



October 12, 2012

Washington State Legislative Oversight Committee
Congresswoman Jaime Herrera Beutler
Concerned Citizens

Dear Elected Officials and Fellow Citizens:

Re: *Columbia River Crossing – Contracts and Task Order Analysis*

Thank you for the opportunity to communicate to you and your colleagues the results of my forensic accounting analysis of the Columbia River Crossing (CRC) project.

The CRC project is a bi-state highway and transit project along the Interstate 5 corridor between Oregon and Washington that proposes to rebuild interchanges in both states, build a new bridge across the Columbia River, and extend light rail transit from Portland, Oregon into Vancouver, Washington.

While our work is funded by a private citizen, the results of these findings are not a private matter. Our client wishes for any findings to be shared with the citizens of Washington and Oregon, their elected officials, and other interested parties who need the information to make informed decisions.

Executive Summary

Acuity Group was hired in April 2011 to analyze documents and compile data in an attempt to provide clarity related to the expenditures of the Columbia River Crossing project. With adequate accounting reports, this task should have been relatively simple; but, simple accounting reports documenting expenditures (by vendor or by amount) have remained unavailable from the CRC project office. Instead, over the course of more than 18 months, Acuity Group has analyzed thousands of documents, attended dozens of meetings, and compiled data provided to us by the CRC project office and Washington State Department of Transportation (WSDOT) in an attempt to answer the following questions:

- How much money has been spent on the CRC project?
- What companies have been paid?

In the 9 months since we issued our last report, additional questionable accounting and contracting irregularities have been uncovered on the CRC project office's contract with their primary contractor, David Evans and Associates, Inc. (David Evans).

We first question accounting practices that do not provide for basic cost reporting on a project of this size and scope. According to the WSDOT Consultant Services Manual, contracts should be administered in accordance with Federal Regulation 49 CFR 18. Subsection 20 of that regulation (49 CFR 18.20(a)(1)) requires that *“Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors must be sufficient to permit preparation of reports as required....and, permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.”*

We previously questioned contracting practices that allowed for consideration of only a single vendor for the \$50 million original contract for the CRC project. Additional research related to Washington State contract and procurement standards has uncovered potential violations of the WSDOT Consultant Services Manual, a manual which identifies specific state and federal regulations which must be followed as well. Specifically, we question whether:

- The CRC project office sufficiently advertised for and made attempts to find sufficient competition from a wide area for the CRC project contract prior to awarding the contract to David Evans and Associates.
- The CRC project office sufficiently documented its potential “Organizational Conflict of Interest” with David Evans and Associates to ensure that the firm did not have an unfair competitive advantage over other qualified firms as a result of performing “pre-CRC” studies on the I-5 corridor.
- Increasing costs on the David Evans and Associates contract could be attributable to their own design errors (some of which have been documented publicly). We also question whether the CRC project office has quantified the financial impacts of these potential errors as called for in the WSDOT Consultant Services Manual. We further question whether any costs attributable to errors by David Evans and Associates, or their subcontractors, has been reimbursed to the State of Washington.

We also question budget and oversight practices that allow for a \$50 million “Maximum Amount Payable” contract to inflate to **\$131,220,000** with little more than a series of 3 page standard language documents.

Lastly, we question the necessity of several multimillion dollar Task Orders, which appear to budget for duplicative work. And we further question the 103 Task Order Amendments (i.e. change orders) that have been approved by the CRC project office and the fact that we have not seen any Task Order Amendments that have been denied.

In summary, we report to you that the CRC project is still in the design phase and that:

1. Total Project Expenditures through September 2012 are **\$153,835,863**
 - The CRC project office has averaged monthly spending of \$2.3 million per month between January and September 2012.

2. CRC Project office's main contractor, David Evans and Associates:
 - Has been paid **\$104,252,228 (67.77% of total expenditures to date)**
 - Was the only contractor to submit a Statement of Qualifications on the CRC project.
 - Was also the contractor who performed numerous "pre-CRC" studies on the I-5 corridor between 1999 and 2004 (a potential conflict of interest).
3. Through June 2012, David Evans and Associates has been awarded \$131.2 million on a "Maximum Amount Payable" contract of \$50 million.
4. The initial budgeted costs (i.e. Task Orders) for David Evans and Associates to "advance the Project through the Record of Decision" (i.e. original scope of work) were \$61.7 million.
 - Task Order Amendments increased the original scope of work by \$13 million to **\$74.7 million**.
5. Additional Task Orders and Amendments issued after the original scope of work added **\$51.1 million** in additional cost.
 - These additional Task Orders contain wording duplicative of work already budgeted for.
6. Total Task Orders, with Amendments, on the David Evans and Associates Contract are currently valued at **\$125.8 million**.
 - This represents \$75.8 million in cost overruns over the original "Maximum Amount Payable" \$50 million contract.
 - Total Task Orders and Amendments on the David Evans and Associates contract, valued at \$125.8 million, do not appear to reconcile to the David Evans and Associates master contract, currently valued at \$131.2 million.
7. Task Orders potentially attributable to design errors have been noted. We question why the CRC project office is apparently expending more funds to rectify these issues rather than following procedures to potentially seek recourse from David Evans and Associates for these errors.
 - We further question Task Orders costing millions of dollars for "meetings" and "strategy sessions", for duplicative work, and which do not require David Evans and Associates to provide the CRC project office with any deliverables.

It is my professional opinion that the magnitude of these accounting and contracting irregularities is significant enough to warrant investigation by an agency of appropriate jurisdiction. Whether there is sufficiency to elevate these irregularities to a definition of fraud is not the subject of this report. Such definition could not be ascribed

without further scrutiny and investigation. That responsibility from here forward falls to you – the elected officials who run these states – in your representation of your constituents, the citizens of Washington and Oregon.

Please note that these findings are limited in scope to the analysis of a single contract of the CRC project; there may be other instances or events, not referenced herein, which may also violate applicable procurement codes or statutes. These findings should not be considered a complete collection of suspect transactions and will be amended as additional forensic accounting is completed and/or additional documents are provided.

Findings and Observations

1. Total Project Costs

Since April of 2011, Acuity Group has attempted to account for the expenditures of the Columbia River Crossing (CRC) project. According to CRC and WSDOT officials, these agencies' accounting systems will not print accounting-type reports that summarize CRC expenditures. Thus, through a series of public records requests, we have received and compiled 29,508 lines of accounting software "data dumps" from the CRC project office and WSDOT that relate to the project's expenditures to date.

In our previous report, dated February 19, 2012, we note that the CRC project office had spent \$132,993,191 between July 2004 and December 2011 (**Exhibit A**). This equates to an average \$1,477,702 monthly expenditure rate over the course of the first 90 months of the project.

The most recent data provided by the CRC project office (**Exhibit B**) indicates that through September 2012, the project office has spent **\$153,835,863**.

Based on this information, the CRC project office spent \$20,842,672 in the 9 month period between January and September 2012; indicating that the project office is currently averaging monthly expenditures of \$2,315,852 for a project that is still in the design phase.

We are concerned that the WSDOT and CRC project office software systems are unable to print reports that provide costs to date on the CRC project. We have extensive experience auditing and consulting with government agencies. Most accounting software systems used by these agencies have the ability to run reports that would provide data similar to what we have provided in **Exhibits A and B**.

Further, during our analysis of the WSDOT Consultant Services Manual¹ we noted that WSDOT describes several state and federal regulations that guide the administration of consultant contracts. Appendix B, Page 7 (**Exhibit C**) indicates that Regulation 49 CFR 18 governs the administration of federally funded projects. Subsection 20(a)(1) of this regulation requires that "*Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors must be sufficient to permit preparation of reports as required....and,*

¹ This is a 282 page report that is too voluminous to include as an exhibit. Pertinent sections/references will be included as exhibits in this report as necessary.

permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes” (Exhibit D).

Based on our analysis of Task Orders, there are several that indicate “Federal Aid” dollars are being expended on the David Evans and Associates Contract. As such, it would be reasonable to suggest that 49 CFR 18 is applicable.

It is important to note that whether or not federal regulations apply to this contract, we would still question why the CRC project office or WSDOT does not have accounting software that can provide for regular reporting on CRC project costs to date.

2. Contracting Process

Of the \$153,835,863 in total project expenditures through September 2012, **\$104,252,228 (67.77%)** has been paid to a single contractor: David Evans and Associates (**Exhibit B**)². As a result of David Evans and Associates receiving two-thirds of project expenditures to date, we have focused much of our analysis on understanding this contract.

We have learned (and previously reported) that David Evans and Associates is the engineering firm that is serving as the CRC’s “general contractor”. This firm is tasked with providing the project office with preliminary engineering and design work as well as preparation of federally mandated environmental impact statements (EIS).

On May 16, 2005, a Professional Services Consultant Agreement (#Y9245) between the CRC project office and David Evans was executed with a “Maximum Amount Payable” of **\$50 million (Exhibit E)**.

We have questions regarding the bid and contracting processes surrounding the David Evans and Associates contract for the CRC project. Attached at **Exhibit F** is a list of common red flags of contract and procurement fraud and how evidence in our possession brings into question some of the CRC project office’s contracting procedures. Following is a more detailed analysis of how the relationship between David Evans and Associates and WSDOT brings into question whether a competitive bid process took place and whether a conflict of interest existed at the time of contract execution.

Potential Noncompetitive Negotiations

As previously reported, there appears to be a lack of a truly competitive bid process on the CRC project. In February 2005, Washington State Department of Transportation (WSDOT) published a “Call for Consultants”, asking for proposals to provide environmental and design services and deliver the environmental phase for the CRC Project (**Exhibit G**). Consultants were required to submit “Statements of Qualifications (SOQ)”. Based on

² We understand that there are subcontractors working for David Evans (however, payments on this contract are made directly to David Evans & Associates).

conversations with project office staff, we understand that only a single potential contractor, David Evans and Associates submitted a SOQ.

According to the WSDOT Consultant Services Manual, there are several federal regulations that direct the selection procedures for contracts for services. The first, the Brooks Act (United States Code (U.S.C.) Title 40, Chapter 11, Section 1101-1104) indicates that:

“For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.” (Exhibit H, Page 2)

The second set of regulations that direct the selection procedures for contractors is explained in the Consultant Services Manual, Appendix O (**Exhibit I**). The manual cites federal regulation 23 CFR 172.5(3):

“Methods of procurement. The regulation states that noncompetitive negotiation may be used to procure engineering and design-related services on federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation, equivalent state qualifications-based procedures, or small purchase procedures. Contracting agencies shall submit justification and receive approval from the Federal Highway Administration (FHWA) before using this form of contracting. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- *The service is available from only a single source.*
- *There is an emergency that will not permit the time necessary to conduct competitive negotiations.*
- *After solicitation of a number of sources, competition is determined to be inadequate.*

The consultant services manual goes on to say (**Exhibit I, page 3**):

“For the majority of WSDOT A&E [Architectural and Engineering] work, there are a number of legitimate firms capable and willing to do whatever work the department needs. Usually, the issue is finding the most qualified firm at a fair and reasonable cost. WSDOT has a legally prescribed process for making that determination through open competition. The federal laws and state laws referenced above are clear regarding this issue.”

In the event that a sole source is deemed the only adequate firm, there is a series of procedures required by the WSDOT Consultant Services Manual (**Exhibit I, Page 4**):

“For certain types of work and at certain times within economic cycles, there may be only one or two firms that respond to solicitations. Under these situations, this item becomes self-explanatory. If a Request for

*Qualifications (RFQ) has been appropriately advertized [sic], and attempts have been made to find sufficient competition without success, the CSO manager may determine and **make a public announcement that inadequate competition exists**. An emergency is then presumed to exist, and a firm that the contracting authority determines sufficiently meets WSDOT's requirements and has sufficient qualifications to do the work may be sourced without further solicitations. **Provided the work has been sufficiently advertised** to meet the usual expectations, the **attempt to solicit interest from a wide area of availability constitutes open competition**, or at least satisfies the requirements of publicly providing the opportunity. [emphasis added]*

At this point in time, it is unclear whether WSDOT and the CRC project office sufficiently advertised the call for consultants, whether they attempted to solicit interest from a wide area of competition, or whether a public announcement was made that inadequate competition existed. We suggest that an agency of appropriate jurisdiction further investigate this issue and find contemporaneous documents dating back to February 2005 to ensure these steps were followed.

Potential Conflict of Interest

It is important to note that David Evans and Associates conducted five separate studies for the I-5 corridor between 2000 and 2005.

- January 27, 2000: Portland/Vancouver I-5 Trade Corridor Freight Feasibility and Needs Assessment
- March 20, 2001: Portland/Vancouver I-5 Transportation and Trade Partnership Draft Corridor Improvement Option Packages
- June 2002: Portland/Vancouver I-5 Transportation and Trade Partnership Final Strategic Plan
- April 2003: Regional Economic effects of the I-5 Corridor/Columbia River Crossing Transportation Choke Points
- 2004/2005: I-5 Columbia River Crossing Partnership: Traffic and Tolling Analysis

As a result of this work, David Evans and Associates would have had intimate knowledge of the proposed CRC project. Further, it is likely that the WSDOT Consultant Services Manual, Appendix P (**Exhibit J**), which provides guidance when a potential conflict of interest exists, would have applied.

According to the WSDOT Consultant Services Manual:

"An organizational conflict of interest (OCOI) may occur when an individual or firm:

- *Is unable to render impartial assistance or advice*
- *Is unable to be objective in the performance of the contract work*
- *Has an unfair competitive advantage*
- *Displays the **appearance** of potential for any of the above conditions [emphasis added]*

49 CFR 18.36(b)(3) addresses organization conflicts of interest where a contractor's performance of a contract gives the contractor access to information that is not readily available to the public and that may give the contractor a competitive advantage."

The Consultant Services Manual is very specific as to who or what organization is responsible for managing potential, actual or perceived conflicts. The manual indicates:

"The ultimate responsibility for avoiding, managing, neutralizing or mitigating organizational conflicts of interest rests with the individual consultant or consulting firm that is potentially conflicted."

The manual is also clear that WSDOT employees have responsibility (**Exhibit J, page 2**):

"WSDOT employees have the responsibility to identify and manage potential, actual, or perceived OCOs as the employees become aware of them. The goals in managing potential conflicts of interest are to prevent the existence of conflicting roles that might bias a contractor's judgment and to prevent unfair competitive advantage."

The manual provides clear guidance as to making the determination of a conflict of interest (including applicable state and federal regulations), the procedures to address conflicts of interest, and certifications that must be approved if a conflict of interest has been identified. It is important to note that a conflict of interest, as identified in the Consultant Services Manual, can be real or perceived.

We recommend that an agency of appropriate jurisdiction investigate whether the CRC project office and David Evans and Associates adhered to conflict of interest procedures as set forth in the Consultant Services Manual and to verify that pertinent federal and state regulations were complied with. We further recommend that an agency of appropriate jurisdiction ensure that all proper approvals and certifications regarding this potential conflict of interest are in place with regards to the David Evans and Associates contract.

3. David Evans and Associates \$50 Million Contract currently valued at \$131.2 Million

Through a series of "Supplemental Agreements," (each totaling 3 pages or less³), the David Evans and Associates' "Maximum Amount Payable" contract has been increased to **\$131,220,000**. This represents an increase of \$81,220,000 (162%) more than the originally executed price of \$50 million.

Most supplements provided to us had no additional documentation attached to them which would explain the reasoning behind the proposed contract increases. Based on the Consultant Services Manual Appendix V (**Exhibit K**), it appears that a "proper request memo" must accompany each supplement request and be approved by the WSDOT Consultant Services Office.

One supplement in particular, dated June 2008 (**Exhibit L**), increased the contract from \$50 million to \$95 million (providing \$45 million in additional funds). While a memo was attached to this supplement, the only explanation

³ Supplemental Agreements can be found at **Exhibits L through P**

as to the reason for the 90% one-time contract increase indicates that the scope of work was not changing, but that additional funding for the same work was needed:

“Services were included [in original contract], funding wasn’t”. **(Exhibit L, Page 5)**

It is important to note that the original contract contains language that it was a “Maximum Amount Payable” contract and contains no language to indicate that funding would be necessary in the future to cover the proposed Task Orders.

4. Cost Overruns on Original Scope of Work

Task Order Background

The David Evans and Associates contract provides for “Task Orders” to guide the parties through the specific scope of work to be performed. In general, the Task Orders are lettered (e.g. AA, AB, AC, etc.), are hundreds of pages in length, and describe specific work to be performed (e.g. analysis, studies, management duties, etc.) and expected deliverables (e.g. reports, meeting attendance requirements, etc.) required by the David Evans and Associates team. The Task Orders flow in numerical order by subtask (e.g. Task AF - ‘7.6.4 Transit Station Design’). The Task Orders are also accompanied by numerous pages of budgets, each matching the specific work/deliverables by Task and subtask number so that one could easily take a budget and find the resulting tasks and subtasks in the Task Order document and correlate the specific proposed work to specific proposed budgets.

When scope of work, costs, or dates change; Task Order Amendments are created. The Amendments follow the same Task/Subtask numbering system and are often accompanied by a Task/Subtask budget document noting changes in amounts.

It does not appear that the Task Orders and Amendments that are approved at any given time directly correlate to the funding currently approved on the overall contract. For example, in June 2008, at the time that the \$50 million David Evans contract was increased to \$95 million, only \$44.2 million in Task Orders and Amendments (AA through AE) had been approved.⁴

While we have analyzed each of these task orders, budgets, and amendments; the number of documents would be too voluminous to include as attachments to this report. Instead, a summary of Task Orders, including descriptions (i.e. scope of work), amounts, and time budgets for each, has been provided at **Exhibit Q**. The detailed description of each original Task Order and all individual Amendments is provided at **Exhibit R**.

⁴ Approvals on Task Orders are generally made by a representative of the Contractor, a WSDOT representative, and a WSDOT agreement manager. The names of those approving the Task Orders and Amendments are not consistent.

Original Scope of Work

The original scope of work for the CRC project was executed through Task Orders AA through AF.

- **Task Orders AA through AE -**
 - Work identified under these Tasks:
 - Jump Start the CRC Project
 - Refine Purpose & Need and Confirm Alternatives
 - **Publish DEIS** and **Prepare New Starts Funding** Applications
 - Provide scoping for next phase of work
 - Task Orders AA through AE were issued with cost estimates of \$40,112,35
 - Task Order Amendments totaled \$4,183,540 (a 10% increase);
 - Task Orders AA through AE ended up budgeted for **\$44,295,898 (Exhibit Q)**
- **Task Order AF –**
 - Work identified under this Task specifies that by December 2009 David Evans and Associates is going to:

“Obtain the Locally Preferred Alternative, Publish the Final Environmental Impact Statement, Obtain Full Funding Grant from FTA, and Obtain a Record of Decision.” [emphasis added]

Note: The Record of Decision (ROD) issued by the Federal Highway Administration (FHWA) signals formal federal approval of an Environmental Impact Statement (EIS) concerning a proposed highway project. The ROD authorizes the respective state transportation agency to proceed with design, land acquisition, and construction based on the availability of funds⁵. In essence, the ROD signals the end of the environmental stage of the project.
 - Task Order AF was originally executed for \$21,585,274 (**Exhibit S**)
 - Task Order Amendments on AF totaled \$8,851,569 (a 40% increase)
 - Task Order AF was delayed by 17 months, to May 2011
 - Task Order AF ended up budgeted for **\$30,436,843 (Exhibit Q)**.

⁵ Definition from FHWA

Cost Overruns – Original Scope

In total, \$13,035,109 in Task Order Amendments were added to Tasks AA through AF (which originally had been budgeted to cost \$61,697,632), bringing the total of these 6 tasks to **\$74,732,741**.

By all accounts, the environmental phase of this project should have been complete and the Record of Decision issued by the end of Task Order AF. At this point in time, the \$74,732,741 budget represented a \$24,732,741 cost overrun (49.4%) over the “Maximum Amount Payable” contract of \$50 million.

It is important to note that the CRC project office had not published an FEIS or received a Record of Decision by May 2011, as budgeted and contracted for.

Task Orders AA through AF are summarized and totaled at **Exhibit Q, and Table 1 below**:

Table 1: Summary of Task Orders AA through AF

TASK ORDER #	DESCRIPTION ⁶	ORIGINAL AMOUNT	AMENDMENT TOTALS	ENDING VALUES
AA	Provide Scoping for CRC	\$250,000	\$50,000	\$300,000
AB	Jump Start CRC Project	\$100,000	\$3,510,340	\$3,610,340
AC	Refine Purpose & Need, Confirm Alternatives for LPA	\$16,008,709	\$343,145	\$16,351,854
AD	Publish DEIS, Prepare New Starts Applications, Prepare Draft and Final LPA	\$23,678,649	\$280,055	\$23,958,704
AE	Provide Scoping for Next Phase of Work	\$75,000	\$0	\$75,000
AF	Obtain LPA, Publish FEIS, Obtain FFGA from FTA, Obtain Record of Decision	\$21,585,274	\$8,851,569	\$30,436,843
TOTALS – TASK ORDERS AA - AF		\$61,697,632	\$13,035,109	\$74,732,741

5. Potentially Duplicative Work and Additional Cost Overruns

In May 2010, the CRC project office approved Task Order AH for \$15,791,944 (**Exhibit T**). Page 2 of this Task Order appears to approve work duplicative of work already approved within Task Orders AA through AF.

Task Order AH states that the work under this task will “*advance the CRC project through the DEIS and begin the FEIS*”. [emphasis added]

Please note that Task Order AF had previously promised to “*publish the FEIS, obtain the full funding grant agreement and obtain a Record of Decision*.” [emphasis added]

⁶ Descriptions as per original documents

Through May 2012, the CRC project office has executed 39 Task Order Amendments (i.e. change orders) on AH, totaling \$21,288,178. This brings the current budget on this single Task Order to **\$37,080,122 (an increase of 134.8%)**.

In addition to AH, the CRC project office has issued an additional 14 Task Orders (AG and AI through AU). The combined total of these additional Task Orders (with Amendments) is **\$14,035,749**.

Task Orders AG through AU are summarized and totaled at **Exhibit Q, and Table 2 below:**

Table 2: Summary of Task Orders AG through AT (Executed after Original Scope of Work)

TASK ORDER #	DESCRIPTION⁷	ORIGINAL AMOUNT	AMENDMENT TOTALS	ENDING VALUES
AG	Scoping for SR 500 Interchange	\$100,000	\$0	\$100,000
AH	<i>Advance the CRC Project through the DEIS and begin the FEIS and biological assessment activities</i>	\$15,791,944	\$21,288,178	\$37,080,122
AI	Coordinating, reviewing and presenting information to support the IRP	\$450,600	\$161,838	\$612,438
AJ	Development of statements of work for future contract packages	\$150,000	\$268,770	\$418,770
AK	Additional support of implementing a panel of experts to review the constructability of the CRC	\$322,500	\$806,494	\$1,128,994
AL	Provide surveying services, mapping of existing BNSF & other facilities, parcel descriptions and Record of Survey	\$133,000	\$0	\$133,000
AM	Provide support for the drilled shaft and driven pile test program.	\$316,534	\$152,321	\$468,855
AN	Provide for off-site natural resource mitigation for the OR side of project	\$110,713	\$0	\$110,713
AO	Investigate, prepare & analyze a conceptual design to achieve the highest vertical clearance possible.	\$280,399	\$29,925	\$310,324
AP	Provide a Project Controls Task Lead for the project & develop a plan to implement updated project controls software systems	\$119,284	\$0	\$119,284
AQ	Ongoing meeting attendance. Ongoing management and administration of bridge & geotechnical for 4 months. Develop new structural design criteria, update conceptual construction schedule	\$259,535	\$0	\$259,535

⁷ Descriptions as per original documents

TASK ORDER #	DESCRIPTION ⁸	ORIGINAL AMOUNT	AMENDMENT TOTALS	ENDING VALUES
AR	Early Transit work to resolve key project issues identified through the 30% engineering phase and to advance toward the Full Funding Grant Agreement	\$3,727,068	\$168,765	\$3,895,833
AS	Continue with federal, state and local permitting for the initial package of the CRC Project	\$1,460,971	\$0	\$1,460,971
AT	Strategize and develop a clear path for obtaining a Section 9 Coast Guard Bridge Permit	\$264,424	\$173,941	\$438,365
AU	<i>Unknown as of date of report; Provided with payment documents showing budgeted Task Order only.</i>	\$4,578,666	\$0	\$4,578,666
TOTALS – TASK ORDERS AG – AU		\$28,065,639	\$23,050,232	\$51,115,871
TOTAL – ALL TASK ORDERS		\$89,763,271	\$36,085,341	\$125,848,612

6. Total Task Orders Valued at \$125,848,612

To Summarize the David Evans & Associates, contract:

- Task Orders AA through AF (**Table 1**) were supposed to bring the CRC Project through the Record of Decision by December 2009 at a cost of \$61,697,632.
 - With Task Order Amendments, that cost increased to **\$74,732,741**
 - With Task Order Amendments, the revised end date was delayed to May 2011
 - This represented \$24,732,741 million in cost overruns over the “Maximum Amount Payable” \$50 million contract
- Task Order AH (**Table 2**) appears to advance the project through significant steps **already identified and budgeted for** in Task Order AF (e.g. finish the DEIS and begin the FEIS) for an additional cost of \$15,791,944.
 - With Task Order Amendments, AH has increased to **\$37,080,122**
 - With Task Order Amendments, the revised end date is now projected to be December 2012
- Task Orders AG and AI through AU (**Table 2**) total **\$14,035,749** and add on additional scopes of work for supporting independent expert panels, strategizing for a United States Coast Guard Permit and also appear to include duplicative work (e.g. Task Order AR, which has similar wording to Task Order AF).

⁸ Descriptions as per original documents

- In total, Task Orders executed under the David Evans and Associates contract are currently valued at **\$125,848,612**.
 - **This represents a total of \$75,848,612 (152%)** in cost overruns over the original “Maximum Amount Payable” \$50 million master contract.
 - And, represents over \$51,115,871 in Task Orders issued after Task Order AF (which promised to bring the project through the Record of Decision).
 - This indicates that the master contract, currently valued at \$131,220,000 million, has over \$5 million in available funding leftover, without corresponding Task Orders.

7. Procedures for Consultant Design Errors and Omissions

Based on our analysis of the WSDOT Consultant Services Manual, we found that the WSDOT has potential recourse against a consultant when it is discovered that errors or omissions are discovered.

We are aware of several publicly acknowledged design flaws and errors that have been reported on during the course of the CRC project. The first was the findings of an independent expert review panel, that issued a July 2010 report to the Governors of Oregon and Washington⁹, indicating that: “...*the open-web box girder [design] has technical, cost and constructability risks, rendering it an impractical and costly alternative.*”

We are additionally aware of concerns over the CRC's current proposed bridge height, which at 95 feet is not in compliance with United States Coast Guard standards. We are aware the CRC project office is currently working to mitigate the impact of this bridge height to river users and, as recently as the October 9, 2012 Washington State Legislative Oversight committee meeting, has suggested alternative bridge heights.

In analyzing Appendix E of the WSDOT Consultant Services Manual (**Exhibit U**), it appears that costs associated with design flaws (i.e. errors or omissions) on the part of the contractor can be potentially recouped by the WSDOT:

“When an error or omission is discovered prior to or during construction, the first course of action is to allow the consultant to correct the error or omission. If that is not an option, then efforts must be made to correct the problem and recover financial damages to the state.

The financial impacts to the state may include, but are not limited to: the costs of redesign...delay costs to the contractor...loss of participating funding...”

Based on our analysis of the details of several Task Orders and Task Order Amendments, we noted that several new Task Orders and Task Order Amendments were apparently specific to these above-mentioned potential design flaws. As a result, it appears that financial impacts on the CRC project budget have already been quantified.

⁹ This 317 page report can be provided upon request

We question why the CRC project office paid additional funds to David Evans and Associates instead of ensuring that David Evans and Associates corrected the errors and/or repaid the state for the time and cost for the original work that was deemed unacceptable. We recommend that the reasons for these design errors be identified and that any costs of these errors attributable to David Evans and Associates be quantified and repaid to the State of Washington.

The following are Task Orders and Amendments we discovered that pertain to known design issues. We question the language in some of these Task Order Amendments which use language to describe work previously budgeted for in other Task Orders, budget for costs that appear to be inconsistent to expected deliverables, and which describe costs for work wherein David Evans is asked to provide “no deliverables.”

Task Order AI – Support for Independent Review Panel

In February 2010 the governors of Oregon and Washington convened an Independent Review Panel (IRP) to:

“Assess the financial and implementation plans for the CRC and to evaluate performance measures that will guide decisions on the project and its operations after construction.”

In total, the Independent Review Panel met during four 2-day meetings (total of 8 days) in May, June and July 2010.

Task Order AI was executed on May 1, 2010, for a total of \$450,600 (**Exhibit V**). Task Order AI called for the Financial, Environmental, Transportation, Engineering and Communications teams to:

- Be “on call” for meetings with the IRP
- Search and provide existing deliverables, reports and documents for IRP meetings
- Create notebooks for the IRP panel meetings
- Create agendas for the meetings
- Provide reviews and responses as requested

Task Order AI was amended on June 22, 2010, for a total of \$161,838 (**Exhibit W**); bringing the total Task Order to **\$612,438**. The wording for the amendment was as follows:

“Reviewing, coordinating, presenting information in existing or new formats, and collecting existing work to support the Independent Review Panel as requested.”

The only documents provided by the amendment call for “No deliverables” and ask for a “Financial Structures Team” to be on call for meetings with the IRP (**Exhibit W, page 4**).

This amendment appears to be duplicative of the Original Task Order AI (**Exhibit V, Page 4**); because it uses the same wording for the same “Financial Structures Team”.

In total, **\$612,438** over an 8 day meeting period equates to \$76,555 per day. I was not given access to time and expense records that might indicate the nature of the costs covered in this task order; however, at face value, these budgeted costs appear to be inconsistent with the deliverables requested.

Task Order AK – Support for Bridge Expert Review Panel

On October 1, 2010, the CRC project office executed Task Order AK in the amount of \$322,500 (**Exhibit X**). This Task Order was worded as follows:

“The purpose of this contract is to describe the additional work needed from the CONSULTANT in support of implementing a panel of experts to review the constructability of the River Crossing Bridge.”

Supporting documentation for this Task Order calls for “administrative support for assigning and scheduling work, monitoring progress, and managing change”; further, the consultant was being asked to attend 7 days’ worth of meetings and document findings. The Task Order calls for the CRC project office to create the final report, not David Evans and Associates.

On February 7, 2011, this Task Order was increased by \$806,494 (**Exhibit Y**). The Task Order Amendment was worded as follows:

“The purpose of this amendment is to describe the additional work needed from the CONSULTANT on the following activities”:

- *Additional review of project material and of the Bridge Expert Review Panel report*
- *Additional support for BERP workshops*
- *Exhibits, analysis and files of alternatives to support the BERP*

The entirety of the supporting documentation for this Task Order Amendment calls for the Consultant to attend meetings, provide additional analysis and alignment alternatives, and prepare meeting materials.

Task Order AK ended up totaling **\$1,128,994**. Without the benefit of analyzing time and expense records, it is unclear what deliverables the CRC project received on this task. If deliverables relate to “redesign” work that was attributable to David Evans in the first place, we question whether it was appropriate to budget for additional costs instead of insisting that the contractor rectify previous errors. We further question the necessity to budget \$1.1 million dollars for “reviewing material” and “providing analysis.”

Task Order AT – Coast Guard Bridge Permit Strategy

On May 29, 2012 the CRC project office executed Task Order AT in the amount of \$264,424 (**Exhibit Z**). This Task Order was worded as follows:

“The purpose of this task is to strategize and develop a clear path for obtaining a Section 9 Coast Guard Bridge Permit.”

The detailed scope of work for this Task Order indicates that the Consultant will deliver a “Bridge Permit Workplan” on or before December 31, 2012.

Sometime between May 29, 2012 and August 17, 2012 an additional \$173,941.31 was added to this Task Order, bringing the total to **\$438,365.55**.¹⁰

The United States Coast Guard (USCG) must approve the CRC’s application for a permit in order for the CRC to begin construction on the project. Currently, the USCG has been critical of the CRC’s plan for the project; primarily stating that the current proposed bridge height is too low. It is unclear why an additional cost of **\$438,366** has been approved for “strategy meetings” and a “work plan.” Because the costs budgeted for don’t appear to match the expected deliverables, we question whether some of this budget includes costs to redesign the current bridge; and, if so, why payment of potential redesign work is being paid for by the CRC project office.

Closing Comments

In total, we analyzed 21 Task Orders totaling \$89,763,271 and 103 Task Order Amendments totaling \$36,085,341. Currently, that equates to **\$125,848,612** in expected CRC costs on the David Evans and Associates contract.

This contract was originally promised to be a “Maximum Amount Payable” of \$50 million. We are concerned that a project still in the environmental and design phase has cost overruns of **\$75,848,612 (152%)**.

We question contracting practices that allow for tens of millions of dollars in supplemental funding and no change in the scope of work with little more than a 3-page standard language document.

We question contracting practices that appear to violate the WSDOT Consultant Services Manual. These questionable practices have allowed for a bid process wherein only a single contractor’s qualifications were apparently considered prior to executing a \$50 million contract, when federal and state regulations call for consideration of at least three bidders. We further question whether David Evans and Associate had a conflict of interest on the CRC project as a result of conducting previous work. And we question whether the CRC project office followed state and federal regulations to determine whether this conflict could have been avoided.

One of the most significant examples of cost increases on this David Evans and Associates contract is Task Order AH. It is questionable why this \$15,791,944 Task Order was necessary in the first place, given that Task Orders AA through AF were purportedly going to advance the CRC project through the Record of Decision. When coupled with the alleged purpose of Task Order AH and the fact that \$21,288,178 in additional Task Order Amendments has increased its value to **\$37,080,122**, it is reasonable to question David Evans and Associates and the CRC project office’s abilities to properly anticipate, budget for, and manage costs.

¹⁰ We were provided with August 17, 2012 David Evans and Associates invoice which shows that Task Order AT’s current budget is \$438,365.55. We do not have the Task Order Amendments which describe the specific additional scope of work.

It is important to note that to date we have not been presented with a single Task Order Amendment that has been denied by the CRC project office. In our years of experience reviewing contracts and change orders we find this to be an anomaly; especially on a contract of this size.

While we cannot predict the future, past performance can be an indicator of future outcomes. We have documented above serious concerns regarding questionable contract and procurement practices. In addition, the CRC project office is significantly over budget and behind schedule. Key approvals that were anticipated long ago are not only yet to be received, but appear to be questionable without considerable additional work and expense. As a legislator, participating government agency, or member of the general public, key questions should be asked and answered, including:

1. How much more will this cost?
2. How long will it take to finish?
3. What specific processes and procedures will the CRC project office do differently to guarantee that its current track record of 150% cost overruns will not be incurred on a \$3.5 billion project?

Furthermore, it is my opinion that the significant questionable contracting practices and cost overruns on the CRC project warrant a full investigation by an appropriate agency.

I would welcome the opportunity to provide additional documentation or answer any questions you may have as it relates to my analysis of the Columbia River Crossing.

If you have any questions or comments related to this analysis of the CRC project, please call me at 360.573.5158.

Sincerely,



Tiffany R. Couch, CPA/CFF, CFE

cc: Oregon State Legislative Oversight Committee
Washington State Transportation Committee
Clark County Board of Commissioners
C-Tran Board Members
Representative Ed Orcutt
Representative Paul Harris
Representative Liz Pike

LIST OF EXHIBITS

EXHIBIT A:	<i>CRC Expenditures through December 31, 2011</i>
EXHIBIT B:	<i>CRC Expenditures through September 30, 2012</i>
EXHIBIT C:	<i>Appendix B – WSDOT CSM (Legal Bases for Contracts)</i>
EXHIBIT D:	<i>49 CFR 18</i>
EXHIBIT E:	<i>Original David Evans and Associates Contract</i>
EXHIBIT F:	<i>Irregularities – Contract and Procurement Practices</i>
EXHIBIT G:	<i>2005 Call for Consultants</i>
EXHIBIT H:	<i>Appendix C – WSDOT CSM (The Brooks Act)</i>
EXHIBIT I:	<i>Appendix O – WSDOT CSM (Noncompetitive Negotiations)</i>
EXHIBIT J:	<i>Appendix P – WSDOT CSM (Conflict of Interest)</i>
EXHIBIT K:	<i>Appendix V – WSDOT CSM (Contract Supplements)</i>
EXHIBIT L:	<i>David Evans and Associates Contract – Supplement 2</i>
EXHIBIT M:	<i>David Evans and Associates Contract – Supplement 3</i>
EXHIBIT N:	<i>David Evans and Associates Contract – Supplement 4</i>
EXHIBIT O:	<i>David Evans and Associates Contract – Supplement 5</i>
EXHIBIT P:	<i>David Evans and Associates Contract – Supplement 6</i>
EXHIBIT Q:	<i>Task Order Analysis</i>
EXHIBIT R:	<i>Task Order and Task Order Amendment Details</i>
EXHIBIT S:	<i>Task Order AF Statement of Work</i>
EXHIBIT T:	<i>Task Order AH Statement of Work</i>
EXHIBIT U:	<i>Appendix O – WSDOT CSM (Errors and Omissions)</i>
EXHIBIT V:	<i>Task Order AI</i>
EXHIBIT W:	<i>Task Order AI Amendment 1</i>
EXHIBIT X:	<i>Task Order AK</i>
EXHIBIT Y:	<i>Task Order AK Amendment 1</i>
EXHIBIT Z:	<i>Task Order AT</i>