

RESPONSE TO REQUEST
FOR ADDITIONAL REVIEW

COMPETITIVE BIDDING OF CONTRACTS
AIRFIELD LIGHTING AND SIGNAGE CONTRACT
DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

PREPARED FOR
THE DETROIT METRO AIRPORT REVIEW COMMITTEE

May 4, 2001

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

Dear Senator Steil:

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 responses to questions in the general issue area of competitive bidding of contracts related to the Airport's airfield lighting and signage contract.

Specifically, the Joint Legislative Select Committee asked us to determine the present status of this contract, the date of completion or the expected date of completion, and whether liquidated damages have been or would be pursued. The Joint Legislative Select Committee also asked that we determine why this contract was not executed until 8 months after the deadline mandated by the Federal Aviation Administration for new airfield sign standards. In addition, the Joint Legislative Select Committee asked us to conduct a more detailed review and comment on the circumstances resulting in the substantial change orders associated with this contract. Further, the Joint Legislative Select Committee asked that we identify and examine the circumstances that led Wayne County Field Engineering to comment on American International's performance on this contract, and to protest American International's participation in a future contract. Finally, the Joint Legislative Select Committee asked us to determine whether Wayne County ordinances required the Wayne County Commission to approve this contract and the significant change orders associated with this contract and to determine whether the contract was approved in compliance with these ordinances.

Our procedures were of limited scope. Therefore, our detailed 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 upon request. If this is the Committee's desire or if you have any questions or concerns regarding this detailed review, please contact me.

AUDITOR GENERAL

This page left intentionally blank.

TABLE OF CONTENTS

COMPETITIVE BIDDING OF CONTRACTS AIRFIELD LIGHTING AND SIGNAGE CONTRACT DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

	<u>Page</u>
Report Letter	1
Overview of the Airfield Lighting and Signage Contract	5
Scope of Review	8
Comments	8
Exhibits*	
Exhibit A - FAA Letter to the Airport Dated November 15, 1991	57
Exhibit B - Airport Letter to the FAA Dated August 11, 1994	59
Exhibit C - Airport Letter to the FAA Dated December 20, 1994	60
Exhibit D - Contract Close-Out Final Payment Sign-Off Report	61
Exhibits D-1 Through D-5 - Certificates of Substantial Completion	62
Exhibit E - Airport's Response to Auditor's Questions Dated January 8, 2001	73
Exhibit F - Airport's Narrative Timeline of Events Related to Airfield Lighting and Signage Project	77
Exhibit G - Airfield Lighting and Signage Project Timeline	82
Exhibit H - Airport Letter to Northwest Airlines Dated December 8, 1993 Requesting Weighted Majority Approval	83
Exhibit I - Field Order - Change Order Log and Change Order Nos. 1 Through 27	90
Exhibit J - Pertinent Correspondence Regarding the Contractor's February 10, 1997 Claim	133
Exhibit K - Airport CIP Program Manager's Memorandum Dated January 30, 1995 Regarding Airfield Signage Acceleration	146

* 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.

Exhibits L-1 Through L-10 - Documents Related to the Contractor's February 10, 1997 Claim	
L-1 - Construction Claim Submittal	148
L-2 - Extended General Conditions - Labor for American International	149
L-3 - Labor Hours Detail for American International Superintendent Perpich	151
L-4 - Extended General Conditions - Labor for Ferndale Electric	162
L-5 - Extended General Conditions - Labor for Williams Corporation	165
L-6 - Extended General Conditions - Facilities, Vehicles, and Equipment for American International	166
L-7 - Overhead Costs	167
L-8 - Lost Productivity	169
L-9 - Labor Escalation	173
L-10 - Contract Reconciliation	175
Exhibit M - Airfield Lighting and Signage Projects, Sources and Uses of Funds and the September 30, 2000 Cost Summary Report	179
Exhibit N - Airport CIP Program Manager's Draft Letter to Wayne County Dated April 29, 1997 Regarding Bid Review and Recommendation for Runway Pavement Replacement	185
Exhibit O - Wayne County Field Engineering's Memorandum to the CIP Program Manager Dated April 28, 1997 Regarding Runway Pavement Replacement	190
Exhibit P - Airport CIP Program Manager's Letter to Wayne County Dated May 1, 1997 Regarding Bid Review and Recommendation for Runway Pavement Replacement	191

OVERVIEW OF THE AIRFIELD LIGHTING AND SIGNAGE CONTRACT

The Detroit Metropolitan Wayne County Airport contracted with American International, Inc. (American International), to provide new airfield lighting and signage as part of the Airport's Capital Improvement Program (CIP). The Airport's CIP program manager estimated the cost of the project to be \$21,000,000. American International submitted a lump sum bid amount of \$11,082,975 for the construction portion of the project. American International's bid was the lowest of three bids received (Aneco, Inc., bid \$11,320,099 and Peter A. Basile & Sons, Inc., bid \$12,696,307).

The agreement was executed on August 8, 1994. We have identified various project completion dates, described more fully in the body of this report. Under the original lump sum agreement, American International bore the risk of completing the contract within 570 days at its bid price of \$11,082,975. However, subsequent acceleration of the contract and resultant change orders transformed this contract from a "lump sum" agreement to a "cost-plus" agreement, abrogating the contractor's responsibility to complete the contract within the competitively bid time frame or contract price under which the contract was originally awarded as "low bid."

Change orders totaling \$8,774,504 (79% of the original lump sum) were issued in relation to this project. The change orders increased the cost of the construction portion of the project to \$19,857,479 and extended the contractually allowable completion time for construction by 288 days (over 50%). The Airport attributed a substantial portion of the change orders and increased costs to "acceleration" of the signage portion of the project.

During our Preliminary Review of Competitive Bidding of Contracts, Detroit Metropolitan Wayne County Airport, the Airport stated in an October 8, 1999 memorandum:

This work was mandated by the FAA [Federal Aviation Administration] and . . . [a]ny escalations in costs are due to an increased scope due to unforeseen existing field conditions and the FAA requirement that the work be completed before the end of the year.

We determined that the FAA had distributed advisory circulars to airports as early as September 13, 1991 and had specifically notified the Airport on November 15, 1991 (see Exhibit A) that the Airport must comply with new airport signing and marking

standards by no later than January 1, 1994. However, by the January 1, 1994 deadline, the Airport had not yet initiated this contract. The Airport did not issue an invitation for bids until May 23, 1994 and did not execute the 570-day contract until August 8, 1994, 8 months after the original deadline and only 4 months before the extended deadline of January 1, 1995.

The Airport's explanations for the reasons for the delay in initiating this contract are expressed more fully within the body of this report and include:

- a. Time needed to execute the design consulting contract, complete a survey and study of the existing airfield lighting system, prepare a recommendation for repair/rehabilitation, and produce construction documents for implementation (November 1991 - December 1992);
- b. Time needed to negotiate with the airlines to determine the funding and scope of the project and secure "majority in interest" approval (January 1993 - November 1993);
- c. Time needed to obtain weighted majority in interest approval for the project (December 1993 - February 1994);
- d. Time needed to issue bonds to fund the project (March 1994 - April 1994); and
- e. Time needed to complete construction documents and publicly advertise the construction portion of the project for bid (May 1994 - August 1994).

The agreement provided for liquidated damages of \$500 per day beyond the allotted project time (570 days). The Airport bid this project on May 23, 1994 with a completion time of 570 days. Even after the FAA extended its deadline 12 months to January 1, 1995, the Airport still had only 223 days to complete the contract from the date that the Airport sent its invitation for bids, not the 570 days that the Airport originally agreed to allow the contractor to complete the contract.

Because this contract's completion time of 570 days was well beyond the FAA's January 1, 1995 extended deadline, after entering into the 570-day contract with American International (August 8, 1994), the Airport sent a letter to the FAA (August 11, 1994) requesting an exemption from the FAA deadline until May 1, 1996 (see Exhibit B). The Airport maintained that the reason it entered into a 570-day contract that the FAA

required to be completed in only 223 days was because it had obtained a verbal commitment from representatives of the FAA's local Airports District Office (ADO) to extend the deadline. The Airport did not have written correspondence to document the commitment and was unable to refer us to any representatives from the local ADO to substantiate such an arrangement.

Notwithstanding, the local ADO did not have the authority to effectuate an extension of the Airport's deadline to May 1, 1996. Ultimately, the FAA did not accept the Airport's May 1, 1996 extension request. Under threat of severe penalty, the Airport subsequently modified and shortened its extension request to the FAA from May 1, 1996 to May 31, 1995 (see Exhibit C). This led the Airport to initiate an "acceleration" of the signage portion of the contract in order to complete it as soon as possible.

Acceleration of the contract effectively nullified the original 570-day contract completion provision and resulted in substantial additional payments to the contractor. Additional payments were also made to other contractors (e.g., design contractor Giffels Hoyem Basso Associates, Inc., received payments for such things as redesigning the project and schedule to accelerate the signage portion of the contract) and additional payments were made to American International for overtime, adverse conditions, and other miscellaneous "acceleration costs" not contemplated in the original contract. Despite the fact that the signage portion of the contract was "accelerated" to meet the FAA deadline, the Airport still had to grant American International more time (288 days beyond the original 570-day contract provision) to complete the remaining portions of the nonaccelerated parts of the contract.

There was no Wayne County Commission resolution specifically approving this contract. During our preliminary review, the Airport indicated to us that this contract did not have a Commission resolution approving it because the contract fell under "delegated authority" provisions of the Wayne County Contracting Ordinance (84-143) and the Appropriations Ordinance (99-497). The Airport's response, contained on page 64 of our Preliminary Review of Competitive Bidding of Contracts, maintained that the Ordinances authorize the County Executive to execute contracts to implement projects within an annual Capital Outlay Plan approved by the Wayne County Commission. The Airport indicated that this project was included in an annual Capital Outlay Plan approved by the Wayne County Commission.

Subsequent to reviewing a preliminary draft of this report, the Airport added that the Commission approved the lighting and signage contract through the bond ordinance

that authorized the County to issue the bonds to pay for the project. According to the Airport, by approving the bonds needed to pay for the project, the Airport achieved Commission approval of the contract with American International.

SCOPE OF REVIEW

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

We reviewed documentation associated with the lighting and signage contract and with the associated change orders. We interviewed personnel familiar with the project.

COMMENTS

Request:

What is the status of this contract at present? If the work has been completed, please determine the date of completion. If the work is not complete, please ascertain what work remains to be done and when the work contracted for is expected to be complete. In addition, please determine whether the Airport has in fact pursued or intends to pursue the collection of liquidated damages. If the Airport has not sought to collect liquidated damages, please determine why the liquidated damages were not collected.

Procedure:

We examined the most recent CIP Status Report and reviewed the listed status for this project. We examined the Airport's CIP program manager's files for evidence of the completion date for the project. We reviewed the liquidated damages section of the contract and contract change orders, and we interviewed various parties knowledgeable about the contract.

Comment:

Present Status of the Contract and Completion

The present status of the contract is "complete." The Airport first listed the project's status as "substantially complete" in its February 1997 CIP Status Report and as

"complete" in its March 31, 2000 CIP Status Report. The Airport's CIP program manager approved the final contract payment on March 20, 2000 (see Exhibit D).

However, we have discovered conflicting project completion dates. For example, as described on page 63 of our Preliminary Review of Competitive Bidding of Contracts, the Airport stated that this project was completed for all intents and purposes by late 1997. The Airport also stated during the preliminary review that "substantially complete" means that the project, while not 100% complete, is finished to the point where it can be used for its originally designed purpose and that only minor items and final "closeout" documentation need to be completed.

The Airport's CIP program manager subsequently informed us that the project had reached substantial completion in 858 days after the Notice to Proceed date of August 22, 1994, which would be a substantial completion date of December 27, 1996. The CIP program manager also stated that there were multiple certificates of substantial completion issued because the project was turned over to the Airport in five separate phases or sections (i.e., each runway plus the vault/regulator room). Originally, the CIP program manager was unable to locate any certificates of substantial completion. However, our review of the project files for this contract uncovered four certificates of substantial completion. After reviewing a draft copy of this report, the Airport found a fifth certificate of substantial completion. The certificates of substantial completion are contained in Exhibits D-1 through D-5.

According to the fifth (and last) certificate of substantial completion, issued January 22, 1997, the date of substantial completion for that portion of the project was established as September 3, 1996. Although the third certificate was issued earlier (November 4, 1996), it had the latest date of substantial completion established, October 18, 1996. The CIP Status Report did not classify the project as "substantially complete" until the period December 1, 1996 through February 28, 1997, and according to the CIP program manager's response to our query, substantial completion was reached by December 27, 1996. In contrast, the Airport reported to us during the preliminary review that substantial completion was not achieved until late 1997.

Furthermore, although the project's Contract Close-Out Final Payment Sign-Off Report shows that a certificate of substantial completion and a certificate of final completion were accepted by the CIP program manager, the corresponding completion dates were not included on the report (see items 20 and 21 in Exhibit D).

Based on the evidence reviewed, a definite completion date was not determinable for this project because we have not found sufficient and consistent evidence to substantiate the Airport's or the CIP program manager's conflicting substantial completion dates.

Liquidated Damages

For the reasons described more fully in the Airport's response (below), the Airport indicated that "acceleration" of the contract abated any prospect of liquidated damages, and the Airport did not seek liquidated damages against the contractor.

Airport Response:

General Background

In July 1991, the FAA issued Advisory Circular 150/5340-18C, which required airports to install new signage. In November 1991, the FAA issued Change #1 to the signage Advisory Circular 150/5340-18C. The Airport, in response to this mandate, started work in December 1991 to bring the Airport into compliance with the subject Circular.

The original FAA deadline for completing the signage upgrade was January 1, 1994. This deadline was later revised to January 1, 1995. In August 1994, the Airport requested the FAA to extend the January 1, 1995 deadline to May 31, 1995. The extensions were required due to the complex nature of the project.

The signage portion of the project was designed to be constructed in phases and as an integral part of other work to be performed. The contractor, American International, the low bidder, was awarded the contract in August 1994. Due to significant changes in the scope of the project and the timing of the work to be performed, the contract amount, supported by approved change orders, increased from \$11,082,975 to approximately \$19.9 million. The signage portion of the project was completed in mid-May 1995. The balance of the work was completed and turned over to the Airport in five phases. A certificate of substantial completion accompanied each of these phases. Following is a summary schedule of completion dates:

<u>Phase</u>	<u>Substantial Completion Date</u>
1	October 3, 1996
2	October 6, 1996
3	November 4, 1996
4	November 5, 1996
5	January 22, 1997

Present Status of the Contract

The present status of the contract is complete.

Date of Completion

Quarterly CIP Status Report #73, covering the period December 1, 1996 through February 28, 1997, shows the contract as being "substantially complete." The last invoice that was paid for actual work performed was dated December 18, 1997. The project, while not 100% complete, was finished to the point where it could be used for its originally intended purpose, and only minor items and final "closeout" documentation needed to be completed. The Airport CIP program manager approved final payment on March 20, 2000. This final payment was the release of retainage. Exhibits D-1 through D-5 contain a copy of all five certificates of substantial completion, with the final one dated January 22, 1997, and the exceptions to the certificates of substantial completion (listings of the items left to be completed).

Pursuit of Liquidated Damages

The Airport did not pursue liquidated damages because any liquidated damages that would have been pursued would have to have been based on the original contract "as bid." As of December 1994, the scope of the project changed to accelerate the signage portion of the project. Due to this change, the liquidated damage clause of this contract became unenforceable. Through a series of negotiations between the Airport's CIP program manager and the contractor, with oversight by the Wayne County Assistant CEO/Airport and Major County Construction, the Airport was successful in pursuing reductions in the amount of the compensation paid to the contractor. The Airport was successful because the Airport reasonably believed that it had a basis to negotiate reductions in the fees. The Airport negotiated the settlement of the contractor's claims for additional cost and extensions of time due to the allocation of the signage portion of the contract. Therefore, the Airport had no basis to pursue any liquidated damages.

Epilogue:

The Airport's response that the Airport's CIP program manager, "with oversight by the Wayne County Assistant CEO/Airport and Major County Construction," successfully negotiated "reductions in the amount of the compensation paid to the contractor" is misleading.

The issue of liquidated damages bears no relation to "reductions in the amount of the compensation paid to the contractor" as described in the Airport's response. As the Airport accurately stated, "[t]he Airport did not pursue liquidated damages" against the

contractor. There was no reduction in compensation paid to the contractor resulting from the contract's liquidated damages provision.

Furthermore, as described more fully in our comment on change orders beginning on page 18, the CIP program manager's notes indicate that the contractor's \$3.8 million claim appears to have been "highly inflated." Paying an additional sum of \$1.2 million to the contractor instead of the contractor's "highly inflated" \$3.8 million claim should not be viewed as the successful pursuit of "reductions in the amount of the compensation paid to the contractor." It does not supplant enforcement of the liquidated damages clause.

Request:

Please determine why this contract was not executed until 8 months after the FAA deadline.

Procedure:

We asked the Airport's CIP program manager and various Airport personnel for information and documentation to explain why this contract was not executed until 8 months after the FAA deadline. Specifically, we asked the Airport to describe and provide documentation to support its activities and progress during the three-year period from the date that the FAA issued Advisory Circular 150/5340-18C, Standards for Airport Sign Systems (September 13, 1991), through the date that the contract was executed (August 8, 1994).

Comment:

On August 16, 2000, we asked representatives from the Airport's CIP program manager to document why this contract was not executed until 8 months after the original FAA deadline. In a September 26, 2000 response, the Airport's CIP program manager representatives stated that they were unable to locate documentation pertaining to this issue for the period in question, but they were continuing to search. We subsequently followed up on this request on October 24, 2000, but no additional documentation was produced.

Similarly, our review of the CIP program manager's project files did not uncover evidence to explain why this contract was not executed until after the original FAA deadline or what work was otherwise being done during the three-year period prior to the time that the contract was actually executed.

In addition, we requested from Airport senior management information and records that would document what was being done during the three-year period from the date that the FAA issued Advisory Circular 150/5340-18C (September 13, 1991) through the date that the contract was executed (August 8, 1994). For example, on November 15, 2000, we contacted the Airport's Deputy Director of Operations and Public Safety, who was the Airport's contact person with the FAA for complying with the new airfield standards. He referred us to the Airport's Corporation Counsel for further information. However, it was the Airport's Deputy Director of Finance and Administration who ultimately responded to our inquiry. On January 8, 2001, the Airport's Deputy Director of Finance and Administration provided us with a written response, along with supporting documentation regarding this question.

The Airport's Deputy Director of Finance and Administration's response (Exhibit E) stated that the time in question was spent developing the total documents and planning necessary to complete the project.

Subsequently, on February 19, 2001, Senate staff assisting the Detroit Metro Airport Review Committee held a meeting with the Airport. During that meeting, the Airport provided Senate staff with a narrative timeline (Exhibit F) detailing the airfield lighting and signage contract. Senate staff shared a copy of this timeline with us on February 20, 2001.

The narrative timeline was not provided to us by the Airport during our inquiry. The narrative timeline is a much more detailed account of the circumstances that prevented the Airport from executing the contract until 8 months after the original FAA deadline than anything that the Airport had previously provided to us.

Furthermore, after reviewing a draft copy of this report, the Airport provided a significant amount of additional information to explain why this project was not executed until 8 months after the FAA's extended deadline. The additional information is contained in the Airport's illustrated project timeline (see Exhibit G).

Airport Response:

Based on the Airport's interpretation of the Office of the Auditor General (OAG) comments, there appears to remain a question as to what activity or action took place during this three-year period of time (September 13, 1991 - August 8, 1994) following the notification of the FAA-mandated Advisory Circular 150/5340-18C. As early as February 19, 2001, the Airport provided a narrative timeline detailing the airfield lighting

and signage contract events and circumstances to the OAG auditors. In response to the three-year period of time in question, the following is a synopsis of the events and circumstances that occurred during that period of time prior to the issuance of the Notice to Proceed:

November 2, 1991 Wayne County executes a contract with a consultant to do a survey and study of the existing airfield lighting system, including recommendation for repair and/or rehabilitation.

November 13, 1991 The FAA issues Change #1 to signage Advisory Circular 150/5340-18C.

December 1991 -
December 1992 Awaiting survey results from consultant to determine complete scope of the project based on the consultant's recommendation. Wayne County amends the consultant's contract to provide for producing construction documents for the implementation of the airfield lighting project. This amendment also includes upgrading the existing airfield signage that was mandated by FAA Advisory Circular 150/5340-18C.

The Detroit Airline/Airport Affairs Committee held the first meeting in January 1992 to discuss the airfield lighting system in relation to the Federal Aviation Regulation Part 139.311 and the Advisory Circular 150/5340-18C. This meeting was followed up with subsequent meetings.

January 1993 -
November 1993 Negotiations with the airlines to determine the funding and scope of the project. (In order for the project to proceed, the Airport was required to secure approval and support from all of the airlines. During this period of time, the airlines reviewed the project scope and the effect of the project on their business schedule prior to granting approval or providing support.)

December 8, 1993 The Airport requests from the Detroit Airline/Airport Affairs Committee the weighted majority in interest vote for \$21,000,000 in funding for the "Airfield Lighting and Signage" project. The

County estimates that \$11,250,000 of the project cost will be paid from FAA grants-in-aid (Project AF-006 is included in the County's Letter of Intent from the FAA dated September 28, 1990). Therefore, the net project cost to be funded from bond proceeds is estimated to be \$9,750,000. (See Exhibit H for a breakdown of the project costs documented in the letter, dated December 8, 1993, from the Director of Airports, Robert C. Braun, to the Regional Director, Airport Affairs - Northwest Airlines, Inc., Daniel R. DeBord.)

January 25, 1994 The Airport receives a letter from Northwest Airlines, Inc., approving the project and complimenting the Airport on the quality of the project documents. (See Exhibit H.)

January 1994 FAA extends national deadline to meet Advisory Circular 150/5340-18C until January 1, 1995. (The FAA extended the deadline nationally because there were a number of larger airports throughout the country that could not meet the original deadline for a number of reasons. An example of a reason that would cause delays in completion is the fact that there are only two or three FAA-approved manufacturers and suppliers of signs. The suppliers were inundated with orders from airports all over the country because of the nationwide Advisory Circular. Also, Metropolitan Detroit Wayne County Airport was one of the largest and most complex airfield lighting and signage projects and had to follow very strict funding and approval requirements.)

February 1994 Remaining airlines approve project.

March 1, 1994 Wayne County issues bonds, Series 1994B, in the amount of \$21,000,000 to fund the "Airfield Lighting and Signage" project. (The process of issuing bonds involves a number of steps that must be completed prior to receiving funds. The time frame involved for the total process is approximately six months. Bond counsel and bond underwriters have to be selected and the official statements have to be prepared. With this in mind, the Airport demonstrated its efficiency and recognition of the time

sensitive nature of this project by the issuance of bonds for funding within a month of receiving the airlines' approval.)

May 24, 1994

The consultant completes construction documents and the project is publicly advertised for bid.

Project scope includes replacing and relocating all airfield signage, adding runway edge and center line lights to meet FAA guidelines, revising and replacing all airfield electrical circuiting, separating signage circuits from lighting circuits, tagging all electrical fixtures, installing a light monitoring system, changing airfield electrical system from 4800 volts to 480 volts, replacing all regulators, renovating electrical vault rooms, installing emergency generators and pre-purchasing airfield signs. The project was scheduled to take 570 days, to accommodate the operational needs of the Airport's constituent airlines, and was broken into multiple phases and sequenced to minimize interruption of Airport/airline operation, to accomplish zero interruption to overseas flights, and to maximize safety.

This project was affecting the entire electrical system on the airfield. The work and scheduling were very complicated, amplifying the need for few errors that would adversely affect the electrical system and the need for uninterrupted and safe operation of the Airport.

June 24, 1994

Prospective bidder, Hypower, Inc., from Ft. Lauderdale, Florida, submits formal protest on project bidding requirements. Airport informs FAA of protest.

July 1, 1994

Airport sends written response to Hypower, Inc., protest. The FAA is sent a copy.

July 7, 1994

Wayne County sends letter to the FAA certifying that the Airport has followed "bid protest" procedures.

July 7, 1994

The FAA writes a letter to the Airport stating that the FAA concurs that Wayne County has followed proper bid protest

procedures as necessary under federal procurement guidelines (FAA Order 5100.38A).

- July 7, 1994 Wayne County receives bids on the project. Three bids are submitted:
1. American International - \$11,082,974
 2. Aneco, Inc. - \$11,320,099
 3. Peter A. Basile & Sons, Inc. - \$12,696,307
- July 27, 1994 Wayne County's CIP program manager reviews bids and sends letter of recommendation for award of contract. The program manager recommended that the contract be awarded to the low bidder, American International. The FAA is notified of bid results and the program manager's recommendation.
- August 11, 1994 Due to the critical need to start and complete this project, Wayne County issues a "Letter of Intent" to award to allow the contractor to mobilize and order "long lead" items. The Airport sends certification letter to the FAA explaining the complexity of work, the schedule, and the need for an extension of FAA deadline from January 1, 1995 to May 1, 1995.

Also, refer to the illustrated project timeline (Exhibit G).

Although this is only a synopsis of the events that occurred prior to the issuance of the Notice to Proceed, it is representative of the series of steps that were required to be completed before any form of construction could begin. Each of the previous events, such as studying, surveying, planning, documenting, negotiating, and issuing bonds for funding a project of this magnitude, is a lengthy process under excellent conditions. The timeliness associated with a number of these events were not within the control or management of the Airport officials. The individual delays that occurred during the first few phases of the project had great impact on the entire schedule and the resulting unfortunate seasonal timeliness of critical phases of the project. For example, there was a loss of efficiency due to seven-day workweeks and outdoor work in extremely cold weather for which winter protection gear was needed.

Request:

Please conduct a more detailed review and comment upon the circumstances resulting in the substantial change orders associated with this contract.

Procedure:

We obtained and examined the 27 change orders (Exhibit I) and the project files for this contract. We discussed the contract with Airport management and the Airport's CIP program manager. We also discussed with the Bureau of Aeronautics (BOA), Michigan Department of Transportation, its involvement with the change orders.

Comment:

The change orders associated with this contract were submitted by the Airport's CIP program manager, accepted by the contractor, and signed by BOA. We determined that BOA's oversight of the change orders is limited to reviewing the mathematical accuracy and eligibility (if federally funded) of the change order and comparing it to the previous change order to ensure that the various facts and figures have been updated.

The CIP program manager stated in a December 21, 1994 letter that the accelerated signage portion of the project would require approximately \$1.5 million in additional costs. However, from February 16, 1995 to November 1, 1995, the Airport produced six separate "multi-part" change orders, which collectively compensated the contractor for accelerating the signage portion of the project. Only the signage portion of this project was accelerated.

The first five change orders that compensated the contractor for acceleration (Change Order Nos. 1 - 5) totaled \$8 million. The sixth change order that compensated the contractor for acceleration (Change Order No. 8) was for an additional \$1,266,227, and it contained an offsetting credit of \$1,265,730, for a net change order amount of \$497.

According to the Airport, there were other change order credits that offset the final acceleration compensation ultimately paid to the contractor. The Airport's summary is described briefly below:

Description	Contract Adjustment	Adjusted Contract Amount
Original Contract Amount		\$11,082,975
Change Order Nos. 1 - 5	\$ 8,000,000	
Change Order No. 8A	1,266,227	
Change Order No. 26	(387,509)	
Total Acceleration Payments	\$ 8,878,718	\$19,961,693
Change Order No. 8-B	(\$1,265,730)	
Change Order No. 24	(869,334)	
Change Order No. 26 (partial)	(32,886)	
Change Order No. 27	(8,000)	
Total Adjustments for Acceleration	(\$2,175,950)	\$17,785,743
Change Order No. 26 (claim)	\$ 1,189,998	\$18,975,741
Change Order Nos. 6, 7, 9 - 23, and 25	\$ 881,738	\$19,857,479

In addition to the "acceleration" compensation contained in Change Order Nos. 1 - 5 and 8, additional compensation and credits were made for various other changes and "extra work as requested by the Airport." The changes were reflected in Change Order Nos. 6 - 25. Also, the Airport issued a "final" Change Order No. 26 on October 23, 1997. Change Order No. 26 made "final" adjustments to the amounts of previously issued change orders and extended the contract 288 days.

Change Order No. 26 also provided additional compensation to the contractor. Originally, the contractor made a claim for an additional \$3,787,347 for what the contractor termed "extended general conditions," "lost productivity," "lost time," "labor and wage escalation," "contract reconciliation," "additional project personnel," and "outstanding issues." In a settlement negotiation involving the contractor, Wayne County's Assistant CEO/Airport and Major County Construction, and the Airport's CIP program manager, the contractor was compensated an additional \$1,189,998 (31% of its original claim). According to the project files, the contractor had requested that the settlement amount be kept confidential.

Although the amount of the contractor's negotiated claim settlement included in Change Order No. 26 was \$1,189,998, the actual payment amount for Change Order No. 26 was \$769,603 because credit adjustments of \$420,395 reduced the change order amount. The credit adjustments were for decreased quantities and portions of work that ended up not being required to be performed (see Exhibit I).

Exhibit J contains pertinent correspondence regarding the contractor's February 10, 1997 claim for \$3,787,347 discovered through our review of the project files. Exhibit K contains documentation concerning the Airport's CIP program manager's original expectation regarding the project's anticipated acceleration. Finally, documents related to the contractor's claim are included in Exhibits L-1 through L-10.

Although Change Order No. 26, dated October 23, 1997, was identified as the "final" change order and "full and final settlement," we subsequently discovered Change Order No. 27, dated February 15, 2000. Change Order No. 27 was issued to make final adjustment to the entire contract, including all approved change orders, for a credit of \$8,000.

As described in our November 7, 2000 letter to the Joint Legislative Select Committee on the Wayne County Detroit Metropolitan Airport, the results of our more detailed review of this contract and its change orders dictates that an independent audit of the airfield lighting and signage contract would be in the best public interest. An independent audit of this contract should include procedures to answer the following:

1. Were the change orders, and corresponding cost increases that were above and beyond the originally bid and awarded contract amount, reasonably necessary and fully documented by the various field orders, construction bulletins, invoices, and other documentation that support the change order?
2. Were the change orders and corresponding cost increases for the contract, such as compensating the contractor for "acceleration," appropriate and reasonable, and not duplicative or excessive?

A comprehensive reconciliation of the payments made on this contract is advisable because the contract has undergone significant modifications from the competitively bid specifications, both in terms of the work completed and in cost escalations. Details of the specific work completed and the reasonableness of these payments were not readily apparent from our review of the project files. Only

a comprehensive independent audit of the contract payments would determine whether the additional costs associated with this contract were justified.

For example, between February 16, 1995 and November 1, 1995, the Airport paid the contractor \$8 million through a series of multi-part change orders for the entire scope of accelerating the signage portion of the contract. The work associated with the \$8 million was described in the change orders as:

. . . expediting the installation of all new signage circuits, wherever possible; installing temporary sign circuits and connections; and arranging for temporary power source for replacing feed from ALV-1. The work needs to be accomplished during the winter months and on multiple extended shift basis. The compensation for this work shall be made on a Force Account-Like basis, with appropriate credits to the contract for the original contract scope of work that this effort shall replace.

This general description does not detail what specific work was performed in accelerating the signage portion of the contract. A comprehensive reconciliation of the payments made on this contract with the change orders, field orders, bulletins, etc., that describe the work performed would be necessary to establish what the contractor did to earn the additional payments, whether the payment amount was reasonable additional compensation for the work performed, and if the Airport received the appropriate credits to the contract for the original contract scope of work that the change order replaced.

Furthermore, during our review of the project files, we frequently encountered documentation of numerous claims made by the contractor for the direct costs of the contractor's unproductive "idle" time. The contractor made no progress on the project during these unproductive times, but charged the Airport for the costs nonetheless.

For example, on August 1, 1996, the contractor made a claim of \$4,174 for "lost time," for a three-hour delay in airfield closure. The claim included subcontractor

costs, bond costs, Single Business Tax costs, and a 5% general contractor "markup." In response, the CIP program manager denied the claim, stating:

As both your sub-contractors described the delay on this particular day as 'beyond their control', the Project Managers office must also describe 'heavy fog' as beyond control of the Owner and the Manager's office.

The Project Managers will NOT consider payment of Quotation #53 and you may consider any other contractual recourse American International deems necessary.

There were many other similar claims contained in the project files. The disposition of these claims was seldom apparent from a review of the project files. A comprehensive independent audit of the Airport's payments to the contractor would determine whether payments to the contractor were supported by documentation and that payments made were reasonable, appropriate, and not duplicative.

3. Did American International comply with Section 1.32 of the contract, which required the prime contractor to perform with its own organization not less than 30% of the contract sum? Section 1.32 states, in pertinent part:

The Contractor shall perform with his own organization, work amounting to not less than thirty percent (30%) of the contract sum. Material and equipment purchasing shall be construed as included in the required portion of the contract sum, provided that the designated material and equipment is installed with the Contractor's own forces, and not subcontracted.

On July 11, 1994, the CIP program manager requested from the contractor a detailed work plan indicating how the contractor planned to satisfy the 30% requirement. On July 21, 1994, the contractor did not provide a detailed work plan, but responded by letter that it would satisfy the 30% requirement by performing the following work with its own forces:

- a. General Project Management and Administration
- b. Project scheduling, monitoring, and reporting
- c. Project layout

- d. Architectural work – ALV-1-LSI No. 12
- e. Piping work – ALV-1-LSI No. 13 (partial)
- f. Supply and installation of signs and lights – LSI Numbers 26 to 49 and 52 to 59 inclusive.

The contractor asserted that the value of this work would be \$3,736,979, or approximately 34% of the contract.

Based on our review of the project files, including the contractor's certified payrolls, it was not clear whether the contractor had committed a sufficient amount of its own organization's resources to meet the 30% requirement. A comprehensive independent audit to identify the work performed by the contractor's own forces would be necessary to ensure that the contractor met its work requirement.

- 4. Why were there only three contractors who bid on this contract, and were the bids received unreasonably low and should have been rejected? Also, what were the various sources of revenue used to fund the project, and what other contractors, besides American International, performed work on the project?

Bids

On August 8, 1994, the Airport awarded the contract to American International, based on a low bid of \$11,082,975 for construction of the project. Other construction bids received were from Aneco, Inc., which bid \$11,320,099, and Peter A. Basile & Sons, Inc., which bid \$12,696,307. According to Exhibit A of the bond ordinance approved by the Wayne County Commission, the estimated cost of construction for the project was \$16,000,000.

A February 13, 1997 memorandum from the Airport's CIP program manager stated that a comparison of bid amounts to the actual amounts paid for several items indicates that the original contract may have been severely underbid.

Sources and Uses of Revenue

On March 1, 1994, the Airport issued \$23,730,000 in Series 1994B Revenue Bonds for the airfield lighting and signage project. The 1994B bond official statement and the Wayne County Commission's bond ordinance specified that the estimated cost of the project would be \$21,000,000. Given the escalation in costs

associated with the project, the proceeds of the Series 1994B bond could not have been sufficient to fund the airfield lighting and signage project.

We questioned why the Airport would require 1994B bond proceeds of approximately \$21,000,000 if American International bid the project for only \$11,082,975. The Airport responded that the estimated \$21,000,000 in project costs included not only the construction that was performed by American International but also \$3,100,000 for "A/E [Architecture/Engineering]" and \$1,900,000 for "contingency," in addition to estimated construction costs of \$16,000,000.

Although American International's bid for its construction contract was only \$11,082,975, the change orders associated with American International's contract alone escalated costs to nearly \$20 million, which was in addition to other costs associated with other contractors who also performed work under the project. Many of those other contracts also experienced cost escalations as a result of "acceleration."

In order to provide the Detroit Metro Airport Review Committee with a better understanding of the entire airfield lighting and signage project and its costs, including what American International and other contractors were paid relative to the funding sources used to pay them, we examined documentation to identify the entire costs associated with this project and the revenue sources used to pay them.

Our examination disclosed:

- a. The CIP program manager reported that the Airport spent over \$27.7 million for construction costs related to the project and over \$36.0 million in total for the airfield lighting and signage project costs. According to the CIP Cost Summary Reports prepared by the CIP program manager, it appeared that only \$30.8 million of \$36.0 million in project costs were within the scope of work originally contemplated in the \$21.0 million cost estimates contained in the 1994B bonds. Of the remaining \$5.2 million:
 1. Costs of \$523,000 involved a lighting systems study that ultimately led to the 1994B bonds and the airfield lighting and signage project. This study was funded under 1986 bonds.

2. Costs of \$4.7 million involved airfield lighting related work for "modifications and ductbank" work for Runway 9R/27L. This work was funded under 1990A bonds prior to the advent of the 1994B bonds that funded the remainder of airfield lighting and signage related projects.

In addition, the CIP Cost Summary Reports listed an additional \$783,000 in costs that were funded with 1994B bonds for work that may not have been within the scope of work originally contemplated in the \$21 million cost estimates contained in the 1994B bonds. Specifically, \$81,000 of the \$783,000 was for a general Airport runway surface sensor system, and the remaining \$702,000 was for runway edge lights and signage additions (see Exhibit M). Neither were reported as part of the airfield lighting and signage project in the CIP Cost Summary Reports. Further review would be necessary to determine if these 1994B bond proceeds were appropriately spent in accordance with the applicable bond ordinances and agreements or if the work was outside of the scope of the project as described in the 1994B bond official statement.

- b. Although the CIP Status Report states that \$20.6 million in 1994B bonds was available for the project's funding, the CIP program manager reported to us that only \$13.2 million of the 1994B bond proceeds was actually used by the Airport to fund the costs of the airfield lighting and signage related projects.

According to the CIP Status Report, the remaining \$7.4 million in 1994B bond proceeds were reserved for "Additional Projects." There were no costs reported for construction or services associated with these "Additional Projects," according to the CIP Status Report. In fact, despite the significant cost escalations associated with this project, the CIP Status Report shows that the airfield lighting and signage project was approximately \$7.4 million under the project's "budget," because no costs are recorded under "Additional Projects."

The 1994B bond official statement pledged that the 1994B bonds were being issued to fund the costs of the "1994 Project," described as including "revisions and replacements to the airfield signage and lighting systems at the Airport which are required by the FAA." Further review would be necessary to determine and evaluate the disposition of the remaining \$7.4 million in 1994B bond proceeds.

- c. The CIP Status Report listed over \$18.0 million in additional project funding for airfield lighting and signage related projects, available from sources other than the 1994B bonds. In addition, \$3.3 million more was available from other bond sources (\$800,000 from the 1986 bonds for a runway lighting system study and \$1.2 million from the 1990A bonds for modifications and "ductbank" work for Runway 9R/27L) to fund the non-1994B bond portions of airfield lighting and signage related projects.

The CIP program manager reported to us on April 9, 2001 that a total of \$20.9 million in FAA "Letter of Intent" funds was used to fund the airfield lighting and signage related projects, along with \$13.2 million in 1994B bonds, \$800,000 in 1986 bonds, and \$1.2 million in 1990A bonds. Further review would be necessary to determine if this work was appropriately funded with those revenue sources.

- d. The Airport stated in the 1994B bond official statement that it intended to pay \$11.25 million aggregate principal amount of the 1994B bonds maturing on December 1, 1997, December 1, 1998, and December 1, 1999 from the proceeds of federal grants-in-aid, as provided for by the County's Letter of Intent from the FAA. As described by the Airport in its December 8, 1993 letter to Northwest Airlines (Exhibit H) requesting weighted majority approval of the project, the County estimated that this would mean "the net project cost to be funded from bond proceeds is estimated to be \$9,750,000" (of the estimated \$21 million in project costs).

The Airport's 1994B bond official statement stated that if the anticipated federal funds were not available on these dates, the County could secure short-term financing until the federal funds became available, or the signatory airlines' weighted majority approval of the 1994 Project would allow the Airport to include debt service and coverage requirements in the signatory airlines' rates and charges although, in the view of Airport management, it was highly unlikely this would be needed for these three operating years.

Further review would be necessary to determine whether the Airport made the debt payments, what sources of revenue (federal funds, etc.) were used to

repay these bonds, and whether the repayments were made in accordance with appropriate requirements.

- e. The CIP Cost Summary Reports did not specify which revenue sources paid for the remaining project costs, what additional work was performed, who performed the work (e.g., design and consulting work by Giffels Hoyem Basso and Associates, Inc.), and in what amounts, or, in addition to the \$19,857,479 paid to American International, what other construction contractors were paid the remaining portion of the \$27.7 million in construction costs reported for the project.

Upon inquiry, the CIP program manager provided us with information on other contractors who performed airfield lighting and signage related projects (Exhibit M). The information shows that the airfield lighting and signage related projects involved more than just American International and totaled over \$36 million in costs charged by the multitude of various contractors and their work.

Other Contractors

A more detailed review of the other contractors and charges associated with this contract would be necessary in order to determine the specifics regarding the disposition of those particular contracts and charges and what revenue sources paid for the costs.

- 5. Was the contractor's performance on the airfield lighting and signage contract satisfactory?

Our review of the project files uncovered evidence of numerous deficiencies in American International's performance, most significantly:

- a. Inaccurate, undetailed project schedules, leading to inefficiencies and poor planning and management. Project schedules are necessary to keep the Airport and the CIP program manager informed of the project's progress, to determine what work activities are to be done next, etc.
- b. Idled closures, where the contractor had requested runway/taxiway closure, but Wayne County Field Engineering observed that no construction activity

was occurring within the affected area, thus needlessly inconveniencing air carriers.

- c. Delays in re-opening runways/taxiways caused by the contractor.
- d. Airfield safety violations by the contractor.
- e. Failure to pay subcontractors. The project files disclosed that at least two subcontractors abandoned work on the project for nonpayment.

In addition, a third subcontractor complained directly to the CIP program manager about American International's nonpayment. American International responded that it withheld money from its subcontractor in order to protect itself from "incomplete or unacceptable work" that American International feared may be rejected for nonconformance by the Airport or its CIP program manager after American International would have already paid its subcontractor for the nonconforming work.

The CIP program manager reminded American International that it was American International, not its subcontractor, that was contractually obligated to warrant that the work was of good quality, free from defect, and conformed to contractual specifications.

Furthermore, the CIP program manager admonished American International for its practice of withholding payment from its subcontractor. The CIP program manager informed American International that American International was withholding payments from its subcontractor for no legitimate reason. American International had been certifying every month, along with its payment requests, that it had made payments to subcontractors for all the work for which American International had received payments from the Airport. The CIP program manager observed that if American International's primary concern was a possible total rejection of its subcontractor's work, then payment should not have been requested and kept by American International for all those months.

- f. Poor performance by American International's subcontractors. Project file documentation showed that certain subcontractors' poor performance may have impeded completion of the project in a cost efficient and timely manner.

One subcontractor (Williams Corporation) was relieved of its duties for a portion of its contract because of its failure to perform certain work in a timely and efficient manner. The work had to be completed using alternate means. However, the subcontractor continued work on other portions of the project, pursuant to its contract.

- g. Poor performance by the contractor's general project manager. On July 24, 1996, the CIP program manager asked the Assistant CEO/Airport and Major County Construction to remove the contractor's general project manager from the project. Both the CIP program manager and Wayne County Field Engineering expressed concerns with this individual's "disruptive influence to the smooth running of this project." The Assistant CEO/Airport and Major County Construction was informed by the CIP program manager that the CIP program manager and Wayne County Field Engineering had tried to work with the contractor's general project manager with little success. The CIP program manager also stated that the contractor's general project manager's value to the project was "questionable at best," and that "it appears that he deliberately goes out of [his] way to strain relations."

Despite the CIP program manager's request, the contractor's general project manager continued on the project to its conclusion, including substantial participation in the negotiation and settlement of the contractor's \$3.8 million claim for additional fees.

After reviewing a preliminary draft of this report, the CIP program manager added that the contractor's general project manager was removed from the construction site but continued working on the administrative aspects of the project on a day-to-day basis. Based on our review of the project, this arrangement did not appear to diminish the influence of the general project manager's role on the project.

At the conclusion of the airfield lighting and signage contract, the Airport's CIP program manager, as well as Wayne County Field Engineering, each recommended that the Airport not award a later contract (runway pavement replacement) to American International because of American International's

previous performance on the airfield lighting and signage contract (see Exhibits N and O). The specific reasons cited included:

- (1) The contractor was unprofessional, confrontational, and very hard to work with;
- (2) The contractor had shown that it had problems developing and meeting schedules on airfield work;
- (3) The contractor lacked any recent, comparable, large paving experience;
- (4) The contractor had shown an inability to responsibly perform work within the airfield operations area in a safe, efficient, responsive, and timely manner; and
- (5) The contractor proposed using the same subcontractor (Williams Corporation) whose performance was questionable on the airfield lighting and signage contract and who had to be replaced in order to complete a critical element of the work on that contract.

The Assistant CEO/Airport and Major County Construction rejected the Airport's CIP program manager and Wayne County Field Engineering's recommendation and required that the Airport award the contract to American International as low bidder except under extreme circumstances. Furthermore, the Assistant CEO/Airport and Major County Construction instructed the Airport's CIP program manager to modify its bid review and recommendation letter to instead recommend award of the runway pavement replacement contract to American International as low bidder. The CIP program manager's revised letter is contained in Exhibit P.

After awarding the subsequent runway pavement replacement contract to American International, concerns regarding American International's lack of qualifications and poor performance on that contract were again raised during and at the conclusion of that contract by Wayne County Field Engineering.

The issue of American International's performance on the airfield lighting and signage contract should have been a critical factor in awarding subsequent contracts. The Airport subsequently awarded at least three additional Airport

contracts to American International: runway pavement replacement (1997), maintenance assistance (1998), and toilet room renovations (1998). In addition, the Airport's former parking contractor, APCOA, Inc., had subsequently used American International as a cost-reimbursed subcontractor.

If it is shown that American International's performance on the 1994 airfield lighting and signage contract was sufficiently defective to merit denying future contract awards, then the Airport's decision to subsequently award three more contracts to American International, while ignoring the advice of both the CIP program manager and Wayne County Field Engineering, is questionable.

6. Were the certified payrolls submitted by the contractor accurate, reasonable, and appropriate? Our review of the contractor's certified payrolls submitted to the Airport for payment showed weekly labor hours that appeared excessive. For example, the weekly labor hours for one employee averaged 80 hours per week for the period January 4, 1995 through May 2, 1995. The employee's weekly hours worked during this period ranged from a minimum of 63 hours for one week to as much as 115.5 hours for one week.

Although it may have been physically possible for the contractor's employee to have worked that many hours over such a sustained period of time, an independent audit of the accuracy of the total work hours charged should be undertaken. In addition, the independent audit should consider the prudence, from a productivity standpoint, of assigning such a large amount of work responsibility to one individual.

7. Was the "cost-plus" nature of the contract reasonable and appropriate? As described above, change orders transformed this contract from a "lump sum" agreement to a "time and materials" or "cost-plus" agreement. By separating and accelerating the signage portion of this contract, as well as issuing 27 separate change orders, the Airport made significant adjustments to the contract sum. According to the contract's general provisions, methods used in determining adjustments to the contract sum shall include one of the following:
 - a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data, as required by the project manager to permit evaluation; or

- b. Unit prices stated in the contract documents or subsequently agreed upon; or
- c. Cost to be determined in a manner agreed upon by the parties and the specified percentage fee; or
- d. Time and material, plus percentage markup for overhead and profit. Owner may elect to follow this method if a lump sum price cannot be agreed upon or if the inherent uncertainty in the work does not permit agreement of a lump sum price.

A contractor bears little if any risk in performing a "time and materials" or "cost-plus" form of agreement because a contractor is guaranteed that it will be reimbursed for its costs, plus a percentage markup for its overhead and profit. In fact, a contractor has an incentive to elevate costs because higher costs result in more overhead and profit to the contractor, as a percentage markup of costs. A determination should be made as to whether "time and materials" or "cost-plus" was the best and appropriate option for Airport management to agree to.

8. Were the Airport's CIP program manager and Wayne County Field Engineering able to exercise sufficient oversight of the contractor's "delay" claims?

As described above, we noted numerous "delay" claims charged by the contractor for unproductive "idle" time. These claims were often the result of runway openings that caused the contractor to suspend work in order to clear runways or taxiways for Airport operations. These runway openings were understandably necessary to ensure the efficient flow of air traffic at the Airport and should have been contemplated in the bid price of any contractor bidding on an Airport contract involving work in a live airfield operations area.

In overseeing the contractor's various "idle" time claims, the CIP program manager described in a September 8, 1995 memorandum a process whereby an independent accounting would be made of any delays to the contractor for possible reimbursement:

If the above mentioned action [the clearing of runways] created undue 'idle-time' for Contractor's forces, a T[ime] & M[aterials] record duly signed by the Wayne County Field Engineering representative must be submitted to the Project Managers who will maintain separate accounting for possible payments and backcharges.

Our review of the project files disclosed that the contractor routinely made delay claims for unproductive "idle" time. However, it is unclear from the project files whether the circumstances surrounding those claims were independently substantiated by the Airport personnel, Wayne County Field Engineering, or the CIP program manager. A comprehensive independent audit of the contractor's claims (change orders) should include an assessment of the sufficiency of the Airport's CIP program manager's or Wayne County Field Engineering involvement in verifying the reasonableness and accuracy of these claims.

9. Was the contractor's \$3,787,347 claim for additional compensation for "extended general conditions," "lost productivity," "lost time," "labor and wage escalation," "contract reconciliation," "additional project personnel," and "outstanding issues" and the resultant \$1,189,998 negotiated settlement reasonable, appropriate, and not duplicative? (See Exhibits L-1 through L-10 for documents related to the contractor's claim.)

Exhibit J includes the CIP program manager's assessment of the merits of the contractor's claim. The information contained in Exhibits J and L-1 through L-10 raise some question as to whether payment on the claim was justified. At a minimum, an assessment should be undertaken to determine whether sufficient, competent documentation exists that supports the Airport's payment of this additional settlement amount.

10. Was the involvement of the Assistant CEO/Airport and Major County Construction in the airfield lighting and signage contract, both as a representative of the Airport and, subsequently, as a representative of the contractor, proper? Also, was it proper for the Assistant CEO/Airport and Major County Construction to participate in the award of American International contracts and have oversight of American International contracts, while simultaneously having an immediate family member employed by American International's Best American Industrial Services Division, and to ultimately accept employment for himself from American International less than seven months after resigning from County employment?

The Assistant CEO/Airport and Major County Construction (title changed to Deputy Chief Operating Officer April 1, 1997) was employed by Wayne County through June 12, 1999. After resigning from County employment, less than seven months later he was hired by American International as Executive Vice President. American International disclosed in its Vendor Disclosure Form dated August 4,

1998 that American International had discussed hiring an immediate family member of the Assistant CEO/Airport and Major County Construction within the previous 12 months. The Vendor Disclosure Form also revealed that American International's Best American Industrial Services Division was currently employing the immediate family member of the Assistant CEO/Airport and Major County Construction.

During his County employment, the Assistant CEO/Airport and Major County Construction exercised significant authority over the Airport. In fact, the 1994B bond official statement, used to finance the airfield lighting and signage project, described the Airport as being officially under the supervision of the Assistant CEO/Airport and Major County Construction. Based on our review of contracts involving American International, the Assistant CEO/Airport and Major County Construction not only participated in the negotiation and approval of a substantial claim settlement in favor of American International, but also served on interview committees that led to contract awards for multiple American International contracts at the Airport.

With respect to the Assistant CEO/Airport and Major County Construction's role as representative of both the Airport and American International, he performed the following official acts as the County official managing the Airport:

- a. August 1994 - Approved the recommendation of award of the airfield lighting and signage contract to American International. Since that time, he continued to oversee this and other American International contracts.
- b. July 1996 - Failed to completely remove American International's general project manager from the project, as requested by the CIP program manager.
- c. September 1997 - Negotiated and approved \$1,189,998 in additional payments to American International, as settlement of American International's \$3,787,347 construction claim.
- d. September 1997 - Rejected the CIP program manager's and Wayne County Field Engineering's recommendation to award to a different contractor and recommended awarding the subsequent runway pavement replacement contract to American International as low bidder, except under extreme circumstances. Directed the CIP program manager to change its draft

recommendation letter from recommending Posen Construction, Inc., to instead recommending an award to American International.

- e. November 1997 - As a member of the Wayne County Interview Committee, interviewed American International and others for a new bid on the maintenance assistance contract that had been held by American International for the previous four years.
- f. December 1997 - Approved the Wayne County Selection Committee's recommendation to re-award the maintenance assistance contract to American International.

With respect to the Assistant CEO/Airport and Major County Construction's role as representative of both the Airport and American International, after resigning his County position overseeing the Airport on June 12, 1999 and subsequently accepting employment with American International January 5, 2000, he then signed Change Order No. 27 of the American International airfield lighting and signage contract on behalf of American International as its Executive Vice President. In so doing, he accepted final adjustment and payment of the entire contract as an American International executive, on a contract that he had also previously awarded, administered, and negotiated and approved a \$1,189,998 settlement claim while still a County official.

Section 15 of the Wayne County Contracting Ordinance, entitled "Ethics in Public Contracting," includes provisions designed to establish procedures to preclude the opportunity for a conflict of interest to arise between County vendors and those County employees who regularly exercise significant discretion over the award and management of County procurements. Section 15, which may apply to the Assistant CEO/Airport and Major County Construction's conduct, provides in pertinent part:

Section 15 (C) General Financial Disclosure Requirements of County Employees Who Regularly Make Contracting Decisions

- (1) Each county employee on the contract managers list, shall file an annual public financial disclosure statement . . . with the Wayne County Clerk by March 15 of each calendar year . . . He or she

shall disclose to the best of his or her knowledge and belief all of the following information:

- (a) . . .
 - (b) The name and address of all sources of employment for himself or herself, and his or her immediate family . . . if that employment is with or for a County vendor, and if award of a County contract to that vendor may have a beneficial effect upon the employment, promotion, or remuneration of the person or of a member of his or her immediate family.
 - (c) . . .
- (2) A County employee shall file an amended disclosure within 30 days after he or she or a member of his or her immediate family becomes employed by, or acquires a substantial financial interest in a County vendor. . . .

On September 13, 2000, we visited the Wayne County Clerk to retrieve annual public disclosure statements for County officials, including the Assistant CEO/Airport and Major County Construction. The Wayne County Clerk had annual public disclosure statements for the Assistant CEO/Airport and Major County Construction for the years 1997 and 1998 only. There was no annual public disclosure statement on file for the years 1995, 1996, and 1999 for the Assistant CEO/Airport and Major County Construction.

American International disclosed in its Vendor Disclosure Form dated August 4, 1998 that American International's Best American Industrial Services Division hired an immediate family member of the Assistant CEO/Airport and Major County Construction. However, in his 1998 annual public disclosure statement, the Assistant CEO/Airport and Major County Construction did not disclose this potential conflict of interest. The required amended disclosures for 1998 were also not on file with the Wayne County Clerk when we inquired on September 13, 2000.

We also inquired with Wayne County Purchasing, regarding the missing public disclosure statements for the Assistant CEO/Airport and Major County Construction for the years 1995, 1996, and 1999. As with the Wayne County Clerk, Wayne County Purchasing was also unable to produce the missing public disclosure statements.

After reviewing a preliminary draft copy of this report, on March 20, 2000, the County produced the missing public disclosure statements for the Assistant CEO/Airport and Major County Construction for the years 1995, 1996, and 1999. After reviewing the disclosure statements, we confirmed that the Assistant CEO/Airport and Major County Construction did not disclose, as required by Section 15 of the Wayne County Contracting Ordinance, that American International had employed his immediate family member in its Best American Industrial Services Division.

Wayne County's "Ethics in Public Contracting" also requires:

Section 15 (D) Employee Must Disclose a Conflict of Interest and Not Take Part in That Contract

- (1) If a County employee on the contract managers list has a conflict of interest in a particular County procurement, he or she shall not take part directly or indirectly in that procurement, unless a waiver is granted pursuant to subsection L. He or she shall immediately notify his or her superior.
- (2) There is a conflict of interest whenever a County employee, who is on the contract managers list, knows or should reasonably be expected to know that he or she, or a member of his or her immediate family:
 - (a) . . .
 - (b) is presently employed by this County vendor in a managerial or other key position, or has become employed by this County vendor in any kind of position within the previous twelve (12) months; or
 - (c) has negotiated or is negotiating for employment with this County vendor . . .
 - (d) . . .

As described above, Annual Disclosure of Potential Conflicts of Interest Forms for the Assistant CEO/Airport and Major County Construction did not disclose any potential conflicts of interest with American International, nor did the Assistant CEO/Airport and Major County Construction avoid taking part in the contract.

As the individual to whom the Director of Airports reported, it is apparent that the Assistant CEO/Airport and Major County Construction exercised extensive executive responsibility and authority over the Airport's contracts with American International. In fact, it appears the Assistant CEO/Airport and Major County Construction exercised exclusive authority over American International's airfield lighting and signage contract. Our review of the project files did not disclose any evidence of substantial Airport senior management participation or supervision of the contract. The chain of command for significant construction decision making appeared to flow from Wayne County Field Engineering and the CIP program manager, who oversaw the day-to-day operations of the contract, directly to the Assistant CEO/Airport and Major County Construction.

Wayne County's "Ethics in Public Contracting" also requires:

Section 15 (H) Gratuities

A person shall not offer, give, or agree to give any County employee or former County employee, nor shall a County employee or former County employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment for themselves or for a member of their immediate family as an inducement for or to influence any of the following actions or transactions: negotiation, decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

Section 15 (R) Definitions

(6) FORMER COUNTY EMPLOYEE. An individual who has drawn a salary or wages from the County within the previous twelve months.

By subsequently accepting final payment from the Airport and signing Change Order No. 27 as an American International representative and employee, after having previously exercised substantial dominion and control over of the same contract and contractor as a County official approximately 8 months earlier, this former County official's conduct raises serious questions. So, too, does his conduct with respect to his responsibilities and official acts as a County official

potentially conflicting with his and his immediate family member's employment opportunities with American International. American International's conduct regarding offers and grants of employment to this former County official and his immediate family member raise similar questions under the County's Ethics Ordinance. A comprehensive independent audit of the contractor's and the former County official's conduct, relative to applicable law and County ordinances, would be necessary fully determine the appropriateness of their conduct.

Airport Response:

Circumstances Resulting in Substantial Change Orders

The Bureau of Aeronautics (BOA), Michigan Department of Transportation, signed and authorized each change order submitted by the Airport's CIP program manager. As stated above, it is BOA's responsibility to review the mathematical accuracy and eligibility of the change order and to compare it to previous change orders to ensure that the various facts and figures have been updated. The Airport firmly believes that if there were any question as to the reasonableness of the change orders submitted, BOA was authorized and empowered to recognize those and not approve the change order. The Airport submitted the change orders and the authorized State of Michigan reviewing agency, BOA, approved each one of them as being reasonable and a retrospective exercise in second guessing both BOA and the Airport is unlikely to yield a fact-supported conclusion useful to the Detroit Metro Airport Review Committee.

The \$1.5 million figure was an estimate of the additional costs associated with the changing of the project sequencing. The CIP program manager's notes from a December 31, 1994 meeting stated a range of \$1.5 to \$4.5 million for additional costs. At the time that the estimate was given, the CIP program manager was working under a very tight deadline to produce a figure without being given sufficient time to perform a complete analysis of the impact of accelerating the signage portion of the project.

The final amount associated with the accelerated signage portion of the project was approximately \$6.7 million. There were credits in the amount of \$2.56 million that reduced the original amount to arrive at the final amount. The summary of acceleration and acceleration adjustments (included in the OAG's comments section) contains a detailed analysis of the project costs. The acceleration imposed rather significant costs on the contract. Some of the reasons are as follows:

1. Work sufficient number of crews on a 7 day/week, 10 hours a day basis to accomplish the schedule (overtime wages).

2. Work one morning and one night shift. Work from approximately 2100 hours on Fridays thru 0600 hours on Mondays to take advantage of runway closures.
3. Work outdoors through the winter months.
4. Work during short daylight hours and more work during night shift.
5. Certain work (extensive temporary power runs for signs, extra setups for pulling cables, etc.) would not have been required under original contract.
6. Need faster delivery of materials.
7. Since some of the sign and light circuits are in the same conduit/duct bank, it is relatively less expensive to pull both cables on this expedited schedule than to come back and pull the lights later. It is still an added cost.
8. Presence of a lot of unknown and controversial elements in the work dictates it to be a time and materials job, which is inherently inefficient.
9. Impact of closures due to snow removal and other air operations.
10. Electrical shut-down and lock-out procedures.
11. Lack of Airport electrical support.
12. Presence of many unknown underground cables.
13. Poor condition of existing circuits that need to be interfaced.

The additional compensation of \$1,189,998, processed in Change Order No. 26, was further reduced by \$420,395 for the credit adjustments associated with decreased quantities and portions of work that ended up not being required to be performed.

Each change order that is submitted is considered to be the final adjustments to any previously issued change orders. This is not to say that there could not be additional adjustments at a later date as facts and circumstances change, but only to reconcile the numbers generated up until that point in time. It should be noted that the contract was a

lump sum contract and remained a lump sum contract. Only the acceleration of the signage portion of the project was handled on a "time and materials" basis.

The CIP program manager's files contain all 27 change orders associated with this project. Each change order fully details the purpose and dollar amount of the request. The files, in their entirety, were made available to the OAG auditors. Thus, eliminating any searches for documentation required for their review.

Other Issues

In the OAG report relating to the project, there were issues identified as requiring further review by the OAG.

The first nine issues were not responded to based on the premise that these issues were only stated in the report as an OAG recommendation for further review. The tenth issue contained comments that warranted an immediate response.

Section 121.13 of the Wayne County Ethics Ordinance ("Ethics in Public Contracting") states:

. . . He or she shall disclose to the best of his or her knowledge and belief all of the following information:

Any County vendor, in which he or she or a member of his or her immediate family has currently or has had a substantial financial interest within the previous 12 months. Disclosure of an interest in a business shall consist of the name and address of the firm; and the kind, and owner of the substantial financial interest.

Section 121.13 also states:

A County employee shall file an amended disclosure within 30 days after he or she or a member of his or her immediate family becomes employed by, or acquires a substantial financial interest in a County vendor. The County Clerk shall keep a filing for at least three (3) years.

Section 121.13 defines "County vendor" as follows:

COUNTY VENDOR. Any business which or person who, has taken part in a County procurement as a contractor or as a County-approved sub-contractor within the previous twenty-four months, or which is expected to take part within the next twelve months. 'Expected to take part' means that

some specific action has taken place which manifests an intent to compete for a County procurement, such as, the active solicitation of County work, a response to a bid or request for proposals, or a written request to be included on the bidders mailing list.

Best American Industrial Services Division (Best American) hired the son of the Assistant CEO/Airport and Major County Construction. Best American did not bid on any County work and is not on the County's vendor list. Since Best American is not a County vendor there is no requirement in the Ethics Ordinance for the Assistant CEO/Airport and Major County Construction to disclose his employment by Best American.

American International did not discuss hiring the son of the Assistant CEO/Airport and Major County Construction with the Assistant CEO/Airport and Major County Construction. The Vendor Disclosure Form submitted in 1998 revealed that Best American was employing the son of the Assistant CEO/Airport and Major County Construction.

The OAG states that the Assistant CEO/Airport and Major County Construction failed to remove American International's general project manager from the project. It is questionable, if not impossible, for him to do so.

The OAG states that the Assistant CEO/Airport and Major County Construction negotiated and approved \$1,189,998 in additional payments to American International as settlement of American International's \$3,787,347 construction claim. This statement is not true. The CIP program manager justified a substantial portion of the settlement amount recommended and presented the settlement offer to the contractor in the presence of the Assistant CEO/Airport and Major County Construction as the final settlement of all claims by the contractor and subcontractors on the contract. The offer was accepted. There were no negotiations that took place during this meeting, and it was the only meeting during the negotiation process that the CEO/Airport and Major County Construction attended.

As stated earlier, there was no violation of the Ethics Ordinance and the disclosure forms submitted and on file with the Wayne County Clerk's Office were not required to disclose the employment of his son with Best American.

The OAG states that it could not get the disclosure forms for the years 1995, 1996, and 1999 from the Wayne County Clerk's Office. However, when the Deputy Purchasing

Director requested the forms, the Wayne County Clerk's Office faxed over all of the disclosure forms since the Ethics Ordinance was adopted to the present date.

The Assistant CEO/Airport and Major County Construction signed Change Order No. 27 a year after leaving County service. Change Order No. 27 reduced the amount of money owed to American International and closed out the contract as a ministerial act. This change order did not give any benefits to American International.

Epilogue:

Change Order No. 26 - Additional Compensation

The Airport's response that the contractor's \$3.8 million claim, which resulted in additional compensation to the contractor of \$1,189,998, "was further reduced by \$420,395 for the credit adjustments associated with decreased quantities and portions of work that ended up not being required to be performed" is misleading.

Compensation to the contractor was not reduced by \$420,395 because the \$420,395 was never earned by the contractor and should never have been paid to the contractor in the first place. By simply and appropriately reducing the amount paid to the contractor through a credit adjustment to compensate for work that was never performed does not change the fact that the contractor was paid a total of \$1,189,998 in additional compensation in Change Order No. 26.

Disclosure Requirements

The Airport's argument on behalf of the Assistant CEO/Airport and Major County Construction contends that he was not required to disclose his son's employment or negotiation for employment with American International because his son was hired by Best American, which did not bid on any County work and is not a County vendor. This assertion is not supported by the facts.

Best American Industrial Services is a division of American International, operating at the same business address and performing a similar function. American International has filed multiple certificates of assumed name with the Michigan Department of Consumer and Industry Services, certifying that it is transacting business under the assumed name of Best American Industrial Services. During our review of American International's invoices for the Airport's maintenance assistance contract (a contract that was procured, awarded, and administered under the direct supervision of the Assistant CEO/Airport and Major County Construction), we uncovered evidence that American International routinely procured goods and services under that Airport contract through

its Best American Industrial Services Division. For example, a bid to install tile flooring at the Airport under the maintenance assistance contract was prepared by American International's subcontractor Musante Tile, Inc. Although the bid was addressed to American International at 4080 Lonyo, Detroit, MI, Musante Tile's subsequent invoice requesting payment after the work was completed was addressed to Best American Industrial Services, also at 4080 Lonyo, Detroit, MI. Under American International's maintenance assistance contract, invoices routinely were "sold to" Best American Industrial Services instead of American International.

Also, purchase orders from Best American Industrial Services were frequently used to procure goods and services for the Airport under American International's maintenance assistance contract. Checks were drawn from Best American Industrial Services' bank account to purchase goods and services from subcontractors that were provided to the Airport under American International's maintenance assistance contract.

Finally, American International's own actions refute the Airport's contention that the Assistant CEO/Airport and Major County Construction was not required to disclose his son's employment or negotiation for employment with American International's Best American Industrial Services Division. Just as the Wayne County Contracting Ordinance requires the Assistant CEO/Airport and Major County Construction to disclose the employment or discussion of future employment of an immediate family member with a County vendor, so too does the Contracting Ordinance require American International, as a County vendor, to disclose to the County Purchasing Director that it has employed or discussed future employment of an immediate family member of the Assistant CEO/Airport and Major County Construction. American International did just that on August 4, 1998, when it disclosed both that it had discussed hiring the son of the Assistant CEO/Airport and Major County Construction and also that it had subsequently employed the son of the Assistant CEO/Airport and Major County Construction.

Construction Claim Settlement

The Airport states in its response that it is not true that the Assistant CEO/Airport and Major County Construction negotiated and approved \$1,189,998 in additional payments to American International as settlement of American International's \$3,787,347 construction claim. Rather, the Airport states that it was the Airport's CIP program manager that justified a substantial portion of the settlement amount recommended and presented the settlement offer to American International in the presence of the Assistant CEO/Airport and Major County Construction as the final settlement of all claims by the

contractor and subcontractors on the contract. The Airport also states that there were no negotiations that took place during this meeting, and it was the only meeting during the negotiation process that the Assistant CEO/Airport and Major County Construction attended.

Based on our review of the project files, there is evidence that the Assistant CEO/Airport and Major County Construction actively and substantially participated and directed the negotiation process on behalf of the Airport, through the CIP program manager. For example, the project files indicate that on March 18, 1997 (after American International submitted its claim in February 1997), the CIP program manager submitted a breakdown of American International's claim to the Assistant CEO/Airport and Major County Construction as he requested.

According to correspondence contained in the project files, the Assistant CEO/Airport and Major County Construction phoned subcontractor Williams Corporation on June 4, 1997 to discuss the Williams Corporation's portion of the claim. The Assistant CEO/Airport and Major County Construction also forwarded to the CIP program manager a copy of the portion of the claim applicable to the Williams Corporation for resolution.

On June 27, 1997, the CIP program manager's notes describe a claim settlement meeting that was held with the Assistant CEO/Airport and Major County Construction to explain the CIP program manager's June 25, 1997 memorandum, which analyzed American International's claim. According to the notes, the conclusion of the meeting was that "while the claim was highly inflated it was not going to go away under the current legal and political climate." The notes indicated that the Assistant CEO/Airport and Major County Construction would settle with American International for \$1.2 million. The notes indicate that the CIP program manager was asked to "tow the line" at \$845,000 (maximum) in its negotiations with American International, to hold a couple of settlement negotiation meetings, and then to turn it over to the Assistant CEO/Airport and Major County Construction within the following two weeks.

On July 10, 1997, the CIP program manager's notes indicated that two further settlement negotiations were held on June 30, 1997 and July 2, 1997. The notes describe the assorted discussions that took place and indicate that American International offered a 10% across-the-board reduction from \$3.78 million to \$3.4 million. The CIP program manager's notes concluded that "it was apparent that they [American International] do not have reason or incentive to negotiate at this stage."

On July 16, 1997, the CIP program manager's notes contained in the project files indicated that discussions between American International and the Assistant CEO/Airport and Major County Construction were also held. Specifically, the notes stated that American International may have indicated to the Assistant CEO/Airport and Major County Construction that it was willing to settle its claim for \$1.8 million and that the Assistant CEO/Airport and Major County Construction was willing to "go as high as \$1.2 million."

On September 12, 1997, the CIP program manager sent the Assistant CEO/Airport and Major County Construction its claim summary for review and comment. The claim summary included a claim settlement amount of \$1.1 million, for a final contract value of \$19,741,958. The CIP program manager's notes dated September 15, 1997 indicated that the matter was thereafter "handed over" to the Assistant CEO/Airport and Major County Construction.

The next day, September 16, 1997, notes contained in the project files describe that a final settlement was negotiated by the County's Assistant CEO/Airport and Major County Construction, the CIP program manager's project manager, and American International's President. The final contract value was described as including a \$1.2 million claim settlement, for a final contract value of \$19,865,479.

Subsequently, on October 31, 1997, the project manager sent a "final change order" (Change Order No. 26) to American International's President to "close out your contract." The project manager indicated to American International's President that the "total contract value is 'as we agreed' during our negotiations with [the Assistant CEO/Airport and Major County Construction]." Change Order No. 26, dated October 23, 1997, included a lump sum claim settlement of \$1,189,998, for a final contract value of \$19,865,479. Change Order No. 26 also provided that "[t]he contract is hereby extended by 288 calendar days at no other additional cost or credit to the contract."

Based on the documentation contained in the project files, there is evidence that indicates a more substantial involvement by the Assistant CEO/Airport and Major County Construction in the negotiation and approval of \$1,189,998 in additional payments to American International as settlement of American International's \$3,787,347 construction claim. In addition, there is evidence that other negotiations or meetings may have taken place during the negotiation process that involved the Assistant CEO/Airport and Major County Construction.

Disclosure Forms

The Airport states that, despite the fact that on September 13, 2000 we could not obtain the Assistant CEO/Airport and Major County Construction's disclosure forms for the years 1995, 1996, and 1999 from the Wayne County Clerk's Office, when the Deputy Purchasing Director requested the forms, the Wayne County Clerk's Office faxed over all of the disclosure forms since the Ethics Ordinance was adopted to the present date.

It is notable that we had already requested the same disclosure forms directly from the Wayne County Clerk's Office and from the Deputy Purchasing Director in September 2000. The disclosure forms were not provided by the Wayne County Clerk's Office or the Deputy Purchasing Director. After we shared a preliminary draft of this report with the Airport on March 5, 2001, the 1995, 1996, and 1999 disclosure forms for the Assistant CEO/Airport and Major County Construction were provided to us by the Deputy County Executive.

After the Wayne County Clerk failed to produce a substantial number of disclosure forms that were required to be on file with the Wayne County Clerk's Office as of September 13, 2000, on September 15, 2000 we contacted the Deputy Purchasing Director to inquire about the missing forms. At the time, 34 disclosure forms that we requested were not on file with the Wayne County Clerk's Office, including the 3 missing forms for the Assistant CEO/Airport and Major County Construction.

After September 15, 2000, the Deputy Purchasing Director produced 29 of the 34 missing disclosure forms over the course of the following several weeks. However, 5 disclosure forms remained missing, 3 of which were the missing disclosure forms for the Assistant CEO/Airport and Major County Construction for the years 1995, 1996, and 1999.

The 1995, 1996, and 1999 disclosure forms for the Assistant CEO/Airport and Major County Construction were faxed from the Wayne County Clerk's Office as early as January 19, 2001.

Change Order No. 27

The Airport stated in its response that the Assistant CEO/Airport and Major County Construction signed Change Order No. 27 a year after leaving County service. However, County records indicate that the Assistant CEO/Airport and Major County Construction did not leave County employment until June 12, 1999. Therefore, the

Assistant CEO/Airport and Major County Construction signed Change Order No. 27 8 months and 9 days after leaving County service.

Request:

Please identify and examine the circumstances that led Wayne County Field Engineering to comment on American International's performance on this contract and to protest American International's participation in a future contract.

Procedure:

We examined Wayne County Field Engineering correspondence and interviewed appropriate personnel.

Comment:

The circumstances that led Wayne County Field Engineering to comment on American International's performance on this contract are described in an April 28, 1997 letter from Wayne County Field Engineering to the Airport's CIP program manager (Exhibit O) and are summarized briefly below:

1. Failure to meet time schedules
2. Lack of sufficient personnel, equipment, and planning, which led to delays in re-openings of runways or taxiways.
3. Lack of experienced field supervision.
4. Failure to follow structured safety procedures.

The documentation contained in the project files also support the circumstances contained in Wayne County Field Engineering letter. The contractor's performance is described in further detail in our comments beginning on page 27 of this report.

Airport Response:

The comments made by Wayne County Field Engineering regarding American International's performance as it pertains to this contract were based on the analysis of American International's perceived performance on the airfield lighting and signage contract. Wayne County Field Engineering generated these comments after the airfield lighting and signage project was completed. The reason for the comments was mainly to raise concerns regarding whether American International possessed the skilled

personnel to perform the work needed on another contract. After meeting with the two lowest bidders, along with the CIP program manager, Airport management and Wayne County Field Engineering, all concerns and issues were resolved and the referenced contract was awarded to the low bidder. The low bidder, American International, completed the project on time and within the budget.

The signage portion of the contract was complex and difficult and only one piece of an unprecedented national schedule to upgrade airports without interrupting service, safety, and efficiency. All parties recognize that this first-time contract could have been completed in a more satisfactory manner, if what was known at the end of the contract was known at the onset.

Request:

Please determine whether County ordinances require the Commission to approve this contract and the significant change orders associated with this contract, and determine whether the contract was approved in compliance with these ordinances.

Procedure:

We reviewed provisions of the Wayne County Appropriations and Contracting Ordinances applicable to Wayne County Commission approval requirements of the Capital Improvement Program (CIP) construction contracts and change orders and evaluated whether the contract was properly executed in compliance with such requirements.

Comment:

There was no Wayne County Commission resolution approving this contract or its change orders. Our review of the County's Appropriations and Contracting Ordinances applicable to Commission approval disclosed the following:

a. Appropriations Ordinance - Contract Approval

Section 46(e) of the Appropriations Ordinance (94-689) requires that, notwithstanding any provision of the Contracting Ordinance, being ordinance 84-143, or ordinance to the contrary, the County Executive is authorized to execute contracts in excess of \$20,000 to implement a project in the approved Capital

Outlay Plan, if and only if all of the following additional conditions have been satisfied:

- (1) The work has been advertised and the invitation for bids has been sent to at least five vendors, but if there are less than five vendors, then to all known vendors who are known to be competent and available to do the work.
- (2) Bidders are given a reasonable amount of time to respond.
- (3) The bids are received on-time as sealed with a publicly witnessed opening.
- (4) The contract is awarded to the lowest responsible bidder.

However, Section 46(i) of the same ordinance also states that the County Executive shall present to the County Commission for prior approval all contracts in excess of \$50,000.

The airfield lighting and signage contract had an original contract price of \$11,082,975, which was well in excess of the Section 46(i) \$50,000 requirement. Under the Appropriations Ordinance, Commission approval was required. The contract was not approved in compliance with Appropriations Ordinance 94-689.

b. Contracting Ordinance - Contract Approval

Section 1(E) of the Contracting Ordinance (84-143) states that the authority to approve contracts in excess of \$50,000 for construction, reconstruction, renovation, or other improvement of County property, property under the jurisdiction of the county, or right of way is not delegated by the Commission to the County Executive. However, Section 8 of this ordinance provides the following:

- (1) The County Executive shall submit to the County Commission, as part of the comprehensive budget, an annual Capital Outlay Plan for approval.
- (2) Notwithstanding the provisions of Subsection 1E of the Ordinance, the County Executive may execute contracts in accordance with Section 2 of the ordinance for construction, re-construction, and renovation projects which are contained in the annual Capital Outlay Plan.

- (3) Approval of appropriations to fund the annual Capital Outlay Plan shall constitute County Commission delegation of authority to the County Executive to approve and execute contracts under Section 2 to obligate those funds.

A relevant condition of the Commission delegation provisions of Section 2 of Contracting Ordinance 84-143 is that the delegated authority is limited to contracts with a period of one year or less.

This contract had a stated contract length of 570 days. Therefore, the authority to approve and execute this contract should not have been delegated by the Commission to the County Executive under provisions of the Contracting Ordinance. Under the Contracting Ordinance, Commission approval was required. The contract was not approved in compliance with Contracting Ordinance 84-143.

c. Appropriations Ordinance - Change Order Approval

Section 46(c) of the Appropriations Ordinance (94-689) states that the County Executive shall present for prior approval of the County Commission any change order or contract amendment for an existing contract which exceeds \$250,000, or which exceeds 10% of the existing contract, whichever is less, with the exception of nonprofessional service contracts under airport construction projects.

Based on Section 46(c) of Appropriations Ordinance 94-689, the change orders pertaining to this contract did not require Commission approval because the contract was a nonprofessional airport construction contract.

However, Section 46(h) of Appropriations Ordinance 94-689 states that the County Executive shall present for prior approval of the County Commission any contract in excess of \$5,000, which is let to implement the Capital Outlay Plan, under the following circumstances: (1) The work is let by a request for proposals, or by a negotiated contract, or by a negotiated change order in excess of \$5,000 on an existing contract. (2) Only one conforming bid is received after a proper solicitation and time does not permit the work to be rebid. (3) Some work is to be sublet, and the subcontractor has not yet been determined or identified.

This contract contained change orders in excess of \$5,000 which did not have prior approval of the County Commission. The contract change orders for this contract were not approved in compliance with Section 46(h) of Appropriations Ordinance 94-689.

Airport Response:

Appropriations Ordinance 94-689 applies only if the following circumstances occur:

1. The work is let by a request for proposals, or by a negotiated contract, or by a negotiated change order in excess of \$5,000 on an existing contract.
2. Only one conforming bid is received after a proper solicitation and time does not permit the work to be rebid.
3. Some work is to be sublet, and the subcontractor has not yet been determined or identified.

This particular ordinance does not apply to this contract because none of the previous circumstances occurred. Furthermore, the Appropriations Ordinance – Contract Approval states that the County Executive is authorized to execute contracts in excess of \$20,000 to implement a project in the approved Capital Outlay Plan, if and only if all of the following additional conditions have been satisfied:

1. The work has been advertised and the invitation for bids has been sent to at least five vendors, but if there are less than five vendors, then to all known vendors who are known to be competent and available to do the work.
2. Bidders are given a reasonable amount of time to respond.
3. The bids are received on-time as sealed with a publicly witnessed opening.
4. The contract is awarded to the lowest responsible bidder.

All of the previous four conditions were satisfied, giving the County Executive authorization to execute the airfield lighting and signage contract.

Epilogue:

As described in our comment beginning on page 49, there was no Wayne County Commission resolution specifically approving this contract or its change orders. On page 64 of our Preliminary Review of Competitive Bidding of Contracts, the Airport responded that the American International airfield lighting and signage contract did not have a Commission resolution approving it because it fell under "delegated authority" provisions, citing specifically Section 8 of the Wayne County Contracting Ordinance

(84-143) and Section 41(F) of the Wayne County Appropriations Ordinance (99-497). The Airport stated then that these Ordinances authorize the County Executive to execute contracts to implement projects within an annual Capital Outlay Plan approved by the Wayne County Commission, without having to individually approve the specific contract. The Airport indicated that this contract was included in an annual Capital Outlay Plan approved by the Wayne County Commission.

Notwithstanding the Airport's earlier claim that Commission approval of this contract was not necessary under "delegated authority" provisions, on March 20, 2001, after reviewing a preliminary draft of this report, the Airport added that Commission approval of this contract was obtained through the bond ordinance that authorized the County to issue the bonds to pay for the project. According to the Airport, by approving the bonds needed to pay for the project, the Commission also approved the contract awarded to American International.

The Airport shared a copy of the bond ordinance with us on March 20, 2001. The bond ordinance did not make mention of American International. In fact, the bond ordinance was approved by the Commission two months before the Airport issued an invitation to bid on the contract that was ultimately awarded to American International. The bond ordinance stated, in pertinent part, that the Commission "has determined that it is necessary and desirable that the County issue . . . Airport Revenue Bonds . . . to provide moneys to pay the cost of that portion of the Capital Improvement Program set forth in Exhibit A hereto"

Exhibit A of the bond ordinance contained a Project Description entitled "Airfield Lighting Systems Revisions and Replacement." Referencing the results of a Runway Lighting System Study, Exhibit A of the bond ordinance described various upgrades to the lighting systems, as well as signage upgrading as part of the FAA mandate. The

estimated cost, by project phase, that was included in Exhibit A of the bond ordinance was as follows:

Project	Estimated Cost
3L Construction	\$ 2,500,000
3C Construction	1,750,000
3R Construction	1,750,000
9R Construction	1,500,000
New Field Wiring	3,500,000
New Vault Modifications	<u>5,000,000</u>
Total Construction	\$16,000,000
A/E [Architecture/Engineering] (20%)	3,100,000
Contingency	<u>1,900,000</u>
Grand Total	<u>\$21,000,000</u>

Although the cost of the project as described in the bond ordinance and official statement was estimated to be \$21 million, a substantial portion of the project required funding from other sources, given that some of the project had already been previously performed (e.g., the lighting study) and that the cost of American International's portion of construction alone was elevated and modified beyond what was projected at the time that the Commission approved the bond ordinance. In addition to American International's contract for construction, there were other contractors who also performed construction, design, and other services that made up the total amount of the bond issue approved by the Commission in the bond ordinance.