Wayne County Commission Resolution No. 92-579 approved $425,000 in additional costs to fund this amendment.

c. The second contract amendment, dated August 31, 1995, added additional environmental, business relocation, appraisal update, expert witness, survey, and other services for an amount up to $250,000 for reimbursement of management and administration at 2.5 times direct salary costs, plus a 7 1/2% subcontract administrative fee. Wayne County Commission Resolution No. 95-590 approved $250,000 in additional costs to fund this amendment.

d. The third contract amendment, dated October 19, 1998, added additional services, including negotiating business relocation to minimize business interruption, securing consultants and appraisers to facilitate business relocation, and securing subcontractors to complete the demolition of all acquired properties. Additional compensation of up to $210,000 was provided for performing the additional services. Wayne County Commission Resolution No. 98-646 approved $1,810,000 in total costs for this contract, including $210,000 in additional costs to fund this amendment.

Our review and analysis of this contract and its amendments disclosed:

a. Our Preliminary Review of Competitive Bidding of Contracts, Detroit Metropolitan Wayne County Airport, reported that the Farbman/Stein land acquisition assistance contract was amended twice, for a total of $1,810,000. As a result of this more detailed review, we have subsequently discovered another amendment to this contract. The amendment was dated October 16, 1992, for an additional $425,000. Thus, the total contract, with amendments, actually totaled $2,235,000. The Airport did not alert us to the fact that this additional $425,000 amendment existed when we conducted our preliminary review of this contract or after we had

reported the incomplete details of this contract to the Joint Legislative Select Committee on March 16, 2000.

b. The 1992 amendment was not considered in Wayne County Commission Resolution No. 98-646 dated October 15, 1998, which approved the 1998 amendment and amended the contract amount. The Commission referred to the 1995 amendment as "Amendment No. 1" in Resolution No. 98-646 (see Exhibit A). However, the 1995 amendment was actually Amendment No. 2 to the contract. Commission Resolution No. 98-646 also did not consider the 1992 amendment when it authorized only $1,810,000 in total costs to be charged to the contract (based on an original contract amount of $1,350,000, the 1995 amendment for $250,000, and the 1998 amendment for $210,000). If Commission Resolution No. 98-646 had included the 1992 amendment for $425,000, which was separately approved by the Commission on October 15, 1992, Resolution No. 98-646 would have authorized total costs of $2,235,000 for this contract.

c. The three contract amendments, totaling $885,000, constituted 66% of the original contract price of $1,350,000. The Airport paid a total of $2,424,482 on the contract, which was $189,482 (8%) more than the total amount of $2,235,000 ($1,350,000 plus $885,000) that was approved individually by the Commission and $614,482 (34%) more than was authorized by the Commission when it approved the third amendment and total costs of $1,810,000 in 1998.

d. The Wayne County Commission did not approve or make mention in Wayne County Commission Resolution No. 91-70 (see Exhibit B) of the additional contract amount of $100 per hour plus expenses (without limit) provided for in the original contract for litigation, hearings, or proceedings arising out of the project (see Exhibit C).

Procedure:

We discussed the details regarding the extension in time and increase in price needed for completion of the contract with the Airport's Corporation Counsel and with a representative of Farbman/Stein.

Comment:
Our discussions disclosed:

a. The Farbman/Stein land acquisition assistance contract required all services to be complete within 18 months. Wayne County Commission Resolution No. 95-590 also stipulated that the 1995 amendment was for an 18-month period to commence upon execution. The initial contract and the first two subsequent amendments required completion of the work within 18 months, stating that "time is of the essence with regard to each and all of the provisions of this Contract [Amendment]." The contract commenced February 21, 1991 and took almost 8 years to complete, with the last contract payment made on January 26, 1999.

b. The Airport's Corporation Counsel indicated that the contract's stated 18-month provision was unrealistic. Corporation Counsel explained that the 18-month provision was merely an arbitrary date and that after about 12 months had passed all parties to the contract realized that the project was going to require significantly more time beyond the 18 months designated in the contract. In a September 20, 2000 memorandum, Corporation Counsel described that the extent of the difficulties in acquiring the land for the fourth parallel runway (Runway 4/22) were only fully appreciated after the appraisers completed their appraisals (see Exhibit D).

   Specific reasons cited for the extension in time were described by Corporation Counsel during interviews on August 29, 2000 and October 10, 2000:

   (1) <u>Newly Discovered Requirements for Appraisers and Appraisals</u> - Corporation Counsel indicated that, at the beginning of the project, the Airport was not aware of Federal Aviation Administration Order 5100.37A - Land Acquisition and Relocation Assistance for Airport Projects. The Order, dated April 4, 1994, set forth certain requirements for appraisers. Specifically, Section 2-11 requires an appraisal by a qualified independent appraiser and Section 2-35 requires that appraisals be reviewed by a qualified reviewing appraiser. Also, Section 2-11(a)(3) requires an appraiser to have specific appraisal experience in the type of property (business, vacant land, or residential) employed to appraise.

   (2) <u>Condemnation Proceedings</u> - Corporation Counsel stated that some of the business property owners hired attorneys to represent them in condemnation

proceedings. Corporation Counsel stated that legal representation of property owners sometimes resulted in novel theories of the position and worth of the affected businesses, delaying the condemnation proceedings and the property acquisition. Corporation Counsel also stated that as the project became overloaded with the condemnation proceedings, it became necessary to contract three additional attorneys to assist Corporation Counsel. Because of the specialized nature of the services, it took several months to retain attorneys with the appropriate qualifications. This also slowed the acquisition process.

(3) Funding - Corporation Counsel revealed that, from the onset of the project, estimating the costs involved was a daunting task. Corporation Counsel stated that a large portion of the initial estimate on acquisition cost was based on the City of Romulus' State equalized value (SEV) multiplied by two. At that time, it was not realized that the City of Romulus was three years behind in assessment values. Because the assessment values were not current, the resulting estimate of acquisition cost, and corresponding estimate for the initial bond issuance, was quite low. Therefore, a completion bond was ultimately necessary. Awaiting the proceeds of the completion bond delayed the project.

(4) Approval Process - Corporation Counsel stated that, during the project, Northwest Airlines was sold and a new management team assumed control, ousting the current management team that the Airport had been negotiating with to obtain authority to build the runway. Corporation Counsel stated that interrupted negotiations significantly delayed the approval process. Corporation Counsel indicated further that, before approval was obtained from Northwest Airlines' new management team, the new management team was subsequently replaced by yet another management team. Again, negotiations were slowed and the approval delayed. According to Corporation Counsel, the personnel changes at Northwest Airlines significantly affected the Airport's time frame for obtaining approval to build Runway 4/22. Although Northwest Airlines had already approved the land acquisition, it had not approved the actual construction of the runway. As more fully described by Corporation Counsel's written response to our inquiries, without a firm commitment to build the runway, it was difficult to prove a public necessity for acquiring the land (see Exhibit D).

c. Farbman/Stein expressed two views to explain the extension in time needed to complete the contract:

(1) A 2-year stoppage was attributable to a lack of funds.

(2) The acquisitions took longer than anticipated.

d. The Airport had contractual rights to terminate the contract upon 30 days written notice, with or without cause. The Airport never exercised these rights or attempted to bid out the additional services. In a February 28, 2000 memorandum, Corporation Counsel stated:

> No one, at any time during the contract, seriously considered changing negotiators during this contract, when the scope of services remained relatively unchanged and relationships between Farbman[/Stein] and all the (over 100) owners were positive. Their professional dealings resulted in very few trials and many satisfactory settlements.

e. The increase in contract price was the result of the three contract amendments, which extended the contract period, expanded the scope of services, and added additional services. The contract amendments included the acquisition of additional parcels, as well as broadened the scope of services generally. The additional services, and the additional price paid for the services, are more fully described in our preceding comment regarding the original contract and subsequent amendments.

Farbman/Stein informed us that it did not really benefit or profit from the amendments because the amendments were written to acquire the services of subcontractors for demolition services, appraisals, and environmental surveys. Farbman/Stein disclosed that it made less than $50,000 on the three amendments and that, of the $1.35 million original contract amount, $1 million went for appraisals. Farbman/Stein provided us with a listing of its subcontractors and the amounts paid to those subcontractors by Farbman/Stein (see Exhibit E).

Procedure:

To determine the current status of the Farbman/Stein contract and the land acquisition project, we reviewed pertinent Airport documents and interviewed the Airport's Corporation Counsel and the Airport's Capital Improvement Program (CIP) program manager.

Comment:
Our review and interviews disclosed:

a. The Airport's Corporation Counsel indicated that Farbman/Stein has completed all services on the contract and that the contract is complete. According to Corporation Counsel, the Airport has acquired possession through condemnation of all property.

b. The Airport's CIP Status Report, prepared by the Airport's CIP program manager, listed the land acquisition project as "substantially complete" in the March 31, 2001 CIP Status Report.

c. During an October 18, 2000 interview as well as a July 23, 2001 follow-up interview, the Airport's CIP program manager indicated that the land acquisitions were complete, the project was currently on schedule, and the runway was expected to be put into service by November 2001, ahead of the planned Midfield Terminal opening.

d. Airport Finance documentation showed that the last payment from the Airport to Farbman/Stein on this contract was made January 26, 1999.

Procedure:
We examined the impact that the extension in time and increase in contract price had on the completion of the fourth parallel runway. We interviewed the Airport's Corporation Counsel and the Airport's CIP program manager. We also examined the Airport's CIP Status Report that detailed the status of the fourth parallel runway.

Comment:
Our examinations and interviews disclosed:

a. The Airport's Corporation Counsel indicated during an August 29, 2000 interview that there was no impact on completion of the fourth parallel runway attributable to the extension in time and increase in contract price on this contract. Corporation Counsel stated that property acquisitions began in 1991, in anticipation of Runway 4/22, but that there was no authority to actually build the runway until 1996, when the Project Development Agreement (PDA) with Northwest Airlines was signed. According to Corporation Counsel, the Airport has acquired possession through

condemnation of all property and none of the delays in the final acquisition of property will delay the ultimate completion and opening of Runway 4/22 by the planned date.

b. The PDA contained two provisions linking the opening of Runway 4/22 simultaneously with the Midfield Terminal. One provision conditioned the effectiveness of the PDA (subject to waiver by Wayne County and Northwest Airlines) upon weighted majority approval of several CIP projects, including Runway 4/22. The PDA also conditioned Northwest Airline's approval by providing that no costs associated with Runway 4/22 are permitted to be included in the Airport rates and charges until 2001.

c. During an October 18, 2000 interview, the Airport's CIP program manager also agreed that there were no delays in the construction and expected completion date of Runway 4/22 that were attributable to the extended period of time taken to complete the land acquisition assistance contract. The program manager stated that, although the land acquisitions took a long time, they did not result in construction delays. The program manager indicated that the long and complicated design process was still in process during acquisitions so construction could not have begun anyway. The program manager reiterated Corporation Counsel's observation that the runway was not required to be complete until the Midfield Terminal's expected opening date in December 2001.

d. The CIP program manager indicated during the October 18, 2000 interview that runway construction after land acquisition was on schedule for completion in November 2001. The program manager explained that the runway is essentially made up of 5 layers: the underground, the aggregate base under bituminous, the bituminous, the asphalt, and the concrete. The program manager stated that the underground work (e.g., storm drains) was complete, the aggregate base under bituminous and the bituminous were mostly complete, the asphalt work was starting, and the concrete work was to begin as soon as November 2000, depending on weather conditions.

e. As described in our preceding Comment section, the land acquisition project was reported as "substantially complete" in the March 31, 2001 CIP Status Report.

Request:

Confirm the accuracy of the representations made by the *Detroit News* on April 5, 2000 concerning Farbman/Stein.

Procedure:

We read the *Detroit News* article, reviewed applicable documentation, and interviewed knowledgeable parties regarding the accuracy of the representations contained therein.

Comment:

The April 5, 2000 *Detroit News* article stated the following with respect to our preliminary review of the Farbman/Stein contract:

> Airport officials paid Farbman Associates of Southfield $1.8 million in 1991 to help the county buy land for a fourth runway needed to ease plane congestion. The project was to be completed in 18 months. Some of the land still hasn't been obtained. Airport officials said the time frame was too optimistic.

Our more detailed review found that Farbman/Stein was actually paid $2,424,482 from the initiation of the contract through January 26, 1999. It appears that the remainder of the article was accurate at the time of print. Currently, based on the evidence contained in the Airport's documents and the responses from Airport employees and contractors, it appears that all property has been acquired. The project remains reported as "substantially complete" in the CIP Status Report.

Airport Response:

On August 1, 2001, we provided the Airport with a draft copy of this report. We asked that the Airport provide its response no later than August 7, 2001. However, it was not until August 15, 2001 that the Airport informed us that it would have no response.