

Elcon Corporation's Comments to the Port Commission on 5/3/11
Re: Rental Car Project

Exhibit	<u>A</u>
Port Commission	<u>Regular</u>
Meeting of	<u>May 3, 2011</u>

Introduction:

I'd like to briefly explain a few matters regarding this project as follows:

I. Schedule Delays

April 5, 2011 Commission meeting minutes, page 2:

"This is a 42 day time loss from what was reported on the last update is due to a slip in the commissioning start date, driven by setbacks in power and electrical systems completion."

- a. Elcon schedule analysis shows 233 day delay (given the September 22, 2011 power on date per latest Turner schedule update) power on date was originally February 1, 2011
- b. Late access to work areas. Elcon held out an average of 86 days over 17 different areas
- c. Elcon directed by Turner to accelerate (man-up) from 35 to 80 thus currently Elcon labor makes up nearly 1/3 of total project work force (250 total)
- d. The construction schedule is now nearly vertical
- e. Elcon has not been paid for ANY acceleration COST. Elcon is in no way responsible for condition leading to schedule acceleration.

II. Design Changes

December 2010 Port of Seattle Monthly RCF Progress Report, page 18:

"RCF/CSB Electrical work including design changes affecting the transformers, cable pulling, buss ducting, electrical panels, lighting and trim. Further design delays may drive the permanent power and the start of commissioning to the RCF/CSB out."

A few key points to consider here:

- 1) 100% POS electrical construction drawings issued by POS 3/28/08
- 2) 136 POS electrical design changes after 100% design (over 350 Elcon pricing iterations thereof)
- 3) Project could not be built electrically as it was designed (Walker)
- 4) There have been 11 **Design Related L&I correction notices issued indicating NEC code violations**

- 5) Electrical Design Changes affected nearly every aspect of Elcon's electrical scope of work from infrastructure to light fixture types and all else....
- 6) 15 NEW ELECTRICAL DESIGN CHANGES in past 10 days alone
- 7) 307 Elcon RFI's drove design changes
- 8) Design change documents incomplete (no drawings nor by-in-large electrical design issued)
- 9) Port has treated Elcon as a design/build subcontractor. This project is a Design/Bid/Build NOT a Design/Build

III. Change Orders

April 5, 2011 Commission meeting, contract status summary, Power point page 3:

"Non suspension Contract Changes total \$8,765,318.00."

- a. Elcon currently has \$2,748,766.00 in executed (non suspension) C/O's
- b. Elcon issued 31% of total of all project changes (% of entire project changes)
- c. Elcon pending changes \$603,811.00 (not yet approved)
- d. Elcon disputed underpaid changes \$2,104,375.00

***To Elcon's knowledge POS did not conduct independent estimates for change orders, as was the #1 recommendation in the 2007 Performance Audit. The excerpt below was taken from the performance audit.**

*** " p. 17, Table I: Recommendation #1: *Immediately implement and strengthen control procedures to assure that Engineer' change order estimates are (a) prepared without knowledge of the contractors' proposed amounts, and (b) change order estimates and cost analyses are fully and completely documented. Where cost or price analysis is used to evaluate change order proposals, POS should require full and complete documentation of these reviews, including fully documented supervisory reviews and approvals.*"**

- e. POS issued lump sum unilateral change orders to Elcon at a fraction of the true cost of the work. Why?
- f. Elcon forced to fund POS directed change order work. Why?
- g. POS issued changes/design have aged over 1 year, in some cases, (DCN's 14, 14.1, 38, & 39) and the designs are still not complete.
- h. Cumulative impact of changes have adversely affected base contract labor productivity and base contract work

IV. Financial Impact to Elcon as of 3/31/11

- | | |
|--|------------------|
| a. Elcon job cost through 3/31/11 | \$20,439,052.00 |
| b. Elcon approved billings through 3/31/11 | \$14,771,560.00 |
| c. Elcon financial impact through 3/31/11 | (\$5,667,492.00) |

V. Closing Comments.

It is important for each of you to understand that Elcon is continually being vilified by the Port of Seattle on this project. Elcon has suffered significant financial damages at the hand of the Port staff. All of this has resulted from:

1. A poorly managed project schedule,
2. Incomplete electrical design,
3. Woefully underfunded change orders,
4. Cost impacts associated with schedule acceleration,
5. And the cumulative impact of the Port directed changes to Elcon's base contract work which have caused major labor inefficiencies and losses.

We are very concerned. You should be too.

Thank you for your time.

- Architectural Stairs and Rails – North architectural stair installation is complete. South architectural stair installation is in progress. Architectural handrail installation commenced around the north escalator core openings.
- Architectural Metal Panels - Installation of architectural metal panels on level 6 (penthouse mechanical and clerestory) is complete. Metal panel installation is in progress on electrical shafts and Level 5 support buildings.
- Temporary Erosion & Sediment Control – TESC items are being maintained. The site is in good condition and ready for the ongoing winter/early spring weather.

Contractor Schedule

- RCF Substantial Completion date is November 15, 2011. Current progress schedule update shows a negative seventy one day float in the project schedule, with the critical path running through the QTA power-up and commissioning and training. This is a 42 day time loss from what was reported on the last update due to a slip in commissioning start date, driven by setbacks in power and electrical systems completion. The Port continues to review the progress schedule for sequencing and logic ties to validate the schedule status, and is working diligently with Turner staff to improve on the status of activities and overall completion date. In addition, staff has authorized selective overtime for critical path activities.

Cost Status Summary

See Cost Status Summary Table in PowerPoint Supplement page 3 for current cost information and page 4 for the trending of Construction Contingency costs over time.

- Subcontractor Bids – closed
- Risk Reserve – 96 approvals have been issued, and 13 in review.
- 2% MACC (Maximum Allowable Construction Costs) Contingency – 104 Change Orders executed and 24 in review.
- Negotiated Support Services – 42 approvals issued.
- Conforming Design Development Allowance – closed
- Anticipated Scope Allowance – closed
- Non-Suspension Related Contract Changes – 481 Change Orders executed, and 132 in review. Port staff is currently trending approximately \$8,000,000 in potential claims from the GCCM and a major Subcontractor.
- Suspension Related Contract Changes – 58 Change Orders have been written. One last claim relates to the unsupported cost previously rejected by the Port from one subcontractor.

Off-Site Roadway Improvements - Construction Contract

Construction Status Summary

- Construction progress is 37% complete.
- Construction costs continue to exceed the originally budgeted amount by approximately \$320,000 due primarily to unsuitable soils and unknown conditions at WSDOT property. The Commission approved transfer from unallocated program contingency to address the unsuitable WSDOT soils appears to allow sufficient contingency funds for completing the construction project.
- 9 to 16 construction workers on site daily.
- Overall project completion date remains the same

- Customer Service Building – The awaited metal panels for the CSB clear story and penthouses have arrived and installation is underway. The Interior build-out in both the lobby and lease spaces is progressing as planned with wall framing nearing completion, lobby ceiling framing commencing and MEP rough in continuing throughout. A potential delay for rerouting the vesda smoke detection piping may delay completion of the ceiling drywall.

ORI – Progress continued in December in several areas as follows:

- Curb on west side of S 160th supporting the SCL vault relocation completed 12/9/10. Vault and sidewalk work scheduled to complete 2/1/11.
- The SR-518 ramp continued with MS-09 work completing 12/15/10 with fine grade and the 1st lift of HMA. The moment slab and barrier work is ongoing and expected to complete 2/7/11.
- The Qwest work on SR 99 Bridge (milestone 3) continued with traffic set up and conduit hanger installation completing 12/16/10. The remaining conduit related work is scheduled to complete 1/11/11 at which time Qwest will start their 180 day period to relocate communication wiring under milestone 10.
- SR 99 Retrofit work commenced with drilling and doweling work on Piers 2 and 3. This is early opportunity work with large float.

BMF – Bus Maintenance Facility. No progress

- The NTP and Mobilization for this project is being delayed while the contractor works to prepare and submit the required Preconstruction Submittals.

Scheduling Risk

RCF-- There is four known potential risks to schedule as follows:

- QTA delays affecting the start of Commissioning. The L&I correction notice requires redesigning and construction modification to HVAC and/or door and louver positioning in the electrical rooms for all QTA's. These changes will delay the commissioning from starting. The extent of the impact is unknown at this time until the design work and the material orders completed.
- Future Labor and Industry Correction Notices. The impact to the correction notice in the QTA's is still being determined and was not anticipated. Additional unanticipated notices could further impact the schedule.
- RCF/CBS Electrical work including design changes affecting the transformers, cable pulling, buss ducting, electrical panels, lighting and trim. Further design delays may drive the permanent power and the start of commissioning to the RCF/CSB out.
- Car Wash Equipment – the car wash equipment has been delayed due to two changes. The first is for an installation change switching a couple bays from car washing to light maintenance use. The second delay is the trench drain from an upper car wash bay extends too far into a lower QTA car wash bay. The height clearance is below minimum and requires redesigning of the upper bay drainage. These two changes could push the completion of the car wash equipment past their commissioning start dates.
- QTA 3 and 4. Delays continue to be noticed in QTA 3. The QTA3 CMU work has now completed but with the delays, the framing and furring activities in the BOH are showing negative float (see progress above). The furring is affecting the MEP rough-in and finishes completion. The crew ties from QTA 3 would indicate an equivalent delay in QTA 4.

ORI

- Weather delays. The ORI contractor has successfully completed the 2010 work and is on track to completing the remaining work ahead of schedule. Weather could delay some work but shouldn't affect any remaining Milestones.

Rental Car Facility Program Contract - Status Summary

Consolidated Rental Car Facility						
Base Contract Amount	Revised	Additional Costs *		Unallocated Balance	Billed to date (as of Feb 2011)	
		In review **	Executed			
Total Construction Costs	\$224,837,739	\$214,455	\$202,606,715	\$8,600,355	\$194,465,051	
<u>Construction Contingency Summary</u>						
Non Suspension Contract Changes	\$5,953,159	\$11,830,698	\$8,765,318	(\$3,564,934)	\$6,001,387	
Suspension Related Contract Changes		89,202	\$8,640,600	\$8,070,198	\$8,474,182	
				\$13,105,619		
Off Site Roads						
Construction Contract Amount	\$7,627,485		\$7,627,485	\$0	\$2,467,433	
Construction Contingency	\$1,087,000	\$134,060	\$1,274,344	(\$321,404)	\$100,005	
Bus Maintenance Facility						
Construction Contract Amount	\$13,086,444		\$13,086,444	\$0	\$185,828	
Construction Contingency	\$1,611,000	\$20,400	\$0	\$1,590,600	\$0	

NOTE: * updated as of March 9, 2011
 ** includes costs in dispute for entitlement or quantum

TABLE I
RECOMMENDATIONS FOR POS AND CORRESPONDING FINDINGS

Recommendations	Finding
1. Immediately implement and strengthen control procedures to assure that Engineers' change order estimates are (a) prepared without knowledge of the contractors' proposed amounts, and (b) change order estimates and cost analyses are fully and completely documented. Where cost or price analysis is used to evaluate change order proposals, POS should require full and complete documentation of these reviews, including fully documented supervisory reviews and approvals.	1-A 1-D
2. Undertake a review of all major recent and ongoing projects to identify cases where engineers' estimates and contractors' proposed amounts are consistently the same and, in such cases, undertake a further evaluation of the underlying causes; followed by remedial actions as appropriate.	1-A
3. Revise its SOP Manual to include specific guidelines for proper and accurate change order documentation. POS should provide training to its consultant staff/construction managers to improve the manner in which POS is documenting project change orders.	1-B
4. Develop Standard Operating Procedures (SOPs) that align with industry practices. Current POS SOPs do not provide adequate information regarding change order negotiations.	1-C
5. POS management should take immediate steps to assure that POS rigorously enforces all contractual schedule requirements. Then, when requests for time extensions are made, they can and should be properly evaluated. POS should also provide more oversight of the Change Order process to ensure that estimates are properly created and used.	1-C
6. Immediately cease its informal method of resolving change order differences, and that POS improve its change order documentation requirements to include that details of change order negotiations must be based on discussions of scope/means and methods/pricing differences.	1-C
7. Undertake a review of the change orders negotiated and approved under all contracts to determine if there were other incorrect mark-ups on change orders.	1-D
8. Improve its management information systems to provide more accurate and up-to-date information regarding project and contract expenditures. POS should develop a better means for tracking actual project expenditures against initial estimates to prevent unforeseen cost overruns.	1-E
9. Develop and include in all contracts a "cost limitation" clause that advises contractors that they should not accept work authorizations or perform any work that would result in exceeding the maximum amount of the contract.	1-E
10. Controls should be implemented to prevent specific companies from being added to randomly-generated PCS bid lists by project management personnel.	1-E
11. Evaluate all of its PCS contracts during the past three years to determine other instances where the practice of lapping contractor invoices occurred and take appropriate corrective actions.	1-E
12. Conduct a more detailed investigation of this contract SWV-311608 to determine how and why the preferred electrical contractor was added to the bid list, contact the other bidders on the list to determine if they were aware of the procurement, and initiate follow up actions as appropriate.	1-E
13. Take immediate steps to review and enforce its policies and procedures for awarding PSA contracts and establish controls to ensure that competition requirements are not circumvented.	2-A 2-B 2-D

