



State of New Jersey
Commission of Investigation

**N.J. ENHANCED MOTOR
VEHICLE INSPECTION
CONTRACT**

March 2002

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VEHICLE INSPECTION
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March 2002

Governor James E. McGreevey
The Co-Presidents and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation herewith formally submits, pursuant to
N.J.S.A 52:9M, a report and recommendations based on its investigation into the N.J.
Enhanced Motor Vehicle Inspection Contract.¹

Respectfully,


Francis E. Schiller


W. Cary Edwards

¹ Former Commission Chair Leslie Z. Celentano and former Commissioners M. Karen Thompson and Audriann Kernan participated in this investigation and in the July 2001 public hearing. Commissioner John J. Farmer Jr. did not participate.

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Executive Summary

In August 1998, the State of New Jersey awarded a contract to Parsons Infrastructure & Technology Group Inc. of Pasadena, California, to privatize automobile inspections. The seven-year, \$392 million deal – won by Parsons Infrastructure without competition – called for the firm to design, build, operate and maintain an Enhanced Motor Vehicle Inspection and Maintenance (I/M) Program to meet vehicle exhaust emission standards established by the federal Clean Air Act Amendments of 1990. The I/M program went into operation on December 13, 1999. Within weeks, the system broke down, and then-Governor Christine Todd Whitman ordered the Attorney General to investigate whether, and to what extent, responsible officials had failed to address warnings of potential trouble during implementation. Meanwhile, questions lingered concerning the process by which the contract had been written, and how and why Parsons Infrastructure had emerged as the lone bidder. In the spring of 2000, the State Commission of Investigation undertook an independent inquiry into the design and award of this contract. Tens of thousands of documents were subpoenaed for review, and nearly 100 individuals were interviewed. Preliminary findings were aired in sworn testimony during public hearings on July 10 and 11, 2001. This is the final report of the Commission's investigation.

In sum, the investigation revealed an ill-conceived state process undermined by mismanagement from within and tainted by manipulation from without. At virtually every critical juncture, the primary duty of government to safeguard citizen interests was set aside in favor of a deeply flawed initiative that cost too much and produced too little in the way of satisfactory results. No meaningful or accurate cost comparison was done to determine whether the state itself could have undertaken an effective I/M program at less cost. As it stands, the privatized version will have cost New Jersey taxpayers approximately \$590 million when the contract with Parsons

Infrastructure expires in August 2005 – some \$200 million more than the original projected expenditure – as a result of change orders, over-charges, exorbitant expenses for non-operational items such as public relations, questionable fees and mark-ups, and an assortment of programmatic costs borne by the state despite privatization.

In order to put the cost estimate in perspective, and to bridge a “due diligence” gap left by the state’s original failure to perform appropriate comparisons, the Commission conducted its own financial analysis. The results show that if the state had simply continued to conduct inspections under terms of the old pre-enhanced system, the seven-year cost of the program would have totaled approximately \$217 million – little more than one-third the projected payout to Parsons Infrastructure. If the state had assumed responsibility for the enhanced I/M program in place of the private vendor, it would have cost taxpayers approximately \$339 million – nearly \$250 million less than the projected payout to Parsons. Charts displaying the full results of the Commission’s analysis are presented at pages A-2 and A-3 in the Appendix to this report.

Further, no one knows what this unprecedented investment of public wealth will yield. Thus far, relatively few vehicles of model year 1996 and newer that have been inspected under the program have failed for emissions, and there is no hard evidence that the I/M program overall has had a measurable impact on air quality.

* * *

What began nearly a decade ago as an effort to respond to a mandate to meet federal clean-air requirements dissolved into a hodgepodge of confusion and inertia as state officials struggled with a poorly defined yet single-minded strategy to turn the job over to a private vendor. A state-run system was never given serious consideration as a possible alternative. As the federal deadline

loomed, years were wasted amid bureaucratic infighting, resource deficiencies, technical missteps and management miscalculations. Materials drawn up for use in the solicitation of bid proposals were poorly prepared. Warnings of problems and inadequacies in the formal Request for Proposals (RFP) were set aside. Even when it became clear that the state would face profound difficulty attracting qualified bidders, it persisted toward privatization. When Parsons Infrastructure emerged as the lone bidder, little was done to ensure that the firm possessed sufficient experience to do the job or that there would not be undue reliance on subcontractors operating beyond the scope of the state's control. Moreover, proper oversight was rarely exercised during contract implementation. Outside experts hired by the state to ensure adherence to basic performance standards were ignored. When these consultants advised that the implementation deadline was unrealistic – and urged the state to appeal for a waiver from the U.S. Environmental Protection Agency (EPA) – their concerns were summarily set aside.

Further, while the contract award was, by law, to have been the result of open, competitive bidding, the process was tainted at key intervals by political considerations and by the granting of favored treatment. Parsons Infrastructure hired consultants with deep ties to the Trenton political establishment to press its case in both the executive and legislative branches of state government. A confidential written agreement between the company and one of New Jersey's most influential lobbying firms called explicitly for the development of a "political strategy" to obtain the contract – a contract which, among other things, eventually accrued to the financial benefit of a Parsons Infrastructure subcontractor that is a subsidiary of the same lobbying firm. Meanwhile, months before Parsons Infrastructure emerged as the sole bidder, company executives met privately and exclusively with senior state officials, including the then-Director of the Division of Motor Vehicles, to discuss substantive matters related to the design and timing of the state's RFP. Before

and after the issuance of the RFP, Parsons Infrastructure received exclusive information that gave it a head start on the deployment of corporate resources for a bid submission. The tactics employed in bringing influence to bear on the selection of a vendor created a perception of impropriety and were inconsistent with the public's rightful assumption that the procurement process is, and should be, a "level playing field" for all potential bidders. Once the contract was awarded, a pattern was established in which the state repeatedly granted waivers to Parsons Infrastructure with regard to implementation benchmarks and penalties governing nonperformance – the same stringent timeline and penalties that, in some cases, had caused other firms to decide against submitting competing bids.

The Commission also examined the nature and timing of political campaign contributions and found that during the years bracketing the contract award, substantial sums were contributed to candidates and political committees in New Jersey by entities that make up the Parsons corporate family. In a number of instances, the chief Trenton lobbyist for Parsons served as a fund-raising middleman, personally soliciting corporate donations and passing them to select politicians, and working with Parsons Infrastructure executives to develop a campaign-funding strategy.

The Commission's findings raise serious concerns about the integrity of the state contract procurement process that go well beyond the events and circumstances surrounding the I/M program contract. The investigation revealed startling "disconnects" between what procurement officials believe is a system secure from manipulation and, in fact, what happens behind the scenes at the behest of vendors and/or the various entities or individuals who represent vendor interests. Mid-level bureaucrats responsible for preparing specifications, RFPs and other materials relevant to the letting of state contracts insisted that, from their vantage point, the process is clean and devoid of improper influence, and that contact between interested vendors and state employees is

prohibited once a project is in procurement. On the other hand, higher-level state officials, along with consultants and lobbyists hired to press the case for would-be contractors, described a process in which it is routine for senior state officials to be queried before an RFP becomes public. They also testified that it is not unusual for vendors or their representatives to go outside normal procurement channels to meet with senior state officials, including Cabinet-level political appointees, to gather information that could give their clients an inside track prior to the release of an RFP. Although patently suspect, the legal and ethical propriety of such contacts technically remains open to question because administrative directives designed to discourage them from taking place lack the force of law or regulation. Similarly, there is no law or regulation governing certain other problematic areas examined in the course of this investigation, such as public disclosure of: 1. Lobbying for the purpose of obtaining a public contract; 2. Campaign fundraising by an individual or entity engaged in contract lobbying; or 3. Campaign contributions by vendors engaged in or seeking business with the state. The concluding section of this report presents a comprehensive series of recommendations for statutory and regulatory reforms in these and other areas.

The Commission is constrained to point out that this was a difficult and time-consuming investigation whose complexity and duration were exacerbated by factors largely beyond the Commission's control. One of the most significant impediments was embodied by a wholly inadequate record-keeping system that almost seems designed to frustrate careful yet efficient scrutiny of procurements involving multiple agencies. Because the state maintains no centralized document repository in connection with such matters, the search for materials relevant to this investigation occasionally took on the flavor of a scavenger hunt in which the bureaucracy yielded records piecemeal and only after repeated contacts, both written and verbal, by Commission staff.

Also, given the fact that the state never conducted an objective, independent analysis comparing the cost of a privatized I/M program to that of a publicly-run alternative, the Commission determined that the findings of its investigation would be incomplete absent any effort to address this important economic issue. Thus, considerable time and accounting expertise were devoted to the calculation of new and heretofore undisclosed cost estimates and comparisons aimed at investing New Jersey's experience with full perspective.

In conclusion, the events and circumstances that placed the state in a position with no option but to award the contract under the terms and conditions of Parsons Infrastructure's sole bid constituted the framework for a mammoth boondoggle perpetrated by a government upon its citizens. Tens of millions of tax dollars were wasted and thousands of motorists were needlessly inconvenienced as the public's business was turned over to private interests under a process that allowed them to unrestrainedly exploit weaknesses in a procurement system designed for disaster. The Commission can only hope that the findings of its investigation, and the reform recommendations contained herein, will serve to prevent similar debacles from occurring in the future.

MISMANAGEMENT

The Enhanced Motor Vehicle Inspection and Maintenance Program was one of the largest and most complex initiatives ever undertaken by the State of New Jersey. Indeed, in a number of key respects, it was a venture without precedent. Thrust into a technical frontier by the exigencies of the Clean Air Act Amendments of 1990, the state embarked on a plan to retool its entire motor vehicle inspection and maintenance system, including the construction and renovation of inspection stations, the acquisition and installation of advanced hardware and the development of a fully integrated computer network.¹ The strategy chosen for this – to turn the job over to a private vendor – resulted in a publicly-financed procurement unparalleled here both in scope and in cost. Significantly, it also resulted in the state’s abandonment, after more than six decades – and without an honest analysis of the fiscal consequences – of direct operational involvement in the conduct of automobile safety and emissions inspections.

Many witnesses told the Commission that the challenge of meeting the Clean Air Act requirements and deadlines would have been difficult under ideal circumstances. As it happened, matters were made significantly worse through inept planning, absentee leadership, bureaucratic bungling, poor communications and a host of technical blunders and miscalculations.

¹ The Clean Air Act Amendments of 1990 (42 *USC* 4701 *et seq*) directed each enhanced I/M program to meet stringent emissions detection and control criteria and imposed severe penalties for failure to comply. According to the statute, if the air quality of a state or region were classified as serious, severe or extreme, an “enhanced inspection/maintenance (I/M) program” had to be implemented. New Jersey’s air quality was classified as both serious and severe. Failure to undertake a program to reduce air pollution exposed the state to a variety of sanctions, including the withholding of \$1 billion in federal highway funding. New Jersey’s final deadline for compliance was December 13, 1999.

Bureaucratic Confusion

One measure of the tangled odyssey this undertaking became in New Jersey is that some officials spent the better part of a full decade in the state's employ trying to get a successful I/M program off the ground. The planning and execution consumed the waning years of one gubernatorial administration and most of another. It occupied space on the agendas of three state Attorneys General, three state Treasurers, three state Commissioners of Transportation, two state Commissioners of Environmental Protection, two state Directors of the Division of Motor Vehicles, and, beneath them, a constantly shifting cadre of internal project managers and mid-level bureaucrats scattered across multiple agencies. Indeed, one reason it took so long to design the program, let alone get it up and running, is that responsibility was allowed to dissipate across competing elements of the bureaucracy. Former Transportation Commissioner John J. Haley Jr., who served in that Cabinet-level position during the crucial months surrounding the final contract design and award phases during 1997 and 1998, likened the experience to the production of a Hollywood extravaganza. He told the Commission in sworn executive session testimony:

I think one of the problems of this kind of thing was that you had so many different departments play a role in it. . . . [Y]ou know, you couldn't have a meeting without less than the cast of Ben-Hur to decide. . . what to do on this stuff. . . . [T]his was a highly complex, unproven system that had to be delivered in record-breaking time.

At its inception in the early 1990s, the program came under the purview of the Division of Motor Vehicles (DMV), but the actual lines of authority over key portions of it were never well-defined and, in some respects, became less so over time. For example, given that the program had its impetus in pollution control, the Department of Environmental Protection (DEP) naturally laid claim to its own direct stake. On another track, the Department of the Treasury became involved

because, in a unique step, New Jersey's enabling legislation placed decision-making authority for the program with the state Treasurer.² The project drew yet another layer of administration when DMV was removed from its longtime niche within the Department of Law and Public Safety (L&PS) and transferred into the Department of Transportation (DOT). Caught up in this bureaucratic alphabet soup, the I/M planning process fell victim to inter-agency friction, inordinate delay, staff cuts and lack of focus. Early on, prolonged debate erupted between DMV and DEP over unresolved issues such as what test should be utilized to provide the proper framework for EPA-approved enhanced emissions inspections. With the shift of DMV to DOT under Governor Whitman's Reorganization Plan #002 in 1995, run-of-the-mill institutional discord devolved into outright hostility.³ The reorganization of DMV had an unintended and negative effect on the I/M program. Witnesses described a "clash of cultures" in which DMV personnel, long accustomed to the operational end of the inspection system, suddenly found themselves relegated to an advisory role within an agency whose central mission revolved around highway construction. Months were spent bringing newcomers up to speed on the project. Meetings were held at which the same issues continually were revisited. At various intervals, it was not at all clear who, or whether anyone in particular, was actually in charge. Moreover, veterans of the early struggle to define the I/M process within DMV complained that their new superiors in the "bricks and mortar" environment of DOT failed to grasp the design complexities inherent in a program that would be heavily dependent upon computers and integrated software systems. Compounding the confusion were deep cuts in DMV's post-merger budget that left many of the state's inspection lanes understaffed

² The state legislation that established a framework for New Jersey's I/M program, the Clean Air Mandate Compliance Act, was passed and signed into law in 1995. It provided for the state to undertake a public, private or hybrid enhanced I/M program with the final choice resting with the Treasurer. Notably, however, the statute failed to articulate clear standards for decision-making.

³ Whitman told the Commission that the reorganization was motivated by logic, i.e. that DOT was a better fit for Motor Vehicles because both agencies were linked to New Jersey's transportation infrastructure and shared a customer-service orientation.

and vulnerable to breakdown. From the outset, the state failed to dedicate the proper resources to the program. DMV became further marginalized from operational planning in this arena when Haley, in his zeal to streamline the agency and improve customer service, filled key agency positions – including that of state I/M project manager – with outsiders who possessed no experience in the motor vehicle inspection bureaucracy.

During the Commission’s hearings, mid-level officials from both DMV and DOT who were intimately involved in the early history of the I/M program vented their frustration in public for the first time over what they characterized as a process replete with false starts and missed opportunities. They estimated that at least one year – and perhaps as many as five – were wasted as management grappled with fundamental aspects of the program. Thomas Bednarz, then-Coordinator of Enhanced Inspection for DMV, was asked whether a lack of focus had an impact on the project’s continuity:

A. *Absolutely.*

Q. *And were you frustrated at that time?*

A. *Yes, because we knew how big this project was at DMV and we knew we were going to have to implement something, and it was just more time, more wasted energy on preparing things that were going to go nowhere. . .and meanwhile the clock is ticking all the time, backing us into a corner because we had to implement something by December '99.*

William Donohue, DMV’s Director of Information Systems, expressed a sense of the surreal in his recollection of just how erratic and disjointed the process of defining the I/M program became, despite the ever-looming deadline:

[It] would just kind of go to sleep for months, and then it would resurface again.

Public or Private?

Poor communication and lack of clarity on the issue of privatization throughout the bureaucracy contributed to confusion and uncertainty among rank-and-file I/M planners and effectively doomed any possibility that a state-run alternative would receive serious consideration.

Witness testimony and documentary evidence show that the policy foundation for a privately-run I/M program was established within months, if not weeks, of Whitman assuming office in 1994. In July of that year, then-DEP Commissioner Robert C. Shinn Jr. and then-Attorney General Deborah T. Poritz, in a lengthy internal memorandum to Governor Whitman entitled “Privatization of Motor Vehicle Inspection System” recommended turning the program over to a private vendor:

We believe management and operation of the enhanced inspection system should be privatized. A private contractor with a proven track record can be bound to provide inspection services – with motorist convenience guarantees – for a fixed inspection fee over a given time period. . . . [W]e believe a private contractor managing the entire system is the best approach for efficient delivery of service, with needed flexibility, at the lowest possible cost to individual motorists.

According to Shinn, the decision to privatize had been reached before he even joined Whitman’s Cabinet in February, 1994. Shinn told the Commission at its public hearing:

It was a decision that was already made when I came on board that this system was going to be privatized.

- Q.** *And that was pretty clearly stated?*
A. *Oh, absolutely.*

Clear as it may have been within the administration’s senior councils, however, it was a different story down below. Mid-level officials who were involved in the early assessment of what an effective I/M program would entail told the Commission that while privatization had always

been regarded as a possible option, it was not until after DMV was moved under the auspices of DOT in mid-1995 that it began to become clear to them that privatization was the only option. Even then, there was uncertainty. Steven B. Hanson, DOT's Chief Financial Officer, was among those who at the time labored under the impression that a state-run program remained a distinct possibility. After the state issued its first I/M program RFP, Hanson took it upon himself to set up a multi-agency task group to examine the potential budgetary impact of an enhanced I/M program. In sworn executive session testimony, he was asked what guidance he received from above:

Q. Did you get anything from [your superiors] at this stage as to what they were thinking about the enhanced I/M project. . . .Would it be private? Would it be public? Did you get any direction at that point?

A. Not that I can recall. . . .[T]here seemed to be an orientation towards privatization in general. . . .[b]ut I don't remember any specific – I didn't get a sense from anybody that it had been predetermined that we're going to go one way or another.

Q. Did you get a sense as to how much of a priority it was at this point or was it a priority?

A. [F]rom my perspective, it didn't seem to be getting on paper anywhere. I mean, one of my concerns from the budgetary perspective was that . . . when a program like this is being designed, you would have it all basically laid out on paper, and then the function of my unit would be to go in and basically cost it out. I was looking around and I didn't see anything like that happening during the process, so I think from that sense – I didn't believe it was being given enough priority in terms of really solidifying the assumptions and the basic design of the program.

* * *

Q. [W]ere you ever given instructions from anyone to cost this thing out or to gather information or to begin to pull a lot of information together? Did you ever get those kind of instructions from superiors or anyone like that?

A. No. I don't recall anybody actually telling me to do it. I think I initiated that by myself, knowing that the program was fairly large, and it was going to have an impact on DOT's budget, and I started to get concerned.

* * *

- Q.** *And when you went forward with your task group, were you given any direction . . . or any information as to where the project was going? . . . [D]id you have any sense as to where the state was going at that point?*
- A.** *No. Actually, we were pretty much operating by ourselves at that time.*

The prospect of a state-run I/M program also remained alive in the minds of concerned DMV staffers, who sought to establish whether the state could effectively carry out an enhanced inspection program from an operational standpoint. But there was no serious effort to pursue the option of a state-run program. As Thomas Bednarz, then-Coordinator of the agency's Enhanced Inspection Unit, testified,

We were never asked to develop an option to keep the program in-house.

Indeed, according to Bednarz and others, the agency never developed even a contingency plan in the event the overriding privatization initiative failed. Bednarz testified:

. . . [A]fter the bid went out on the street, we met with Commissioner Haley before the [contract] award, and at that time in that meeting he said – “Is there any chance of the state doing this?” Well, to me that was a day late and a dollar short to ask that question. . . . [T]here were no other options at that time . . . no other choice than to award.

Collapse of ‘Due Diligence’

One reason a state-run alternative failed to emerge as a plausible option for policymakers was that no meaningful or accurate analysis was ever utilized to determine how much it would cost in comparison to privatization. Indeed, prior to the time bids were actually solicited from private vendors, the state had no clear idea how much any type of I/M project would – or should – cost,

even though the Office of the State Treasurer was obliged by law to consider the comparative merits of three distinct approaches: state operation, full privatization, or a hybrid of the two.

As DOT's Hanson testified, state officials in the early- and mid-1990s did prepare limited assessments of what an enhanced I/M program would cost. In 1997, a more comprehensive effort was undertaken, in a document known internally as the "Blue Book," to capture the overall budgetary costs of such a program. But it was not until the summer of 1998 – after Parsons Infrastructure submitted the lone bid for a privatized program – that the state attempted anything approaching a statutorily required economic analysis of comparative costs. Even at that late date, the Commission found, a bogus methodology was utilized. Instead of developing and incorporating objective data from the Blue Book, state officials plugged figures drawn directly from the Parsons submission into their own analysis. Moreover, the state estimates for a public-run program incorporated the probable impact of "unavoidable" costs on the program – utility rates, facility maintenance, etc. None of these, however, was included by the state in its rendering of Parsons Infrastructure's total cost for purposes of comparison. Thus, the estimated cost per enhanced inspection of a state-operated program, \$26.32, appeared to be more than \$2.00 higher than the \$24.25 contained in the company's proposal. In reality, the lower figure was not an accurate representation of the cost to operate the system. If the unavoidable costs had been factored into the private vendor's totals, as they had been included in the state-side calculations, the estimate for the privately-operated I/M program would have exceeded that projected for a state-run system.

Further, the method used by the state to evaluate the fiscal impact of the Parsons Infrastructure bid proposal was also skewed. Besides lacking data to make meaningful comparisons, the evaluation committee was instructed by the Treasury Department's Purchase

Bureau to give the firm's proposal the maximum score allowable for cost since no competing bids were received. Moreover, this cost-of-proposal score alone counted for more than half the total score possible on the overall bid evaluation sheet. As a result, the rating given to Parsons Infrastructure's bid was higher than it would have been had the cost factor been given less weight in the final evaluation. The score was also biased in the company's favor because no valid comparison to the cost of a state-run program had been made.

Ultimately, both the per-inspection cost differential and the inflated evaluation score were incorporated into a final "economic analysis" by the Office of the Treasurer. In July 1998, this superficial document, the text of which begins at page A-12 of this report, was used as a basis for awarding the state's I/M program contract to Parsons Infrastructure "in the best interests of the citizens of New Jersey." In executive session testimony before the Commission, both James J. DiEleuterio – state Treasurer at the time of the contract award – and David Mortimer, an Assistant Treasurer at the time, stated that they relied upon the supposed rigor of the analytical methodology and believed that due diligence had been performed in determining the state's cost estimate. They also testified that had they known otherwise, different decisions might well have been reached with regard to how the I/M program was carried out.

Flawed RFPs

In the years leading up to the contract award, between 1997 and 1998, the state twice issued procurement documents known as requests for proposals, or RFPs, to solicit private-sector participation in the development and operation of an I/M program. In each instance, crucial elements of the RFPs were poorly prepared, technically flawed and grounded in assumptions that proved in the long run to be unrealistic. These deficiencies, which were compounded by a failure

to solicit or heed the advice of expert consultants, undermined the state's ability and its legal obligation to ensure a sound competitive bidding process.

In the first round, the state on February 27, 1997 issued RFPs for three possible contracts: one to design and operate centralized inspection facilities (CIFs), a second to provide support for the integration of private inspection facilities (PIFs) within the overall program, and a third for the hiring of a project management firm to assist the state in overseeing the project. Of the three, only one resulted in an actual contract award. The firm of Parsons Brinckerhoff-FG was hired as the state's outside I/M project manager.⁴ The CIF component of the initial RFP generated only one bid, which was determined to be non-responsive. A single bid also was received for the PIF component, but it was never evaluated on the grounds that it made no sense to award a PIF support contract absent a CIF vendor.

Perplexed by the generally poor response to the RFPs, and increasingly worried about the state's ability to meet the approaching federal deadlines, state officials decided to reach out to the industry for input on what had gone wrong – an unusual step at mid-procurement. Prospective vendors were invited to a “postmortem” session on August 28, 1997 during which the I/M program was hashed over and suggestions for an improved RFP were solicited. Additional vendor input was sought by the state at a “pre-proposal” conference held on October 16, 1997. Vendors unable to attend that session were solicited to provide written input. In order to satisfy procurement rules designed to provide equal footing for all, these meetings consisted of group forums in which state officials met openly and collectively with vendor representatives.

In an effort to increase the number of interested potential bidders, the state merged the CIF and PIF components of the project into a single second-round RFP, which was issued on February

⁴ Parsons Brinckerhoff-FG is a corporate entity separate and distinct from Parsons Infrastructure and has no relationship to the Parsons Corp. family of companies.

18, 1998. But despite the postmortem consultation and other efforts that had been made to improve it, the new RFP also was flawed, replete with technical ambiguity and programmatic uncertainty.

The fundamental problem lay in how the procurement specifications were framed. They were “performance-based,” meaning that instead of delineating with specificity how the job should be done, they were geared solely toward the bottom line – that is, getting it done and meeting a deadline. While this approach seemed on its face sensible and efficient – vendor flexibility, for example, was maximized – it wound up as a formula for chaos and costliness because it minimized the state’s ability to ensure that its goals would be properly fulfilled in the event the contract were awarded to a vendor incapable of delivering a quality product. In effect, the I/M program RFP was tantamount to a production order for a car, with no guarantee that it would ultimately run and little recourse, save the drastic step – after the fact – of outright contract cancellation, if it did not. Beyond this most basic flaw, examples of primary weaknesses in the second RFP included:

Unrealistic Implementation Schedule

- The RFP set forth a project implementation schedule governed by a deadline that was impossible for any vendor to meet. Experts told the Commission that, under the best of circumstances, a minimum of 18 months should have been allotted for adequate preparation between the time the contract was awarded and the program was launched. In reality, the lead-time was less than 16 months. Efforts by the state’s outside I/M project manager to gain an extension were set aside.

Poor Clarity

- The document presented an uncertain picture as to the volume of inspections that prospective bidders would be asked to undertake, even though it mandated that bids be written on a cost-per-inspection basis. In essence, vendors were asked to determine the inspection load and then use that to calculate the expense necessary to generate a reasonable profit.
- Vague wording left unclear which entity, the state or the vendor, was responsible for quality control and quality assurance, thus rendering the ultimate contract difficult to enforce.
- Confusion over which entity was responsible for costs related to maintenance of the inspection facilities resulted in higher program costs to the state.
- The RFP and contract documents did not detail the terms of fees to be paid to the vendor in relation to construction costs and service-related change orders.

Absence of Reasonable Performance Penalties/Incentives

- The contract documents set forth limited milestones or benchmarks against which progress by the chosen vendor could be measured leading up to the launch of the I/M program. The documents also failed to provide a graduated system of penalties and/or incentives to ensure that

such benchmarks would be met. The only penalty provided for was complete default.

- The practical effect of this was that the state essentially assumed the full risk associated with the I/M program launch.

Lack of Subcontractor Control/Oversight

- The RFP provided the state with no mechanism to evaluate and control the suitability of I/M program subcontractors chosen by the vendor awarded the contract. Further, the state had no direct control over the performance of the subcontractors. The state did not even require that vendor's contracts or agreements with its subcontractors be submitted to the state for review of the job description, despite the fact that subcontracts totaling more than \$400 million would be awarded for a program originally estimated to cost the state \$392 million. Virtually all aspects of the capital construction phase, and key aspects of the system design, were subcontracted.
- No performance bonds were required of subcontractors and equipment suppliers. This omission left the owners of certain private inspection facilities (PIFs) in a vulnerable position when one of the suppliers of PIF equipment experienced financial difficulty and sold its proprietary rights to a company that would not recognize contract responsibilities, warranties or maintenance agreements with the PIFs.

* * *

From a practical standpoint, the nature and scope of these flaws generated a double dose of bad tidings for the I/M program. First, rather than produce the intended effect of promoting a broader, more competitive mix of industry participation, the terms of the second-round RFP provided the script for something of a re-run: Once again, just a single bid was forthcoming. Moreover, an array of problems imbedded within the state's approach, coupled with a vendor (Parsons Infrastructure) that lacked requisite experience, virtually guaranteed that the I/M program would be plagued by serious operational difficulties well beyond the implementation phase.

The Commission conducted extensive interviews with representatives of 14 vendors that initially expressed interest in the second-round RFP but ultimately declined to pursue it.⁵ In each instance, they recited a laundry list of shared concerns to explain why they declined to submit bids. Many complained that the RFP was vague and poorly written and that its technical specifications lacked clarity, conclusions echoed by consultants familiar with the procurement documents. Given the tight project schedule mandated by the state, the other potential bidders concluded there was insufficient time to evaluate the procurement documents and prepare qualified bids. Several stated that they had asked for more time and may well have pursued the process further had such extensions been granted. Moreover, others complained about the severity of fines and other penalties that they would have faced, according to the RFP, for non-performance. On this last point, it should be noted that after the I/M program's troubled launch by Parsons Infrastructure in December 1999, the state repeatedly took steps to ease the non-performance penalties. A prime example involved damages for excessive wait times at the centralized inspection facilities. According to the RFP, the state was entitled to assess the contractor \$500 per calendar day for

⁵ At least four of the 14 would have been in a position to undertake the program independently; the others would have joined in teaming arrangements.

every instance in which a motorist was subjected to excessive delay. Depending on the number of motorists stuck in line for lengthy periods, the daily toll could run into the tens of thousands of dollars. During the summer of 2000, however, this provision was amended such that the fine would apply more generally, on a per-facility basis rather than for every single instance, thus substantially reducing Parsons Infrastructure's exposure. In addition to the benefit realized when wait-time fines were nearly eliminated, Parsons Infrastructure also was allowed to collect payment for a larger market share than that set forth in the RFP.

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Beyond issues that discouraged potential bidders, the RFP was freighted with less apparent oversights and technical pitfalls that set the stage for problems after the contract was awarded. One example involved confusing language related to the operational temperature tolerance of devices known as analyzers used in the actual emissions testing. Because it was not clearly stated that the analyzers would be deployed in the open air of centralized inspection stations under New Jersey's weather conditions, they were configured initially for operation indoors. As a result, a number of the devices malfunctioned in cold weather, and considerable time had to be devoted to recalibrating them after the I/M program was launched in December 1999. In another area, the second-round RFP ignored the need for booths in which motorists could wait while their cars underwent inspection at the open-air CIFs, as mandated by the state's own Clean Air Mandate Compliance Act.

Moreover, the RFP's failure to give the state authority over the performance of subcontractors led to costly technical decisions that were taken independently and without input from either the state or the company awarded the contract, Parsons Infrastructure. The practical

effect of this in one instance was an equipment overcharge in which approximately \$1 million was spent on certain high-technology gas detection machines even though less reliable devices valued at only about \$150,000 were actually delivered to the inspection lanes. According to Robert Kozak, an environmental consultant who worked at different intervals for both Parsons Infrastructure and the state, the combination of heavy reliance on subcontractors for key systems components and lack of adequate monitoring of them led not only to questionable expenditures but also undermined the state's ability to ensure accurate testing. According to Kozak's testimony:

Q. . . [B]ased upon your experience in our jurisdiction and seeing other RFPs, was New Jersey's RFP unique or unusual with respect to how much of the critical work was performed by subcontractors?

A. Yes. Most other state programs, if you look at Connecticut or Ohio or Arizona, . . . most of the times the I&M contractor manufactured a great deal of their own hardware and had their own software staff to write the software routines. . . .

Q. And that was not the case here?

A. Right . . .

* * *

Q. Was there an issue with respect to the level of control exercised over the subcontractors?

A. Yes. And . . . it seemed like in a lot of cases the tail was wagging the dog, with the tail being [the subcontractors]. They were making technical decisions that Parsons [Infrastructure] had very little input into.

Q. Did you talk to anybody about that?

A. Yes.

Q. Who did you talk to?

A. I talked to Carl Passeri [the chief I/M program official at DMV].

Q. What did he say?

A. Well, we just got to keep going. We got to implement the program.

Q. Do you feel that the subs provided what was called for in the RFP?

A. No.

Q. *How did this . . . affect the overall implementation of the program?*

A. *It affected, one, not meeting the deadline [and] two, the accuracy of the equipment was not what was ordered. I mean, I still think this question is out there as to what is the real accuracy of the equipment that's been installed.*

Kozak testified that he now uses the mistakes and missteps of New Jersey's I/M planning process as part of an object lesson to show other clients "what not to do" when attempting to undertake a similar program.

Experts Ignored

Could the state have addressed these issues and concerns when it would have counted – that is, before the RFP was issued? Throughout the process leading to the release of the RFP, and, ultimately, to the selection of a private contractor to operate the new system, the state had at its disposal the resources of a firm, Parsons Brinckerhoff, with an international reputation for managing projects of exceptional complexity. Moreover, Parsons Brinckerhoff bolstered its credentials as the state's I/M project management consultant by retaining a California-based subcontractor, Sierra Research Inc., widely recognized in the industry as a specialist in the design and evaluation of advanced emissions inspection technology. Officials from both firms, however, told the Commission that the state failed at key intervals to take advantage of the consulting expertise available to it. In some instances, the experts were kept at arm's length or simply ignored; in others, they were cut out of the process altogether.

Bruce Podwal, a Parsons Brinckerhoff Vice President and the firm's chief New Jersey trouble-shooter at the time, testified that the company had gained experience while working on a

similarly complex project here – the E-ZPass automatic highway toll system – and expected the state to draw upon that experience in putting together the I/M program:

My first hardware/software contract was the E-ZPass one, which had its own problems, and I learned a lot about hardware/software development in that one, and I was looking to take those lessons learned and apply them to the DMV program.

But Podwal said it soon became apparent that officials involved with the I/M program at DMV and DOT were not interested in what Parsons Brinckerhoff personnel might have had to say about the design of the RFP or, for that matter, about the proposal submitted later on by the eventual contract winner, Parsons Infrastructure:

- Q.** *[D]id Parsons Brinckerhoff get any requests from the State of New Jersey in any way, shape or form to assist them in their efforts toward a second RFP . . . was there ever any consideration given to have [you] help them write the RFP or having your consultant help them in any way?*
- A.** *No. In fact, it was actually the opposite. We offered and were declined.*

* * *

- Q.** *Was Parsons Brinckerhoff ever asked to evaluate the Parsons Infrastructure proposal?*
- A.** *No.*
- Q.** *Was there any point at which you thought that Parsons Brinckerhoff might play a role in the evaluation of the proposal?*
- A.** *Yes.*
- Q.** *And when was that?*
- A.** *At the time the decision was made to go out to [the] RFP and we thought we might participate in evaluating the proposal when it was received to see if it met the terms and conditions of the RFP.*
- Q.** *Was that of particular interest to you because you had . . . to manage the project. . . ?*
- A.** *Well, that was a concern of ours that, clearly, since we would have to implement whatever was received from the proposal and see that it met the terms of the*

RFP, we knew we would have to understand it well. We also felt that we had the ability . . . to offer suggestions and advice to the state on the proposal.

Podwal said that despite these concerns, Parsons Brinckerhoff was notified – in the aftermath of a pre-bid meeting conducted by the state in March 1998 – that neither it nor Sierra Research would be involved in the evaluation process for any forthcoming I/M bid proposals.

The firm’s role as outside project manager was further diminished in the months after the award of the contract to Parsons Infrastructure in August 1998. Podwal said that while his firm initially had been positioned as “the single point of contact” between Parsons Infrastructure and the state, and conducted regular biweekly meetings involving all key public- and private-sector participants, that arrangement abruptly changed in the summer of 1999. He testified that at that point, Parsons Brinckerhoff was cut out of the loop at the behest of Parsons Infrastructure, acting in conjunction with Carl Passeri, the I/M program chief at DMV:

. . . [W]e began to realize that Parsons Infrastructure was beginning to ignore us and that they and Mr. Passeri were beginning to hold meetings off line, and we were no longer being able to issue directions or letters to Parsons Infrastructure. The amount of the decline increased over the course of the summer.

Q. *The decline of information, the decline of cooperation?*

A. *Both. We were no longer receiving information nor receiving cooperation. . . . There were, in fact, meetings being held . . . which we weren’t even aware there were meetings.*

Officials at Sierra Research related a similar history of reluctance when it came to willingness on the part of the state to solicit advice and heed warnings of serious weaknesses in the procurement materials. Richard Joy, a Sierra Vice President, told the Commission that he and his staff received little sense of where the state was headed with the technical specifications until just weeks before the final RFP was issued – and then only by way of a verbal sketch of the document’s

primary components via telephone conference. The 11th-hour briefing, however, was sufficient to convince Sierra personnel that the document contained a number of significant flaws. The firm responded with a lengthy critique, but its suggestions for improvements were set aside. Moreover, when it came to the formal evaluation of Parsons Infrastructure's proposal, Sierra, like Parsons Brinckerhoff, was excluded from the exercise.

Joy characterized both the RFP and the proposal submitted in response to it by Parsons Infrastructure as among the most poorly drawn procurement documents he has ever encountered in more than 20 years of professional experience related to I/M program issues both in the U.S. and abroad. He told the Commission:

Normally you would want to have an RFP that really requires a contractor to do certain things, and [this] RFP has very little of that in it, and that was complicated by the fact that the proposal that [Parsons] submitted has almost no commitment. It parrots back the RFP; the RFP will say "do this" and . . . the proposal says "we will do that," but it doesn't say how they'll do that. And so the combination of the RFP that New Jersey put out and the proposal that [Parsons] submitted, it's about the worst I've ever seen.

Joy also told the Commission that receipt of a solitary bid generally is a glaring red flag suggesting trouble and should have prompted the state to step back from the process, possibly even to the point of making an emergent appeal to the EPA seeking a waiver of the looming compliance deadline:

When you have only one bidder on an RFP, especially on a project of this magnitude, I think you need really to go back and look at why that happened. . . . [T]his kind of project attracts a lot of interest because it's for a lot of money. And so there's always an issue if you only get a single bidder. . . . [T]hat would be a concern to me.

Indeed, even after the contract was awarded, Joy, Podwal and others urged their state counterparts to seek relief from EPA. At a meeting in July 1999, approximately five months before the I/M program's December launch deadline, they mapped a plan to approach EPA using Sierra's professional connections with agency personnel to seek a deadline extension, but their initiative was rejected by the state. According to Podwal:

We strategized that . . . because the opening was now scheduled for the middle of December, that we could say it was illogical to do it in the middle of December, it's a holiday month, and then we [would come] to the first of the year, that the Y2K [computer] problem [was a] potential and, so, we felt that we could go to EPA and definitely get to February 1 without any problem . . .

Q. . . . [Y]ou were optimistic that this would be attempted?

A. *I think there was just such a sigh of relief from everyone leaving the room, because we all thought that we had a strategy to gain us at least six extra weeks. We were disappointed to find out subsequently that the decision was made that [the state] would stay with the mandatory date . . .*

Q. . . . [H]ow did you find out that the idea had been declined or the decision had been made to stick with the date?

A. *Mr. Passeri advised us that the date would be held.*

Nonperformance

One significant I/M program component required by the RFP – a “Gasoline Tank Evaporative Pressure Test” – was never implemented even though equipment for it was purchased at taxpayer expense and the state has paid the vendor, Parsons Infrastructure, millions of dollars in unfulfilled performance fees. The test, designed to detect vehicle fuel vapor emissions, was postponed at the outset of the I/M program in December 1999 because the central inspection facilities (CIFs) – those operated by Parsons Infrastructure under contract with the state – were equipped to conduct it, while many participating private inspection facilities (PIFs) were not. It

was also apparent that the time required to perform the evaporative pressure test would have compounded already-onerous inspection delays and motorist wait-times in the weeks following the I/M program's launch.

This issue is critical because it goes to the heart of why New Jersey undertook an enhanced emissions inspection program in the first place and whether the state gained anything by pursuing an overly ambitious schedule for putting a privatized version of such a program into operation. Top state officials repeatedly defended strict adherence to the December 13, 1999 launch deadline – despite patently insufficient program preparation and the warnings of impending trouble from outside consultants – on grounds that to postpone it was to risk federal clean-air penalties, primarily the potential loss of substantial funds for highway construction. The evaporative pressure test, however, was supposed to be a defining element of the “enhanced” inspection protocol – accounting for as much as half the time to be spent by each vehicle at the CIFs. That it was shelved from the start raises serious questions about whether New Jersey met the federal clean-air mandate after all. EPA officials told the Commission they are aware of, but never authorized, nonperformance of the pressure test.

The financial side of the equation is equally disturbing. Although the state has never required – and seemingly has indefinitely postponed performance of – the evaporative pressure test, Parsons Infrastructure nonetheless has continued to receive full payment for enhanced inspections with no downward adjustment in the fee schedule. Absent any attempt by the state to recover these unearned payments, the Commission undertook a labor-cost analysis to determine the dollar value involved.

Parsons Infrastructure's estimates of the time required to complete a single enhanced inspection under the current regimen – i.e. without the evaporative pressure test – range from eight

to 10 minutes. For purposes of its calculations, the Commission utilized a conservative estimate of 10 minutes. Given the amount of additional time that should be devoted to performing the test – specifications call for three minutes and 10 seconds – it was determined that the per-inspection labor cost of the test is \$3.56.⁶ Based upon the number of enhanced inspections performed to date, that translates conservatively into approximately \$9.5 million in fees paid thus far to Parsons Infrastructure for a test never performed.⁷ Over the full seven-year life of the I/M contract, these payments will exceed \$50 million – an average of approximately \$600,000 per month.⁸

The Commission further determined that in allowing nonperformance of the evaporative pressure test to persist, the state violated the express terms of its own I/M program RFP on two counts: 1. Failure to gain authorization from appropriate federal authorities for a reduction in the scope of work; and 2. Failure to negotiate an appropriate adjustment of the contract price with the vendor. Section 8.13.2 of the RFP states that a work-scope reduction requires approval from the Federal Highway Administration. Specifically concerning the gas tank pressure test, the RFP states:

. . . Should the requirements for these testing procedures be modified to reduce the scope of work, the State and the Contractor will negotiate an appropriate adjustment to the contract price. . . With regard to any other modifications, should the requirements for procedures be modified to reduce the scope of work, the State and Contractor will negotiate an appropriate adjustment on the contract price. . . .

⁶ The firm Environmental Systems Products Inc., produced a specification for the test. The procedure entails removal of the gas cap, connection of a filler adapter, opening of the hood, clamping of hoses, pressurization of the gas tank for 60 seconds, stabilization of pressure for 10 seconds, monitoring “decay” in pressurization for two minutes, removal of pressure, and, finally, reversal of the above steps. For purposes of this computation, only the actual test time of three minutes and 10 seconds is considered, although it is obviously conservative. Some estimates of the time required to perform the test range as high as six minutes. It should be noted that performance of the test would extend the inspection time and seriously reduce Parsons Infrastructure’s overall through-put. Also, the test cannot be performed on vehicles of model year 1996-present because most have fuel lines that cannot be clamped. These newer vehicles, however, are equipped with “on-board diagnostics” (OBD) to enable computerized emissions testing. As the vehicle fleet becomes composed predominantly of these vehicles, the total number subject to the pressure test will decline. The Commission’s analysis is based upon the pressure-testing mandate in the RFP.

⁷ As of October 31, 2001.

⁸ Additionally, suspension of the evaporative pressure test may result in claims estimated to range between \$500,000 and \$4.2 million against the state by the equipment manufacturers.

MANIPULATION

When Parsons Infrastructure devised a marketing strategy to pursue the I/M program here, it chose the slogan, “New Jersey and Parsons, the Perfect Partners.”⁹ As it turned out, the phraseology was quite appropriate, for just as New Jersey had no experience in designing such a program, Parsons Infrastructure had no experience in operating one. Though a leading subsidiary of a long-established worldwide engineering and construction concern (Parsons Corp.), the firm nevertheless was a relative newcomer to automotive emissions-testing, having entered the business in 1995. The industry was dominated at the time by a handful of other firms with established track records that could boast substantial experience in I/M program technology. By comparison, Parsons Infrastructure had never been involved in a comprehensive statewide automobile inspection program of any sort, let alone one as complex and of the magnitude as that contemplated by New Jersey. But with EPA pressuring state after state to develop aggressive clean-air strategies, and states looking to the private sector for help, new and lucrative sources of corporate revenue beckoned. In essence, the opportunity here simply was too good to pass up. Thus, just as New Jersey officials were determined – seemingly at all costs – to meet what they perceived as an irrevocable deadline for program implementation, Parsons Infrastructure was determined to win a major piece of the action.

Setting the Stage

The company began to mount a serious campaign for the New Jersey contract in the months

⁹ In its response to New Jersey’s I/M program RFP, the company incorporated a slight variation of this slogan: *New Jersey and Parsons, Perfect Together*. Both were designed to play off a popular catch-phrase adopted during the Kean administration in the 1980s to promote tourism.

following the collapse of the state's first-round RFP in 1997. Like most of its competitors, Parsons Infrastructure regarded that document as a deeply flawed recipe for unacceptable risk and declined to submit a proposal. But when the state, as part of its "postmortem" exercise, solicited industry-wide suggestions for an improved RFP, the company decided to take another look. That summer, a Parsons Infrastructure corporate strategy document, known internally as a "strat memo," was generated in order to catalogue progress in New Jersey. Moreover, in late October – following up on the meeting with vendors that had been held approximately two weeks earlier – the firm sent a lengthy letter to then-DMV Director C. Richard Kamin addressing a wide range of concerns and recommending a series of technical and substantive changes as the state prepared to pursue a second-round RFP.

Meanwhile, behind the scenes, circumstances began to take shape that would enable Parsons Infrastructure to position itself for an inside track in the actual procurement. On one level, company officials tapped into an informational back-channel that turned up in the form of a state Department of Environmental Protection employee familiar with every critical phase of the I/M planning process. On another level, the firm mapped plans to hire lobbyists with access to the highest levels of state government.

The back-channel was Kathryn "Katie" Watson, who held positions at various junctures at both DEP and DMV. Watson's link to Parsons Infrastructure was through Larry Sherwood, a company executive with whom she had developed a professional friendship in the mid-1990s when Sherwood was employed by the State of California's air pollution control program. As Parsons Infrastructure began to pursue the I/M program in New Jersey, Sherwood was slated to be the firm's project manager. He told the Commission that Watson was among those who attended the

state's postmortem session with vendors and that she contacted him after the company submitted its letter of recommendations for changes in the second RFP:

- Q. . . .[A]fter this letter was sent, did you receive any feedback from any state employee as to how the letter was received? Do you recall getting any feedback?*
- A. . . . Yes. . . . Katie Watson mentioned that the letter had come in , that they had reviewed it, and that our comments were favorably reviewed.*

* * *

- Q. Did you speak to Katie on more than one occasion?*
- A. Oh, yes.*
- Q. Did you speak with her in person or on the telephone?*
- A. Typically, on the phone.*

As these contacts proceeded on the unofficial track, the company began to expand significantly its efforts to influence decision-making at the official level. At the time, the Parsons corporate family was hardly unfamiliar with the intersection of public business and private profit in New Jersey – and the importance, at least for the profit-makers, of maintaining access to that intersection through connections in the political arena. Subsidiaries of the California-based parent company already had been engaged here for a number of years as public contractors at both the state and local levels, particularly in Burlington County where elements of the firm maintained a longstanding foothold in publicly-funded bridge work while regularly contributing substantial sums of money to the county's ruling Republican Party organization. During the 1990s, the company also came to rely upon advice and information provided by individuals with strong ties to state government and to the Republican Party establishment statewide. The first of these advisers was Frank B. Holman, a former executive director of the New Jersey Turnpike Authority who served

four years as chairman of the Republican State Committee during the 1980s. Holman, who made a point in testimony before the Commission of emphasizing that he is a “political consultant,” began his involvement with Parsons when the original firm for which he was a contract advisor, DeLeuw Cather & Co., was acquired by Parsons Transportation Group Inc. In July 1996, Holman entered into a consulting agreement to promote DeLeuw Cather & Co.’s ground transportation, engineering and construction-related services for a fee of \$2,500 per month, plus expenses. In the fall of 1997, when the Parsons corporate hierarchy started taking a close second look at the prospect of an I/M contract in New Jersey, Holman’s services were transferred to Parsons Infrastructure at the same monthly fee.

The written agreement between Parsons Infrastructure and Holman stated that “Parsons desires to obtain contracts,” and that, as the firm’s “agent,” Holman would employ his “best efforts to assist Parsons in obtaining contracts. . . ,” specifically in connection with promoting “[Parsons’] vehicle emissions compliance testing.” Further, the agreement called for Holman to engage in “contacting appropriate officials in the State of New Jersey Department of Transportation, submission of proposals and performing appropriate follow-up activities.” Holman testified that among the senior officials serving in state government at the time, he had a close political relationship with DMV Director Kamin. Holman stated he had known Kamin for at least 25 years, adding, “I talk to Dick [Kamin] numerous times on political matters. . . .”

Meanwhile, as preparation of a second I/M program RFP neared a critical juncture in late 1997 and early 1998, Parsons Infrastructure officials came to the conclusion that their efforts to position the company for the I/M program contract required additional clout. At the same time, they were trying to determine how to fulfill a major public-relations component that would be required of every firm that sought the contract. Amid discussion of these and other concerns,

Parsons Infrastructure was referred by Holman to Public Strategies Impact LLC, a top Trenton lobbying firm whose co-owner, Roger Bodman, is a former Republican campaign strategist who served in Cabinet-level posts as Commissioner of the Departments of Transportation and Labor during the 1980s. Bodman is also one of the owners of DKB & Partners Inc., a Morristown, New Jersey-based public relations and advertising firm with a sizeable public-sector clientele.

Parsons Infrastructure hired Public Strategies on a retainer of \$5,000 per month in exchange for a range of services related to obtaining the I/M program contract. The written agreement, signed by Bodman and Parsons Infrastructure executive James R. Shappell, contained language similar to that set forth in the Holman arrangement, but was far more explicit in its recitation of services to be rendered. Beneath a section entitled “Definitive Services,” the agreement states:

CONSULTANT agrees to use its best efforts to promote and maintain for PARSONS a vehicle safety and emissions compliance testing program. . . . CONSULTANT will render such assistance as PARSONS requires in connection with said business development, such as contacting appropriate officials in the State of New Jersey and performing the following services:

- i. Development of a political strategy to obtain Contract.*
- ii. Design of public relation strategies – assist in the development of strategies designed to respond to the opportunity identified.*
- iii. Implementation of market strategies – assist in the actual implementation of strategies by helping develop proposals which present PARSONS’ capabilities and added value.*
- iv. Understanding the political agenda – the political agenda of the administration drives the behavior of appointed officials within the administration. Assist the marketing force in gaining an understanding of the political agenda and the forces driving it.*
- v. Identify key players in the administration – the Governor has put together her administration. She has selected her immediate staff and advisors, who in turn have selected the trusted bureaucrats who will assist in carrying out the Governor’s agenda. CONSULTANT will work to establish as positive corporate image of PARSONS.*

- vi. *Maintain a presence – consult with the sales team to maintain a consistent, and focused presence among the key decision makers and influences. . .in the state.*
- vii. *Develop a long range positioning strategy – assist in developing and implementing a strategy for the duration of this administration to effectively position PARSONS as one of the State’s vendors of choice, a strategic player, and an able corporate citizen.*

It is significant that prior to the Commission’s investigation, there was no public record of the written agreements between Parsons Infrastructure and either Holman or Public Strategies Impact, even though the provisions therein bore directly upon matters involving the public interest, to wit: the proposed expenditure of nearly \$400 million in tax revenue. As paid representatives of the company in its pursuit of public business, both Holman and Public Strategies were engaged in a practice commonly known as “contract lobbying.” However, because this form of lobbying is not included in New Jersey’s statutory definition of the term, there is no requirement for public disclosure. Indeed, there was nothing in this instance to require that either firm even comply with minimal reporting and registration rules. Those strictures apply only to those lobbyists whose efforts are explicitly directed at influencing state legislation and/or regulations. Holman, who considers himself a political consultant, has never registered as a lobbyist and testified that he keeps few records of his business activities. Public Strategies Impact, which is a registered lobbying firm, did include Parsons on lobby-client lists filed pursuant to law with the New Jersey Election Law Enforcement Commission (ELEC) beginning in March, 1998. But the accompanying description of agreed-upon services filed with ELEC was misleading. It stated that Public Strategies Impact would “monitor and influence legislation and regulations affecting automobile inspections.” In sworn testimony before the Commission, Bodman acknowledged that his firm never engaged in that form of lobbying on behalf of Parsons Infrastructure.

The Inside Track

Thus operating beyond the scope of full disclosure, Parsons Infrastructure's New Jersey agents freely wielded their influence with senior government officials, using it to open doors at a time when procurement personnel were drafting confidential program requirements for inclusion in the second I/M program RFP. Long before any vendor was invited to bid, Parsons Infrastructure executives were treated to exclusive private briefings during which they received inside information related to the state's plans and intentions. Further, as the process moved forward, the company's urgent interest in securing the I/M contract was advanced in conversations with officials at the top levels of both the executive and legislative branches of state government.

* * *

On December 10, 1997 – little more than two months before the RFP was made public – Holman accompanied executives of Parsons Infrastructure to DMV headquarters in Trenton where they met privately with Director Kamin. Present were Philip Morris, a Parsons Infrastructure Vice President; Larry Sherwood, who would soon be designated the firm's New Jersey I/M program manager; and an executive from MCI Corp. Morris, who requested the meeting, said he did so as a result of information relayed to him via Sherwood's contact inside DEP. Morris told the Commission:

Well again in this case it was some further encouragement coming . . . from Katie.

Q. *Katie Watson?*

A. *Yes. Saying basically that our letter was well received. That there were serious discussions going on within the administration as to what would be the best way to proceed. And I said, I thought, 'Gee, it would be helpful to us and to the state*

if I could sit down with Dick Kamin and just reinforce the fact that the approach that we were recommending was a workable one, was in the best interest of the state. And I just wanted to put a face on our team and try as best I could to get the message across to Dick and his staff that this was the proper way for the state to proceed.

The discussion during the meeting with Kamin was memorialized by Sherwood, who took detailed handwritten notes and prepared a typewritten memorandum the following day. Both the notes and the memorandum were obtained by the Commission via subpoena. Significantly, no state record is known to exist of this meeting or of subsequent private contacts between state officials and representatives of Parsons Infrastructure.

In his memorandum regarding the December 10 meeting, Sherwood stated, “The approach I tried to focus on was to gather information on the RFP. . . .” In particular, the Parsons Infrastructure contingent was keenly interested in finding out when the RFP would be formally issued. Referring to Kamin, Sherwood stated “he felt strongly that the RFP would be released the first week of January [1998].” Sherwood was asked during the Commission’s public hearing to explain why this type of information was important to the company:

Q. . . . [T]hat was something that you were . . . particularly interested in?

A. Sure. As you know . . . one of the things that concerns us, of course, is to be ready when the RFP comes out so we can produce a good response.

Q. Are there certain things that a firm does when it knows the RFP is about to come out?

A. Sure.

Q. What?

A. You start organizing people to help write a response.

In his notes and memorandum on the meeting, Sherwood also stated that Holman and Kamin discussed the use of a public relations firm as a possible subcontractor for the I/M program,

adding that “Dick [Kamin] made the statement that there would be a PR component to the RFP.” Sherwood stated that it became evident during the meeting that “there will be even less flexibility provided in the new RFP, compared to the old one, regarding the use of existing state-owned test facilities; the contractor will be required to use them and to retrofit them wherever necessary to ensure accurate tests, accessibility and convenience to the public.” He wrote that “the [the state] will require that a vehicle pass at least a curb idle test in order to obtain a waiver [from inspection].”

Sherwood further wrote that “[the state] will probably ask for bids to be prepared as design/build/transfer and design/build/operate.” How this issue would be resolved was of particular importance because it bore directly upon the profit-making potential of New Jersey’s I/M program. In its pre-proposal letter to Kamin that October, little more than one month before this face-to-face meeting, Parsons Infrastructure executives had made it plain that they were loathe to consider bidding in response to a second RFP if there was any chance that the job would involve simply laying out and constructing an I/M program, the so-called design/build, or “DB,” approach. Rather, the company favored a long-term operational role via a design/build/operate/maintain, or “DBOM,” configuration. In his public hearing testimony, Sherwood explained:

. . . Our main business was in operations. Although our company does a lot of construction, the . . . profits on that are a one-time shot, and whereas, if you’ve got an opportunity to do operations and you can charge on the basis of each inspection or test, then you can make a little bit, but over a longer term you can make more profit.

Q. *So it’s fair to say that there is the potential for much more profit in the DBOM approach?*

A. *Sure. Especially on a longer time frame.*

Sherwood's record of the December 10 meeting also reflects discussion of the volume of inspections and the manner in which the private contractor under the I/M program would be compensated. "The centralized contractor," he stated, "would be guaranteed 60% of the population and will receive 12 lump sum payments. . . . Project will be capitalized up-front and payments will be based on passing through invoices." Sherwood later explained in his testimony:

The 60 percent related to the volume of vehicles that were going to the centralized [inspection] stations at that time, and we had submitted in our [October] comments. . .that we had asked for some kind of payment schedule. . . asking for equal payments so that we would, basically, spread the payments out, and he [Kamin] was saying that, at least tentatively, that it sounded like that was viewed favorably.

* * *

Q. *Did you . . . have a concern about there being some type of certainty or guarantee as to the number of inspections the centralized vendor was going to perform?*

A. *Yes. We had – I know we mentioned that verbally at the postmortem meeting and it may be in our comments here, as well.*

Q. *So when he told you they were looking at guaranteeing 60 percent, that . . . addressed that issue?*

A. *Yes*

Q. *That you knew that you would be guaranteed at least 60 percent of the inspections?*

A. *Well, again, this was all tentative, and even at the postmortem meeting . . . most of our comments were, you know – as soon as you say something like, you know, gee, you know, we'd really like to have some sort of minimum guarantee, and if they respond and say, oh, yes, well, okay, yes, that's reasonable, we'll consider that, and that type of conversation had occurred there, as well.*

Q. *. . .[B]ut hearing it from the Director of the Division of Motor Vehicles on December 10 certainly had to have more weight.*

A. *Sure.*

Sherwood was not the only participant to leave the meeting encouraged by Kamin's candor on these and other issues of concern to Parsons. Morris told the Commission that the session was a

catalyst that prompted him to make extensive revisions to the company's fledging New Jersey "strat memo.":

I upgraded the probability that an RFP would come out that we might find to our liking or our interests and upgraded the probability that we would win.

Morris added that information gathered during the meeting enabled the company to get a head start in the preparation of a response:

. . . [S]ince we knew that the RFP was going to be released soon we activated an in-house effort to be prepared for a release [of the RFP]. And what that means is that there is a whole series of internal consultations with . . . the legal staff, with contract staff, human relations divisions, etc. We intensify our search for teaming partners. We begin to get more and more focused in assembling the staff resources that we think are going to be required to prepare [a response to the] RFP.

For his part, Kamin was vague and equivocal in his recollection of the meeting and the circumstances surrounding it. Questioned in executive session, he first testified he "may have" met in his office with representatives from Parsons, then stated, "I remember a meeting with Frank Holman and some folks, yes." Asked if he could recall why the meeting was held or what was discussed, Kamin stated, "No, I don't recall the specifics. In a general sense, I know the issues that were being discussed at the time was what was it going to take to have a successful bid for the New Jersey contract." He further testified:

Q. *. . . [D]o you recall anybody from Parsons making any presentation to you or giving you any information about their company that . . . would have helped you maybe feel more comfortable that there was somebody out there that could handle this venture and had the financial background and so forth? Can you recall this at all?*

- A. I can recall Larry Sherwood certainly had a national reputation. . . . And I can recall talking with Frank Holman, because one of the key components was to have the operational capabilities of a workforce.*
- Q. Now, when you say you can recall this, talking with Mr. Holman, would this have been at this meeting or –*
- A. Probably would have been or even with a phone conversation.*
- Q. . . . Would you have called Holman or he would have called you? I mean would you have any reason to call Mr. Holman out of the blue about this or –*
- A. I believe he would have called me.*
- Q. Did he indicate to you that he represented in any way Parsons Infrastructure as a possible bidder?*
- A. My recollection is yes.*
- Q. Would he have given a pitch, so to speak, as to their qualifications that they could handle the job, they were interested?*
- A. That would have been, I'm certain, part of the discussion.*

At the Commission's public hearing, after having had an opportunity to refresh his recollections, Kamin testified:

- Q. . . . Do you, at this point, recall the meeting?*
- A. Not really.*

* * *

- Q. Can you recall at all Mr. Holman having contacted you to arrange a meeting with people from Parsons?*
- A. I do not. My recollection of meeting with virtually all of the vendors or discussions with them took place either at bidders conferences or because of my role as a member of the International Association of Motor Vehicle Administrators, my counterparts from all over North America, that oftentimes the vendors in this community were in attendance at those events.*
- Q. How about any meetings that took place in New Jersey in your office? Do you recall meeting with any vendors in connection with this project?*
- A. Quite honestly, I do not. My role as the Director of Motor Vehicles, I had dozens of meetings with many, many folks over my six years as Director of Motor Vehicles.*

The Commission's investigation revealed that no other vendor was treated to such private meetings with Kamin or any other state official in connection with the I/M program procurement. Moreover, no official record memorializing any of these exclusive meetings was found.

* * *

By mid-January 1998, the state still had not issued an RFP, and Parsons Infrastructure executives were increasingly nervous about the investment of personnel and resources they had begun to devote to pre-response preparation. At Holman's suggestion, the company linked up with Public Strategies Impact, LLC and began holding tactical discussions with the firm's lobbyists. Again, Larry Sherwood took notes memorializing a number of these meetings, including one held January 15 to discuss Parsons Infrastructure's concerns. Among the observations in Sherwood's written minutes of this session:

This firm [Public Strategies Impact] claims to have strong connections in the legislature, which is where Frank Holman may be a little bit weak (although we have not asked him to set up meetings with them yet.) Holman spoke highly of this group as they did of him.

Kati[e] Watson, my contact within NJ DEP, still believes that the RFP could be released in about a week.

At a subsequent meeting held January 27, Public Strategies offered to provide two main services: procurement lobbying and public relations, the latter via its affiliate, DKB & Partners.¹⁰ Those in attendance included Sherwood and a Parsons colleague, Tom Peters; Public Strategies Impact co-owner Roger Bodman and one of his associates, lobbyist G. Bruce Jones; Frank Holman; and DKB

¹⁰ The explicit services to be rendered by Public Strategies Impact were set forth in detail in a written agreement with Parsons Infrastructure as referenced at pp. 34-35.

Vice President Carl Golden. Like Bodman and Holman, Golden had longstanding ties to New Jersey's Republican Party apparatus, having served as press secretary to Gov. Thomas H. Kean and, most recently, as communications director for then-Gov. Christine Whitman and as a paid consultant to the Republican State Committee.

Sherwood's notes reflect that the meeting opened with a discussion of the "PR issue," followed by an assessment of then-DOT Commissioner Haley's position on certain issues related to the I/M program. Sherwood stated that, according to information that emerged during the meeting, Haley was concerned about the potential for EPA sanctions in the event the state did not meet the December 1999 deadline for the start-up of enhanced emissions testing. Sherwood added that "Haley may be the closest thing to [a] champion [for the I/M program]."

At one point, the discussion turned to politics. Sherwood stated, "Assy [Assembly] probably most volatile since up for election in 1999." The group then proceeded to discuss how Public Strategies Impact could assist Parsons Infrastructure in gaining approval of its forthcoming I/M program proposal. According to Sherwood, it was suggested that Public Strategies Impact personnel could "help by getting somebody from the Gov[ernor's] Office on the eval[uation] team" that would review all I/M bid proposals received by the state. In his executive session testimony, Sherwood explained this observation:

Well, Roger [Bodman] had contacts in the Governors Office. Carl Golden had contacts. [G.] Bruce [Jones], you know, had a lot of contacts all around. I don't know if he had any in the Governor's office, but it had to do with this sort of [procurement] contest between Treasury and DOT. And I think [if] they got somebody from the Governor's office – well, then a decision would be made, and there just wouldn't be a fight.

Q. *Whose idea was this?*

A. *I'm not – I don't recall.*

* * *

A. . . .[M]y recollection is that there was simply. . .that if you had a tie-breaker on the evaluation committee, then it wouldn't end in a stalemate which would delay the contract further.

Q. . . . Do you know whether there were any efforts made to try to get somebody from the Governor's office on the evaluation team?

A. I don't believe there was ever any efforts.

Q. Did you ever hear anything further about that?

A. I don't recall that I ever did.

* * *

It is noteworthy that in sworn executive session testimony before the Commission, Bodman sought to minimize his own direct role in furthering the contract goals and interests of Parsons Infrastructure. For example, he stated that the language of the representation agreement involving his firm was provided by Parsons Infrastructure and that, although he personally signed the document, he was not certain of the meaning of a number of its key elements:

Q. These are the Definitive Services. First one is development of a political strategy to obtain the contract. What does that mean?

A. I'm not sure exactly what this means, but I do know it was unnecessary.

Q. Unnecessary did you say?

A. Unnecessary, and never happened. The only, if you want to call it, political strategy and the initial meeting I had with them back in . . . January of 1998, I discussed the generic political circumstance, and they expressed their concerns about the political issues that had cropped up in other states . . . where programs such as this had been implemented or attempted to have been implemented. And they were very concerned . . . [about] the political will for New Jersey to go forward with this because in other states either the legislators came in after the fact and pulled the plug. . . . So they were very interested in trying to determine and seek our advice as to whether the political will existed. I gave them a general briefing on the political circumstance. Christie Whitman was the governor. She was a Republican. She was in her second term. Basically, mundane stuff about, I guess you would call them in their mind a political strategy. It was . . . really a general briefing.

Bodman also characterized his colleague at Public Strategies Impact, G. Bruce Jones, as the “lead partner” when it came to dealing with Parsons Infrastructure as a client. He stated that Jones’ expertise was in matters related to the state procurement process and that Parsons was “looking for Bruce Jones to advise them on how to properly respond to an RFP and be compliant in the process.” According to Bodman:

. . . [W]hat Jones, I believe, did and would say is that, in fact, he would advise them [Parsons Infrastructure] on how to specifically respond to an RFP. He does this on a regular basis for a host of clients, and oftentimes clients of his that are seeking to perform a service or sell a product to the state will go well above and beyond what the RFP requires, and therefore, they may be deemed noncompliant.

Jones, however, testified that he had little personal involvement with Parsons Infrastructure as a client and provided only rudimentary advice when it came to the procurement process, including the preparation of the company’s RFP response:

Q. . . . Are we talking about some relatively brief conversations. . . ?

A. Yes.

Q. How many times?

A. Maybe twice.

Q. Maybe twice.

A. Yes.

Q. In person or on the phone?

A. On the phone.

Q. You didn’t have any significant involvement in the actual preparation of the [Parsons]proposal?

A. No.

Q. How about in steering them through the procurement process?

A. . . . In this instance, this was completely unfamiliar territory to me in terms of either understanding what the RFP was asking for or responding to it. . .

* * *

Q. Have you ever talked to Commissioner Haley about [the I/M program procurement]?

A. No, I never met Commissioner Haley.

Q. Do you know who on the team was in a position to talk to Commissioner Haley?

A. Roger.

Q. Roger?

A. Yes.

Q. How do you know that?

A. Roger is a former Commissioner of Transportation. Your question was who was in a position to meet with Haley.

Q. Commissioner to Commissioner kind of –

A. Yes.

* * *

Subsequent to the January 27 meeting at Public Strategies Impact’s Trenton offices, arrangements were made – with Bodman acting as the middle-man – for Parsons Infrastructure executives to consult directly with Commissioner Haley. A private meeting was scheduled for February 17 at DOT headquarters. Though there is no evidence to suggest the Parsons contingent knew it in advance, the timing would prove crucial: The state planned to issue its RFP the following day.

On the morning of February 17, Parsons Infrastructure executives Sherwood, Peters and Shappell gathered at the lobbying firm with Bodman and Jones to prepare for the meeting. According to Sherwood’s testimony and notes, the Parsons group was informed by Bodman that Haley was “very aware of this project” and “strongly supports” the DBOM approach favored by the company. It was also pointed out, however, that the final decision on whether the state would opt for DBOM or DB, or both, rested with the state Treasurer, James J. DiEleuterio. Sherwood’s notes

stated that Bodman also told the group that “he can find who is going to be on the eval[uation] committee” to review and assess I/M program proposals from prospective vendors. Sherwood wrote that Bodman further suggested that Parsons Infrastructure “narrow down” a list of potential subcontractors for the project and that he (Bodman) would “help select one that will help us win the RFP.”

Shortly after noon, as the group was preparing to leave for the meeting with Haley, an intermediary at DOT headquarters telephoned to inform them that the Commissioner would be unable to keep the appointment. In his stead, they would meet with Gary Mariano, the agency’s I/M program manager and, as such, the official in charge of preparing the RFP. According to Sherwood’s public hearing testimony, the group was ushered into Haley’s conference room whereupon the Commissioner “did stick his head in for probably ten seconds to say he apologized for canceling the meeting with us.”

Q. . . . [D]id Commissioner Haley or Mr. Mariano tell you why the Commissioner decided not to attend the meeting?

A. . . . That the RFP had been approved, I think just within the hour previous to our meeting, and that the Commissioner was uncomfortable meeting with us directly.

Q. But he sent Gary Mariano, the man who wrote the RFP?

A. That’s right.

In addition to disclosing that the release of the RFP was imminent, Mariano gave his guests a sense of some of its contours. According to Sherwood’s notes, the project manager detailed a schedule related to the emissions program procurement process over subsequent days, including a Treasury Department meeting slated for the next day, February 18, to authorize advertisement of the RFP and a pre-bid conference for interested vendors scheduled for March 10 “unless Treasury changes it.” He told the group that the document incorporated a “more realistic” time frame, along with

“incentives for early completion and less penalties for missing deadlines.” Mariano also disclosed that the state, following an evaluation period of between 30 and 60 days, expected to award an actual contract sometime that “summer or early fall.”

* * *

Within eight days of the meeting with Mariano, Parsons Infrastructure’s Phil Morris and his staff made final revisions in the New Jersey “strat memo” that they had been putting together since the previous summer. The document, dated February 25, 1998, was then sent up through Parsons’ corporate chain of command, serving as the impetus for an internal mobilization in response to the RFP. Excerpts relevant to the Commission’s inquiry include the following:¹¹

- **Contract Concerns**
A preliminary reading of the RFP did not surface any concerns. The state has indicated great flexibility on contract terms.
- **Most Recent Customer Contact**
December 10, 1997, proposed project manager Larry Sherwood, our New Jersey lobbyist, a MCI representative and I [Morris] met with Dick Kamin, Director, Motor Vehicle Services as follow-up to my letter of October 29 which contained several suggestions and recommendations for the RFP. Most all of our suggestions have been incorporated into the RFP. A meeting was held on February 17 with Gary Mariano who drafted [the] RFP.
- **Selection Criteria**
Yet to be determined, however highly likely to be best value score when using technical ability and cost. Political connections are important.
- **Local/Political Concerns**
This is a controversial program that was a minor issue in the last gubernatorial election. The program has seen a number of delays and EPA has started the sanction clock December 15, 1997. It is a long established program, so the issue of public acceptance is much more manageable. Large highly visible procurements such as this have a strong political spin in New Jersey. Union influence must be dealt with as well as conflicts on the approach between the

¹¹ The complete text of this document begins at page A-5 in the Appendix.

DOT commissioner (favors DBOM), and the commissioner for Treasury (DB). Two lobbyists have been retained. Frank Holman, former state chair of the Republican [P]arty, and Roger Bodman, former[C]ommissioner of Labor, and [former] Commissioner of the DOT.

- **Competition**

Possibly Envirotest and Gordon-Darby. Testcom is a remote possibility.

- **Other Relevant Information**

We have been tracking this prospect for nearly a year and have worked extensively with state staff. We have had considerable success in influencing their decisions particularly since their prior contracting approach was an utter failure and embarrassed the state. We have received constant encouragement behind the scenes and are now extremely well positioned.

Asked to explain “constant encouragement behind the scenes,” Sherwood told the Commission’s public hearing that it primarily referred to the contact with DEP’s Katie Watson throughout the process. He testified that he was under the impression that Parsons Infrastructure was one of a number of potential bidders that had been urged to participate:

Well we had gotten these encouraging phone calls from Katie Watson, who I . . . think felt, at least, that her responsibility was to encourage vendors to bid on this and she had been calling, oh, probably once a week or so.

During a separate executive session appearance, Sherwood elaborated on this point:

. . . Katie Watson, for one, was encouraging all of the bidders to bid on this. And so, she would call us up every now and then and, say, you know, [“A]re you guys still interested and are you still looking at this? We’re moving along. . . .”

* * *

Q. *Do you think she was giving everybody constant encouragement?*

A. *Yes. . . . [S]he was encouraging people to bid, period. She’d call up and say, [“L]ook, this is a big program, there’s bound to be good profit in it for you. You know, I just want to encourage you to bid on this.*

In the course of its investigation, the Commission found no evidence to suggest that Watson acted under official direction in contacting and encouraging vendors to bid, or that her contacts included vendors other than Parsons Infrastructure. Commission staff questioned key personnel employed by other vendors that had expressed an interest in the I/M project. None stated that they had been contacted or encouraged by Watson or any other New Jersey official during the course of the I/M procurement. Watson is no longer a state employee. She joined one of the Parsons family of companies, Parsons Advanced Technologies, in May 1999.

* * *

Between the issuance of the RFP on February 18, 1998 and the formal awarding of the contract some six months later on August 12, there were at least two additional instances in which Parsons Infrastructure's Trenton lobbyist reached out privately to top state officials on his client's behalf.

The first occurred on or about June 23 when Bodman met with DOT Commissioner Haley. The bidding deadline had passed, and Parsons Infrastructure had emerged as the lone bidder. The gist of this encounter was recorded by Sherwood in notes that he took about a meeting with Bodman colleague G. Bruce Jones the same day. Sherwood stated that Haley had told Bodman that "he [Haley] thought they [the state] could issue a contract award before July 27." Sherwood also stated that Haley had characterized the company's bid as "a little pricey" but "well w[ithin] the range." According to Sherwood, Haley also told Bodman that if the state were to "let the bids out again, they didn't believe they would get more bids."

In sworn executive session testimony, Haley said he could not recall meeting with Bodman to discuss these topics but that it was possible he "may have." For his part, Bodman initially denied

that such a meeting occurred, but later he confirmed it. Bodman was questioned in executive session:

Q. Would there be a role [for Public Strategies Impact] in contacting officials after it was on the street, the RFP?

A. No.

Q. How about any time up to the bid award?

A. There was no role during the period of time that the RFP was on the street to contact anyone in the executive branch.

* * *

Q. . . . [W]ho were the key players identified in the administration?

A. Well, again, I'm going to describe it in the context of the reality of what took place. And that is that once the RFP was on the street, we didn't – we had no contact with the executive branch officials. . . . We made no efforts to contact them and certainly never to tell them about this during the time frame that the RFP was on the street.

During the Commission's public hearing, Bodman testified:

. . . I do believe I had a conversation with Haley asking the status of this contract after the bid was in. Turns out it was the sole bid. The reason for that [conversation], I might add, was that Parsons was very concerned about the time frame regarding the contract. They were contractually and financially obligated, once that bid was in, assuming the state accepted it, to perform all of the duties and responsibilities that bid required.

* * *

As the procurement process neared completion in the summer of 1998, another ranking target of lobbying was then-state Senate President Donald T. DiFrancesco. DiFrancesco told the Commission that after the Treasurer's Office had announced the state's intention to award the I/M program contract to Parsons Infrastructure – but before it was formally signed – a telephone call was placed to his office by a lobbyist. DiFrancesco told the Commission he believed it was

Bodman. Bodman told the Commission he could not recall placing this call but said it was possible he did. A day or two earlier, DiFrancesco had come out publicly against the contract award and had requested the scheduling of Senate Oversight Committee hearings. He said the caller asked whether he knew that Tony Sartor would be working on the project, or words to that effect. The reference was to Anthony J. Sartor, a longtime DiFrancesco friend and campaign contributor. At the time, the engineering company in which Sartor was a name partner, Paulus, Sokolowski & Sartor (PS&S), had been retained to do work for a firm, Torcon Inc., selected by Parsons Infrastructure as one of its main subcontractors. DiFrancesco told the Commission that, until that telephone call, he had not been aware of the Sartor firm's role as a "sub to a sub" in the I/M program.

During this investigation, the Commission subpoenaed records relating to a loan made by Sartor to DiFrancesco in 1994-95. Additionally, Sartor, DiFrancesco and representatives of Torcon were interviewed. The Commission found no link between the loan and the retention of PS&S as an I/M program subcontractor by Torcon.

A Vulnerable Process

The timing and nature of these various contacts between representatives of an interested vendor and senior state officials who held positions of decision-making authority raise troubling questions about the integrity of New Jersey's contract procurement process. According to the Treasury Department's Division of Purchase and Property, which administers that process, there should have been no individual interaction on the part of any state official with any vendor until after the contract was awarded, unless the information gathered from or exchanged with that vendor were shared publicly with all other potential bidders. Indeed, as early as October 1995 – in a

directive specifically related to the developing I/M program – Division Director Lana J. Sims notified officials at DMV in writing that such contact was prohibited. The directive stated, in part:

Please be aware that this project is now in the procurement process, and as such, it is more critical than ever to ensure that there is no interaction between State personnel and potential vendors for these services. This applies not only to those who are directly involved with the procurement, but also to [DMV] management and support staff as well. Interaction of this nature, no matter how harmless it may seem, can undermine the equal footing of potential bidders and, ultimately, the entire procurement process. I do not want to see the State miss the implementation date simply because someone damaged the process by speaking with a potential bidder. For the protection of your agency, and the procurement itself, no calls or inquiries of any nature regarding this project are to be handled by [DMV], but must be forwarded to the Purchase Bureau. Thank you for working with us to protect the procurement process. [Emphasis in original]¹²

Sims was among a small parade of procurement officials who told the Commission that their understanding of the rules governing contact with potential vendors is clear and unambiguous: Once specifications are being drafted for an RFP, individual vendor contact should cease. To do otherwise is to risk giving one vendor an unfair advantage over others, or to cast the perception of an unfair advantage, thus undermining the goal of open and competitive bidding and subjecting the process to possible legal challenge. Though never incorporated into law or regulation, this precept has been the basis for standard practice within the procurement bureaucracy for years. To maintain it, the Division of Purchase and Property has even gone to such lengths as barring unauthorized personnel from office areas where procurement documents are prepared and restricting physical access by vendor representatives. David Mortimer, a former Assistant Treasurer who worked on

¹² The complete text of this document begins at page A-10 of the Appendix. Within one week of the Commission's public hearing in July 2001, a follow-up memo containing virtually identical language was issued to various elements of the executive branch bureaucracy by Division of Purchase and Property Director Sims.

various aspect of the I/M program, testified that procurement officials must exercise constant vigilance on this score:

Q. . . . [I]s there a concern about giving a vendor or vendors a leg up over the competition?

A. Absolutely.

Q. What kind of information do vendors try to find out?

A. . . . [I]t runs the whole gamut. . .

Q. Even the date, even knowing the date when it's coming, what benefit could that be to a vendor, particularly on a large procurement like this?

A. Well, knowing when an RFP is going to go out, they can then pre-judge how much time they are likely to have to respond. . . [T]hey would. . . know how much to intensify their efforts to be prepared to respond in as complete a manner to the RFP as possible.

Q. And if they had some idea what was in it, they could perhaps ramp up and get the staff going on the response?

A. That's the risk, yes.

Q. Does that possibly impact on them having a leg up on their competition, if there is a very short return time on the RFP?

A. Yes.

Q. . . . [I]f a state employee or state official was contacted by an interested vendor or a representative of a vendor, what are they supposed to do? What is the procedure or the rules?

A. My understanding is to refer them to the buyer who is in the department – or the Division of Purchase and Property.

John Kennedy, who served as the Division's I/M program procurement buyer – as such, the individual responsible for assisting DMV in preparing the bid documents – told the Commission that he regularly reminded officials at that and other agencies with whom he worked of the rules restricting vendor contact. Kennedy testified:

Q. Are there any limitations upon what you, as a buyer, as well as state employees and state officials can tell any vendors that are interested in a procurement?

A. Of course, yes. . . .[I]t's a level playing field, it's equal footing, and, if there is one thing that you have to protect in the process, it's the integrity of it, and we do everything possible to do that.

Q. Can you discuss anything that's in the specs?

A. Of course not.

Q. And can you discuss or suggest or tell a vendor when the specs are coming out?

A. No.

Q. You are certain of that?

A. I'm positive.

Q. Is it fair to say that you can only tell them what is known to the public?

A. Well, of course. . .

* * *

The Commission found that the three principal state officials who shared information with Parsons Infrastructure representatives during the procurement process – I/M Project Manager Gary Mariano, DOT Commissioner John Haley and DMV Director Richard Kamin – acted without the knowledge or involvement of Treasury Department or Division of Purchase and Property personnel. They did so leaving no record of the contacts that could be found in state documents. Moreover, they employed a set of vendor-contact rules quite different, and far less stringent, than those maintained by the Division. These three officials shared the view that it is proper to engage in one-on-one contacts with a vendor while specifications for an RFP are being written and until the time it is released publicly for all potential bidders to see.

Under questioning, both Mariano and Haley conceded that the contacts they engaged in could have been construed as questionable and inappropriate. Kamin was unapologetic.

Mariano testified that he could recall only sketchy details of the meeting he attended in Haley's stead on February 17, 1998, the day before the RFP was made public. He did recall

informing Parsons Infrastructure executives that the state had opted for a “more realistic time frame with incentives for early completion and less penalties for missing deadlines.” Mariano, however, characterized that statement as “the basis for a general conversation . . . generic in the fact that a more vendor-friendly product [i.e. the RFP] was about to come out and was about to come out soon. We didn’t get into any details of what that meant, but that was the gist of it.”

Q. Now, what is your understanding as to the rules concerning contact that a state employee or a state official should have with an interested vendor on a particular procurement . . . ?

A. It’s a fairly defined process, once the RFP is issued, in that you would have a pre-bid conference, people are either going to attend and ask questions or they may write and submit questions, in which case you’ll review all those at the pre-bid conference. The ones that are submitted in writing you would read openly for people to have a chance – so everyone understood it, and then from that window forward there is generally some time period . . . to submit further question[s], and those questions go out to everybody in the form of an addendum and everyone gets copied in on them from there.

Q. How about during the drafting process or the process where the RFP is being written? Is it your understanding that contact is permitted or it is inappropriate to be meeting with a single vendor one on one?

A. I don’t think there is any – I’m not sure that there is a regulation or a statute that involves that.

Q. That may be the case, but what’s your understanding of the rules? Is it permissible or not permissible? Good idea, bad idea?

A. Probably permissible. It’s probably not a good idea, either.

Q. Why is it probably not a good idea?

A. Depends on what you talk about.

Q. Why would it not be a good idea to meet one on one with a vendor?

A. If you were going to talk specifics about a bid or give somebody a copy of a bid or an outline or something like that, it could create a problem.

Haley, who resides outside New Jersey, did not appear at the Commission’s public hearing. During executive session, however, he testified that it had been his practice as DOT Commissioner

to meet with vendor representatives even if a procurement of interest to them were under way. He said such contacts occurred approximately “a couple of times a month”:

Somebody would bring them in. They would give me a brochure that talked about the firm and their capabilities, whether or not they had an office in New Jersey, what types of work they did, what projects they had done in other places, left me their brochure and sometimes they might ask me if I was – you know, are there projects coming out in this area or are there – or they may mention something. [They might say,] We know from talking to somebody that in, you know, three months you’re going to rebuild the bridge over Route 70, something like that, that kind of thing.

Q. *How would you handle it if they actually wanted to talk about a specific project?*

...

A. *Well, if the project was on the street, out on bid, we wouldn’t talk. Say no, I’m sorry, I can’t talk about that.*

Q. *You mean out on the street, when it’s released publicly? Is that what you mean by out on the street?*

A. *Yes.*

Q. *Okay. Up to that, though, there wouldn’t have been any concern on your part or any prohibition from you having contact with them?*

A. *Generally, as a rule, no*

As an example, Haley cited a meeting with Trenton lobbyist Hazel Gluck prior to the release of the first I/M program RFP in February 1997. At the time, Gluck’s clients included Envirotest Corp., a leading Parsons competitor, although Haley testified that he could not recall which firm she was representing before him. Haley testified that the meeting, which occurred within weeks of his appointment as Transportation Commissioner by Gov. Whitman, was scheduled at Gluck’s request and was held in a conference room at DOT headquarters.¹³

Q. *What was the gist of the visit? . . .*

¹³ Gluck testified in executive session she could not recall but that it was “possible” she met with Haley regarding aspects of the I/M program.

A. As best I can recall what we discussed were the sort of parameters or approach of the project. High-level stuff like what we were trying to do systemwide, whether, you know, DBOM or that kind of thing.

Haley said he could not recall the subsequent meeting – held approximately one year later on February 17, 1998 – at which he was to have been the host of Gluck’s then-competitor, Roger Bodman, and executives of Parsons Infrastructure.¹⁴ He testified that he could not recall excusing himself from that session, telling anyone that he felt his presence would be inappropriate, or sending Mariano in his place.

Similarly, Haley testified that he could not recall any contact with Bodman concerning the I/M program procurement after the release of the RFP, particularly the conversation that occurred on or about June 23, 1998 when, according to Larry Sherwood’s notes, there was discussion of matters related to Parsons’ bid submission and the deadline for awarding the contract. Haley acknowledged, however, that it was possible such a conversation took place, and he conceded that – according to his own rule governing contact with vendors – it would have been ill-advised, given the timing:

Q. . . . [W]ould you have had any concerns conveying any of [that information] to Mr. Bodman?

A. Yeah, I don’t think it would have been appropriate to convey that information to him at that time.

* * *

Like Mariano and Haley, Kamin had difficulty recollecting his contact with Parsons Infrastructure representatives. Specifically, he testified that he could not recall meeting with them in his office at DMV headquarters on December 10, 1997. However, Kamin stated that he would

¹⁴ Gluck’s firm, the GluckShaw Group, merged with Public Strategies Impact LLC on January 1, 2002.

have had no qualms about participating in such a meeting and sharing information relative to the I/M program RFP:

Q. . . . And why is that?

A. . . . [I]t would be in advance of the issuance of an RFP and, depending – as long as the discussions were in a general sense about what was to be included in a Request for Proposal, I think it's an obligation of those in capacities such as mine to gather as much information as we possibly can, so that the – so that that is then given to the people who were preparing the Request for Proposal and – so we can have a successful bid. That was certainly the concern.

Indeed, Kamin testified that during his tenure at DMV, his door was always open to interested vendors, and it was not unusual for him to meet with them on a whole range of agency procurements prior to the actual issuance of RFPs:

Q. . . . [H]ave you, on other occasions, met with vendors in advance of RFPs going out on the street?

A. Yes.

Q. And can you give us any idea how many times? Many times? A few times?

A. Conversation – most of my conversation would tend to be on the telephone, although it doesn't preclude someone from stopping by, if they asked to say hello or to meet with me. Oftentimes I could often meet someone here at the Statehouse. Happenstance. People that – public relations firms or lobbyists, consultants that might have been retained by potential bidders might ask questions, as well.

It is noteworthy that during his appearance at the Commission's public hearing, Kamin made a point of volunteering that he typically placed two personal caveats on such contacts with vendors: that the discussions be general in nature and that they take place no closer than 30 days prior to the issuance of an RFP. This was a departure from earlier executive session testimony when he made no mention of such self-imposed restrictions. When it was pointed out at the hearing that Sherwood's notes of the December 10, 1997 meeting reflected that Kamin told Parsons

executives to expect the RFP during “the first week of January” 1998 – less than 30 days away – Kamin stated:

Well, the reference to the note, I would have said sometime next month. I don't know specifically what was said at that point.

* * *

In the final analysis, the facts are that Kamin, Mariano and Haley did engage in private contacts with Parsons Infrastructure representatives, they did pass along significant intelligence at crucial intervals, and, in doing so, they did violate the standards and practices of the state's centralized procurement apparatus. In summary, the company during these covert contacts received advance information in a range of key areas, including the following:

- When the RFP would be issued
- When the contract would be awarded
- The method by which the contractor would be compensated
- The volume of inspections to be performed
- That the state would be flexible in applying the eventual contract terms
- That there was high-level support for the company-preferred “DBOM” approach
- That the contract would contain more performance incentives and fewer penalties than originally anticipated
- That the company's suggestions were favorably received and would be incorporated into the RFP

Perhaps the best evidence of the inside track that came to dominate this procurement is what the company itself said it had gained, as embodied in its New Jersey strategy memo shortly after the RFP was issued:

We have been tracking this prospect for nearly a year and have worked extensively with state staff. We have had considerable success influencing their decisions. . . We have received constant encouragement behind the scene and are now extremely well positioned.

It is also significant that the individual who was in charge of making the final decision to award the I/M contract – then-state Treasurer James J. DiEleuterio – testified that such contacts “probably would have tainted the procurement process to such a point where it certainly would have become obvious, and adjustments would have had to have been made.” DiEleuterio was questioned in sworn executive session testimony:

Q. . . . [D]id you ever learn whether any vendors . . . [had] one-on-one contact here?

A. No, because frankly, I would have put a stop to it if I had known about it from a procurement process.

* * *

Q. How about if there was any discussion of the contents of the RFP?

A. That would be inappropriate.

Q. No question about it?

A. No.

Q. How about when the RFP was coming out?

A. Specific dates, letting bidders know, no.

Q. Inappropriate?

A. Yeah.

Q. How about whether the terms or issues that the vendors had raised at various meetings . . . were going to be incorporated in the new RFP, . . . if a vendor’s concerns were going to be addressed in the upcoming RFP?

A. Yeah, I don't think that would be appropriate. If you call out and ask a vendor to clarify or amplify a response, you know, I wouldn't consider that inappropriate, but if one of us were to turn around and say, well, you know, you talked about thus and so and, you know, as a result we're changing the construction schedule, just to use an example, yeah, I think that would be inappropriate.

* * *

Q. Had you been aware of these meetings, might it have put your award of the contract to Parsons in jeopardy?

A. Yeah. I think that's a fair statement.

The question of whether Parsons Infrastructure was involved in any way in the process leading up to the issuance of the I/M program specifications actually arose during a Senate Legislative Oversight Committee hearing on July 29, 1998. DeEleuterio, who just days earlier had announced the state's intent to award the contract to the company, was asked at the time:

Q. Were the specifications prepared by your department?

A. It was a combination of Treasury, DOT, DEP, as well as the Federal Highway Administration and the [f]ederal EPA.

Q. Can you say unequivocally that it was done without the assistance or consultation of Parsons?

A. Yes.

Political Campaign Contributions

An extensive review of campaign contributions showed that Parsons Infrastructure, together with its related corporate entities, were generous donors in New Jersey during the years that bracketed the award of the I/M program contract in August 1998. During the four-year period between 1997 and 2000, Parsons-related entities gave \$507,950 to select candidates and political committees in the state, nearly all affiliated with the Republican Party apparatus.

According to internal corporate documents examined by the Commission, the process by which Parsons engaged in political giving in New Jersey during this period involved cross-over participation by an array of executives and entities tied to the parent company. That is to say, donations related to Parsons Infrastructure's activity in the state were not solely considered by, or authorized through, executives of Parsons Infrastructure. Decisions about contributions also drew the involvement of top corporate headquarters personnel as well as executives of other Parsons-related companies, such as Parsons Transportation Co.; Steinman, Boynton, Gronquist and Birdsall Inc.; and Barton-Aschman Inc.

As for the method of disbursement, the donations were distributed in one of two ways: through corporate personnel or via the company's New Jersey-based political advisers. In an example of the former, Larry Sherwood, the firm's I/M program manager in New Jersey, testified that he personally delivered a corporate check for \$1,000 to a fundraising dinner for then-Senate President DiFrancesco. Sherwood further stated that the event was held one day after he, Sherwood, formally delivered Parsons Infrastructure's I/M program bid on June 12, 1998 in response to the state's RFP. Sherwood stated that although he was not normally involved in political fundraising, he was instructed by Parsons Infrastructure President Frank DeMartino in this instance to deliver the check from Parsons' California headquarters. Sherwood testified that he was introduced to DiFrancesco at the dinner by a representative of Public Strategies Impact who, he stated, described him to the Senate leader as "one of the bidders on the RFP program." DiFrancesco told the Commission he could not recall meeting Sherwood but that it was possible he did.

On other occasions, the company relied on its paid consultants/lobbyists in Trenton. Frank Holman was questioned on this issue at the Commission's public hearing:

Q. Have you ever had any involvement in recommending to anyone from Parsons that they make political contributions?

A. Yes.

* * *

Q. In New Jersey?

A. In New Jersey.

Q. When was that?

A. Well, like I said, it was almost continual from the time I worked for them. Every other company that does business in New Jersey makes political contributions. I felt that they shouldn't be any different than any other

Holman added that ultimately, he considered the Parsons Infrastructure contingent to be “a rather cheap bunch” and expressed his opinion that “what they were contributing didn’t amount to a whole lot.”

Parsons lobbyist Roger Bodman, meanwhile, provided assistance in nurturing the company’s political giving. In letters dated June 29 and August 7, 1998 to Parsons Senior Vice President James R. Shappell – corporate signatory of the original contract-lobbying agreement with Public Strategies Impact – Bodman urged the company to participate in various fundraising events scheduled on behalf of key legislators and the Republican State Committee. The letter relating to the state GOP event, known as the Governor’s Gala, bore the August 7 date. That was the day before the state formally signed the I/M contract with Parsons Infrastructure. The invitation yielded a \$5,000 contribution from the company.

During the fall of 1998, amid a backlash of media reports and political criticism raising questions about why the I/M contract had been awarded to Parsons Infrastructure, Bodman met with a Parsons executive to discuss the possibility of a broader, more bipartisan approach to the company’s political giving. The result of this meeting with Andrew Bonds Jr., a Washington,

D.C.-based senior vice president and government relations manager for Parsons Transportation Co. was a three-page “Fundraising Strategy” memorandum dated March 29, 1999. In this memo, which was copied to Holman, Bodman recommended a total of approximately \$20,000 in contributions to Republican and Democratic incumbents in both the State Senate and General Assembly. The document noted that Public Strategies Impact planned to host ten separate events for “key legislators,” and urged Parsons to participate: “You should plan to attend these events,” the memo stated, “since past history has demonstrated these events provide attendees with excellent opportunities to meet and engage legislators.”

In executive session testimony before the Commission, Bodman defended the fundraising efforts as a valid component of the political process and a practice in which he encourages all of his firm’s lobby clients to participate. Bodman also denied any connection between the firm’s campaign-finance strategy and the seeking of public contracts by Parsons:

- Q. With respect to your discussions with Mr. Bonds, did you have any discussions as to the benefit of making these contributions in terms of [Parsons’] overall interest in getting business in New Jersey or anything along that line?*
- A. No, it was not designed to get business in New Jersey. It was designed to participate in the political process.*

EXCESSIVE COSTS

The Commission conducted extensive accounting analyses of New Jersey's privatized I/M program and found that the state's taxpayers have absorbed an array of exorbitant and unreasonable costs growing out of the contract with Parsons Infrastructure. The expenditures, including a multi-million-dollar public relations program, have contributed to an overall cost spiral that is expected to drive the contract's ultimate price tag to approximately \$590 million.

Public Relations

State legislation required that the I/M program be undertaken in conjunction with a comprehensive effort to educate the public about the importance of clean air and how the new emissions inspection program would operate. The legislation also mandated that a minimum of one percent of the total I/M contract cost – approximately \$4 million – be devoted to this purpose. As it turned out, nearly four times that amount – more than \$15 million – was allocated for public relations and information, the bulk funneled through a politically-connected subcontractor that ultimately positioned itself as a publicist engaged not so much in public relations as in corporate damage control for Parsons Infrastructure.

Although New Jersey's executive agencies, including the Department of Transportation and the Division of Motor Vehicles, maintain fully-staffed and multi-functional public information offices, the I/M program RFP was structured such that the informational component of a DBOM-type award would be the responsibility of the outside contractor. As it began to position itself for a bid in 1997, Parsons Infrastructure initially considered partnering with MCI Communications Corp. That plan, however, was shelved in early 1998 after Parsons hired Public Strategies Impact LLC.

At that point, according to Parsons executive Larry Sherwood's meeting notes, a Public Strategies Impact affiliate – DKB & Partners – emerged as leading candidate for the public information subcontract. Among those with an equity stake in the Morristown-based advertising and public relations firm is Roger Bodman, co-owner of Public Strategies Impact and Parsons Infrastructure's primary lobbyist in Trenton. It is noteworthy that during this period, the impending partnership was unknown to DKB's top executives. Indeed, DKB's chief operating officer, John Manos, testified that he did not become aware of the key role his company would play in the I/M program until August 1998, after the state contract with Parsons was signed. Until then, Manos stated, he assumed DKB would function merely as a subcontractor to MCI.

According to the initial terms of the arrangement with Parsons Infrastructure, DKB was to be paid \$13.7 million over the seven-year life of the I/M program contract. Subsequent change orders, however, boosted DKB's billings by an additional \$2.2 million. The final subcontract totaled approximately \$15.7 million. In order to appreciate the relative magnitude of this expenditure, it is noteworthy that less was spent for the actual emissions-testing equipment (\$14.7 million) or for the equipment used in the safety inspections (\$6.5 million) than on the public information component – in a state that already had substantial experience with mandatory emissions and safety inspections on an annual basis.

Most of the public information money, approximately \$9 million, was expended within the first three years, nearly half of it on radio and television advertisements. The ads, featuring a “talking dog” named Clarence, were built around what Manos characterized in testimony as a “very humorous approach” aimed at conveying basic information related to the new system and gaining

public acceptance.¹⁵ He stated that the core strategy was dictated by Parsons through Sherwood:

- Q. New Jersey had a long history of doing motor vehicle inspections and we already had safety inspections and we had emissions testing. . . . What was it that you or whoever saw as being . . . the focal point of what needed to be conveyed to the public?*
- A. The strategy that was outlined to us by Larry was, is that we had to communicate to New Jersey motorists that this was a better system than was in place, there would be no long lines, there would be no unfriendly service, and that it would be a positive experience . . . as compared to the present system that was in place.*

* * *

- Q. Were there any specific pieces of information that you needed to convey to people?*
- A. As I mentioned earlier, no long lines.*
- Q. Okay.*
- A. Friendly and convenient service. All the things that didn't happen when the program first took shape.*

In addition to the advertising component, DKB spent nearly \$340,000 to conduct a series of spot surveys aimed at gauging public opinion relative to the new inspection process. Beginning in April 2000, these surveys also contained questions designed to elicit public opinion regarding the favorability of select politicians, including Gov. Christine Todd Whitman and Senate President Donald T. DiFrancesco.

The Commission's investigation also revealed issues that raise questions about the extent of contracted work actually performed by DKB personnel and about the firm's billing practices in

¹⁵ Two 30-second television commercials, produced at a cost of approximately \$480,000, featured a California-based "talking" dog selected by state officials after a review of tryout videos featuring a number of trained dogs. The spots were filmed in Dallas, Texas, according to testimony, so that money could be saved through use of a non-union production company. Approximately \$1.3 was spent to air these commercials. Meanwhile, \$2.7 million was spent on radio commercials, aired primarily via stations in New York and Philadelphia. Only \$226,000 was spent on New Jersey radio. In one instance, the ads were pulled from a New Jersey station, 101.5-FM, because state officials were dismayed over what they perceived as news coverage critical of the I/M program.

connection with the I/M program. For example, one ranking DMV official testified that he prepared material on state time for dissemination by the firm. Thomas Bednarz, then-Coordinator of Enhanced Inspection for the agency, told the Commission:

The funny thing about the public information, they have this contractor, DKB, that was supposed to be providing all this stuff. Well, basically I wound up writing most of the stuff because they'd call me up, they wanted information on the program. I would write down . . . the whole bit on how the rules acted, [and DKB] would take it back and tweak it. Basically it was the same thing I wrote. I don't know why we hired these guys. They're making all the money and I'm doing all the writing.

Moreover, DKB billed the contract for “advertising expenses,” beyond the cost of producing radio and television commercials, at a rate of \$50,000 per month. In doing so, however, the firm provided no documentation as to how the money was spent or whether any portion of it was used to pay for material and/or activities outside the scope of public information related to the I/M program. Similarly, no detailed records were maintained relative to the actual work performed by DKB personnel. This is significant in light of questions raised about the true purpose of DKB’s public relations function: Was it to inform New Jersey’s motorists or to polish Parsons Infrastructure’s corporate image, and was that magnitude of expenditure necessary at taxpayer expense? Carl Golden, the DKB vice president who acted as chief spokesman as Parsons’ connection to the I/M program evolved in 1998 and 1999, candidly conceded that he was never in doubt as to his mission or his client. Golden was questioned at the Commission’s public hearing:

- Q.** . . . *What was the message you were trying to get out . . . [a]fter the bid was submitted, but before the bid award?*
- A.** *Survival mostly. There was a great deal of political criticism that was directed toward everyone involved in this and my role generally was to respond to media questions, respond to allegations that came to us through the media about the whole process.*

Q. *Who was your client?*

A. *I was responding on behalf of Parsons at that point.*

Q. *Was it clearly Parsons that was your client? Has it always been Parsons that was your client?*

A. *Yes, ma'am.*

Q. *No question about that?*

A. *Not in my mind, no.*

Q. *I just want to make sure we are clear on that, that the State of New Jersey . . . was not the client, it was Parsons.*

A. *No, the State of New Jersey was not the client.*

Q. *. . . [W]as part of your effort . . . related to what, for lack of a better word, I'm going to call damage control?*

A. *A good bit of my time was, yes.*

Questionable Expenditures

Parsons Infrastructure billed the I/M contract for a total of \$36,372 to cover the cost of seminars for participants in the I/M planning process. In one instance, a consultant was paid \$25,135 for a one-day partnering seminar on February 11, 1999, with a one-day follow-up session six months later. The charter for this seminar stated the following:

We the partners commit to work collaboratively to successfully design, build, operate, and maintain this country's best Enhanced Vehicle Inspection & Maintenance Program. We will achieve this through open, honest, respectful communication while resolving issues in a fair and timely manner.

In another instance, a consultant was paid \$11,237 for a two-day motivational seminar held April 17 and 24, 2000.

The firm also billed the contract for expenses related to the planning of a picnic for Parsons Infrastructure employees. The event was held in September 2000 at Morey's Pier in Wildwood,

New Jersey, at a cost \$9,375, which, according to Parsons Infrastructure records, was billed to the I/M contract account.

Administrative Mark-Ups/Fees

In public construction projects, the generally accepted practice when it comes to mark-ups and/or fees for change orders is to address them proactively either in the pre-contract RFP or as a negotiated part of the ultimate signed contract. The goal is to ensure that both parties agree, before work commences, on a method for dealing fairly with necessary but unanticipated changes in the project's scope. In connection with the I/M program, however, the RFP and related contract documents were, at best, vague on this issue, leading to a situation in which the terms of fees to be paid to the vendor in relation to construction and service-related change orders were decided on an *ad hoc* basis.

The Commission examined invoices submitted by Parsons Infrastructure to the state and found that between April and August of 2000, the company appended a 25 percent mark-up in the form of an "administrative fee" on select invoices. Records show the firm initially sought to collect an even higher mark-up – 35 percent per selected invoice – but that rate was disallowed by state procurement officials as excessive. Even at 25 percent, however, such an administrative mark-up substantially exceeds that applied to state projects in general. State guidelines for construction projects, such as those maintained by the Department of Transportation and by the Treasury Department's Division of Property Management and Construction, cap administrative mark-ups at 15 percent or less of selected invoices. The Commission was unable to find any other instance in which mark-ups of the magnitude provided to Parsons Infrastructure were paid to other vendors. The issue was formally addressed in August 2000 in a document known as Contract Amendment

#8, which reduced the mark-ups to 18.5 percent in the area of construction and construction-related change orders and to 15 percent as applied to all services and service-related change orders. In addition to the approximately \$475,000 paid to it in the form of such administrative fees, Parsons Infrastructure requested more than \$8.3 million for construction scope change orders, of which more than \$3.9 million was attributed to overhead costs and profit.

Parsons Infrastructure continues to receive a fixed administrative fee of approximately \$3,000 per month at state expense in connection with services provided by one of its wholly-owned subsidiaries, a company known as Protect Air, which manages a system designed to enable New Jersey motorists to schedule vehicle-inspection appointments. Under this arrangement, Parsons is positioned to collect a total of approximately \$200,000 in fees between July 2000 and the end of the I/M contract in 2005. Protect Air's direct services separately cost the state approximately \$20,000 per month.

The contract also allows Parsons Infrastructure to adjust annually the amount it charges for each inspection based upon changes in the consumer price index. The first such "cost-of-living" increase took effect in August 1999, less than a year after Parsons had taken over the inspection stations and four months before the first enhanced inspection even took place.

I/M Program Costs: State Share

One of the least publicized yet most ironic aspects of New Jersey's experience with an enhanced I/M program is that despite privatization, the state remains responsible for underwriting a host of costly activities that are necessary adjuncts to performance of the actual vehicle inspections. These so-called "back-end" items were not included in the contract with Parsons Infrastructure and consist of audits, training, mobile inspections, licensing and enforcement related to private

inspection facilities, a consumer inquiry system, technical and administrative support, utilities and facility maintenance. The Commission estimates the combined taxpayer cost of these activities at approximately \$92 million over the full span of the I/M program contract, an amount equivalent to approximately \$13 million per year over and above the contract payments to the private vendor.

None of the overall I/M program cost estimates issued publicly heretofore included the back-end components. However, the contract is structured such that the state, for example, must pay all costs associated with various auditing, monitoring and compliance activities required by law. State Department of Transportation records show that the tab for these activities exceeded \$18 million through Fiscal Year 2000. In addition, in many instances, such costs have doubled, particularly in connection with the audit function, which is designed to gauge the accuracy of the enhanced inspections performed by Parsons Infrastructure. According to DOT's own data, the amount budgeted for covert audits jumped from \$700,000 per year under the prior state-run inspection system to nearly \$6 million per year under the privatized enhanced I/M program, while the amount devoted to overt audits nearly doubled from \$1.5 million to \$2.5 million.

The cost borne by the state to underwrite energy and other utility-related consumption at the centralized inspection facilities operated by Parsons Infrastructure also has escalated substantially – from approximately \$300,000 per year in 1997 under the old inspection system to approximately \$1.2 million due to the requirements of the enhanced system.

REFERRALS AND RECOMMENDATIONS

The Commission refers the full record of this investigation to the following agencies of government for whatever action is deemed appropriate:

- Office of the Attorney General of New Jersey
- New Jersey Department of the Treasury, Division of Purchase and Property
- New Jersey Executive Commission on Ethical Standards
- New Jersey Election Law Enforcement Commission
- United States Environmental Protection Agency
- Federal Highway Administration

* * *

Based upon the investigative record, the Commission makes the following recommendations for statutory and regulatory reforms:

1. Proper Execution of Major Initiatives

One overarching lesson to be drawn from the facts of this investigation is that the executive and legislative branches of New Jersey state government must establish a workable mechanism for the effective design, evaluation, management and oversight of major programmatic initiatives. As noted in this report, no meaningful objective effort was undertaken to determine whether privatization of the enhanced emissions inspection program was in the best fiscal interests of the citizens of New Jersey. Moreover, despite

the lack of private-sector expertise for this job, nothing was done to determine whether the chosen strategy presented potential pitfalls of such magnitude as to raise serious question about its long-term advisability. In the end, as the Commission's investigation has demonstrated, the actual cost of a privatized program has proven to be far greater than anyone anticipated. In order to avoid repetition of this fundamental policy blunder, a statute should be adopted to require that any privatization initiative presented to the Legislature be accompanied by an independent evaluation analyzing the economic and implementation consequences of such a proposal as compared to that of a government-run alternative. Further, even under circumstances where privatization is ruled out, the state should be required to undertake a thorough examination of the potential consequences of a proposed initiative before it is undertaken.

2. Recovery for Nonperformance and Review of Contract Expenditures

Given the Commission's finding that a substantial sum of money has been, and continues to be, paid to the vendor in this instance for an emissions test component never performed (See *Nonperformance*, p. 27), the state should take appropriate steps to seek an immediate suspension of such payments and to determine its options for recovering payments made to date in this area. On a broader scale, the state should conduct a thorough review of all expenditures associated with the I/M contract to ensure that the taxpayers have gotten what was paid for on their behalf.

3. Integrity of Contract Procurements

In order to shield New Jersey's overall contract procurement process from manipulation and influence-peddling of the sort revealed by this investigation, the state should establish and maintain a practical system to ensure a level playing field and full disclosure for all potential vendors. Legislation and/or regulations should be adopted that explicitly define appropriate and inappropriate contact between state officials and representatives of current and/or prospective vendors, with appropriate sanctions in the event of violations. Public officials at all levels should be alerted to, and regularly reminded of, the definitions and consequences of inappropriate contact with vendors and others who stand to profit from contract procurements.

In addition, it should be required that, once a matter has entered the procurement process, any contact between state employees and representatives of active or prospective state contract vendors be memorialized in writing so that a public record of all such contacts can be maintained.

4. Conflicts of Interest

New Jersey's conflict-of-interest statute should be amended to require that state officials who have contact with or assist a private vendor relative to, but outside the normal scope of, the authorized procurement process be barred from taking employment with that vendor or related companies for at least two years following termination of state service.

5. Procurement Oversight

Given the ever-increasing role of applied high technology in the conduct of the public's business, the entire process by which state contracts and contract proposals are prepared and managed should be subjected to greater accountability and oversight at all stages, particularly in instances where unusually large sums of taxpayer money are at stake. In large contracts, and wherever practical – particularly in matters involving complex systems as was the case in the enhanced emissions inspection program – the state should utilize the advice of expert technical consultants in the preparation of requests for proposals, in the drafting of contract bid specifications and in the evaluation of bids.

6. Clarity/Technical Accuracy of Contract Specifications and Provisions

The state Department of the Treasury, through its Division of Purchase and Property, should undertake a thorough review of policies and procedures governing the preparation of procurement documents, including requests for proposals, to ensure a proper foundation for competitive bidding and the receipt of quality goods and services. At a minimum, in advance of soliciting bids, every effort should be made to gather accurate and comprehensive technical data for the drawing of specifications. Moreover, all appropriate contract documents should spell out, in unambiguous terms, the responsibilities and obligations of both the state and the contracting vendor with regard to services to be rendered and payment for services completed. Also, a formal check-list should be prepared to ensure that all state contracts clearly specify rules governing a full

range of standard provisions, including but not limited to, such matters as quality control, compensation for change orders and the granting of waivers.

Failure to generate more than a single bid for a given procurement should trigger an immediate review of the process, with independent technical input, and deadlines should be evaluated throughout the process to determine whether changing circumstances have rendered them unrealistic.

7. Control of Subcontractors

Much of the work specified in the enhanced emissions contract awarded by New Jersey to Parsons Infrastructure and Technology Group Inc. actually was performed by subcontractors hired by Parsons beyond the scope of the state's control, thus exposing taxpayers to substantial liability. In order to reduce the risk of such exposure, the state should be given explicit statutory authority to review, and to approve or reject, contracts with subcontractors and to ensure that the terms and conditions of such contracts meet the RFP and are fulfilled. The review process should include an assessment of the suitability and qualifications of the prospective subcontractors.

8. Regulation of Contract Lobbying

Statutes governing the practice of lobbying in New Jersey should be amended to require registration and disclosure of all such activity, including the identities of clients and the amounts of fees, as it relates expressly to the state procurement process – so-called “contract lobbying.” Under current law, individuals and entities must register as

lobbyists and disclose their clients only if their activities relate directly to new or pending legislation and/or regulations or to the passing of benefits to public officials.

Further, New Jersey's campaign finance laws should be amended to require regular public disclosure of political fundraising activities by registered lobbyists.

9. Disclosure of Campaign Contributions by Vendors

New Jersey's campaign finance laws should be amended to require that firms and individuals engaged in, or seeking, business with the state pursuant to any contract involving potential billings of more than \$50,000, report summary details of such work to the Election Law Enforcement Commission at the time of any political contribution of \$1,000 or more by the firm or individual. This reporting obligation should continue for at least one year following the completion of the state work. Contract documents and requests for proposals should include formal language notifying potential vendors of these obligations. The Commission is cognizant of pending legislation that would impose an outright ban on campaign contributions by state contractors, and is supportive of the intent – i.e. to protect the integrity of the procurement process. However, the Commission believes that transparency is the key issue and that more extensive disclosure would provide the state with a fair and effective means for achieving the wider goal.

10. Service of Process

Legislation should be enacted to require that all entities doing business in New Jersey relative to any public project, including consultants, contractors and

subcontractors, complete, maintain and keep current the state Division of Revenue's "Public Records Filing For New Business Entity" form that includes the designation of a registered agent and registered office within this state for the service of process (subpoena) for any legal action or inquiry, civil, criminal or otherwise. Moreover, proof of such filings should be required by the public entity prior to the award of any contract.

This investigation was conducted by Commission Counsel Charlotte K. Gaal, Executive Assistant Lee C. Seglem, Senior Special Agent Marilyn D. Cichowksi, former Senior Special Agent Patricia M. England, Special Agent James P. Conroy, former Special Agent Harry J. Curley, Chief Investigative Accountant Joseph A. Becht, Investigative Accountants Amy Campbell and Kenneth Cooley, Investigative Analyst Debra A. Sowney and former Intelligence Analyst Julie Batchler, with assistance from Systems Analyst Keith Bodder and clerical staffers Linda DiMaggio and Nancy Pardini.