



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Inspector General**  
Washington, D.C. 20230

June 28, 2010

The Honorable Maria Cantwell  
Chair  
Subcommittee on Oceans, Atmosphere,  
Fisheries and Coast Guard  
Committee on Commerce, Science, & Transportation  
United States Senate

The Honorable Olympia J. Snowe  
Ranking Member  
Subcommittee on Oceans, Atmosphere,  
Fisheries and Coast Guard  
Committee on Commerce, Science, & Transportation  
United States Senate

Dear Madam Chair and Senator Snowe:

This letter responds to your March 5, 2010, request that we examine the National Oceanic and Atmospheric Administration's (NOAA) decision to award a lease to the Port of Newport, Oregon, for facilities to house NOAA's Marine Operations Center—Pacific (MOC-P). In your letter, you expressed concern about the MOC-P lease acquisition specifically and NOAA's facilities acquisition management systems more generally. We have completed our review of the events, decisions, and processes that culminated in the decision to award the 20-year operating lease to the Port of Newport, Oregon.

Our review extended back to the final years of the previous lease for MOC-P facilities on Lake Union in Seattle, Washington, and NOAA's efforts to find alternatives in the event the lease could not be extended beyond 2003. We summarize our findings below and provide details in the enclosure that address the specific questions you posed in your March 5, 2010, correspondence.

Based on our review, we are unable to provide assurance that NOAA's award of the lease to the Port of Newport provided the most cost-effective solution for MOC-P, or more generally for the government. The principal reasons for this conclusion center around two issues: NOAA limited its options based on a preference for a consolidated facility without a documented analysis, and it did not, in our view, adequately consider the use of existing federal facilities. NOAA's decisions in these two areas took place well before the agency initiated the competitive lease acquisition process.

As detailed below and in our enclosure, there were errors and weaknesses in NOAA's competitive lease acquisition source selection; however, the outcome of the competition (i.e., the award to the Port of Newport) is unlikely to have changed in the absence of the weaknesses and errors in the source selection process.



We are sharing the results of our review with the Secretary and Under Secretary Lubchenco. The Office of Inspector General does not have a decision-making role in the Department's real property acquisition process; accordingly, our report is advisory in nature. We will, however, follow up to determine what, if any, action is taken as a result of our review. We note that the Secretary has recently directed a comprehensive review of the acquisition process across the Department, based, in part, on concerns surrounding the MOC-P lease acquisition.

#### *NOAA's Consideration of Existing Federal Facilities*

*First*, we found that NOAA limited its consideration to a solution that consolidated all ships and related facilities at one location, even though a dispersed model is feasible and would have given the agency more options for siting the facility. In 2000, in anticipation of the possibility of not being able to extend its Lake Union lease, NOAA had considered a dispersed configuration on the premise that it was the most efficient and economic solution. Moreover, NOAA has been operating in a dispersed mode since the 2006 fire at the Lake Union site. Yet NOAA did not assess this possibility in its planning for the new lease.

*Second*, NOAA did not adequately, in our view, consider federal facilities, such as use of federally owned space at NOAA's Western Regional Center or space available at the Federal Center South, leading us to conclude that NOAA did not make "every reasonable effort to utilize Government-controlled space," as required by the Department's *Real Property Management Manual*. This is especially significant given the Administration's emphasis on containing costs associated with federal facilities. Our findings on this issue are discussed in detail in the enclosure.

We alerted NOAA to our concerns in this regard on May 26 of this year, prior to its final determination about practicable alternatives, and advised that NOAA should address these concerns. In a June 1, 2010, memorandum, the Administrator stated that she had tasked her staff with reviewing the issue and ensuring appropriate actions were taken to address it as NOAA finalizes its analysis of practicable alternatives. However, on June 2, NOAA issued its final decision on its practicable alternatives analysis. Although this document inserted a discussion of existing federal properties, it provided no discernable new information about NOAA's process for considering the use of existing federal facilities.

#### *Source Selection Process*

With respect to source selection, both we and the Department's independent review of NOAA's process found weaknesses and errors with NOAA's lease acquisition process for MOC-P. These problems reflect the highly technical nature of the source selection process. Based on our concerns about the source selection process, NOAA requested that the Department's Senior Procurement Executive and Director of Acquisition Management review the source selection documentation associated with the lease acquisition for MOC-P. The Senior Procurement Executive's review is documented in a June 3, 2010, memorandum to NOAA's Chief Administrative Officer. This review identified a dozen weaknesses including the addition of a new evaluation factor late in the process, an overly complex and convoluted rating scheme, and issues with how the evaluation criteria for the proposals were applied.

Despite the weaknesses and errors in the source selection process, the outcome is unlikely to have changed. Specifically, two of the four unsuccessful offerors were deemed to have leasing costs that exceeded NOAA's lease authority. They, therefore, could not legally receive the award. While the third was within NOAA's lease authority, its proposal was more expensive than that of Newport, was also in a floodplain,<sup>1</sup> and received a lower technical rating. Notably, the Department's Senior Procurement Executive stated in her June 3, 2010, memorandum that she had identified process deficiencies but concurred with the ultimate conclusion that was reached by the official responsible for the award decision. Based on our analysis, we also concur that the outcome is unlikely to have changed in the absence of these weaknesses and errors.

In our view, the more fundamental problems pertain to NOAA's process prior to the competitive lease process. A primary cause of these problems is grounded in the fact that NOAA did not subject the MOC-P project to a rigorous capital investment planning and oversight process. Unfortunately, NOAA's policy and procedures for facility capital planning and investment are unclear in their scope and requirements. Consequently, the MOC-P lease acquisition was subject to few process requirements, lacked any meaningful oversight, and was permitted to be unnecessarily schedule-driven. While the Department has a clear real property policy, NOAA did not follow it. NOAA thus proceeded with requirements for its desired option of a consolidated MOC-P facility and an operating lease, based on justification and consideration of alternatives that on their face and without additional documentation were significantly lacking.

NOAA's organizational structure places the real property contracting officers in the Office of the Chief Administrative Officer rather than in the Acquisition and Grants Office. Separation of the real property contracting staff from the leadership, supervision, and expertise of senior contracting professionals in NOAA's contracting office reduces the agency's ability to ensure that it is properly carrying out its responsibilities and that NOAA applies high-quality and consistent procurement methodologies.

Finally, although it is within NOAA's discretion to define the scope of the practicable alternatives analysis conducted in response to the recommendation in GAO's protest decision, it is difficult for those unfamiliar with the technical rules of federal acquisition to understand how the scope that NOAA chose constitutes a true alternatives analysis. NOAA limited its analysis to the four offers received in response to the MOC-P solicitation and defined "practicable alternative" as one that did not involve development in a floodplain and otherwise presented an executable lease under the terms of the solicitation. Since NOAA did not expand its definition of practicable alternatives to permit consideration of other options, such as government-owned space, and since NOAA was willing to allow development for MOC-P in a floodplain, the result of the practicable alternatives analysis could have easily been predicted from the outset.

The issues surrounding the MOC-P acquisition exemplify the importance of effective capital planning and investment processes. While offerors who do not win an award can protest irregularities with the source selection process, the confidentiality of that process limits the

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<sup>1</sup> Executive Order No. 11988, "Floodplain Management," states that if an agency has plans to conduct, support, or allow an action to be located in a floodplain, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain. The MOC-P solicitation stated that an award of contract would not be made for a property located within a base floodplain or wetland unless the government has determined that there is no practicable alternative. Here, GAO found that the selected offeror was, indeed, located in a floodplain thus triggering the duty for NOAA to cure this deficiency by engaging in a practicable alternatives analysis many months after the award.

information available to them and therefore the opportunity to protest all source-selection missteps. And, as in this case, decisions made prior to publication of information about the solicitation are, for the most part, internal. Thus, requirements definition, decisions about whether to thoroughly investigate the suitability of federal facilities, and decision-making regarding lease versus purchase were not subject to external scrutiny. These factors make it imperative that the senior officials and staff responsible for an acquisition ensure that agency capital asset planning and investment processes are coherent, rigorous, and implemented as intended. Based on our review, we have concluded that this was not the case for MOC-P.

As noted above, Secretary Locke has recently directed a comprehensive review of the acquisition processes across the Department based, in part, on the concerns surrounding the MOC-P lease acquisition. We will support this review in whatever manner the Secretary requests. Once that review is completed, we will consider whether there would be a benefit to a broader review of NOAA's facilities acquisition process by our office as you have also requested. If you have any questions, or if we can be of further assistance, please do not hesitate to contact me at (202) 482-4661.

Sincerely,

A handwritten signature in black ink that reads "Todd J. Zinser". The signature is written in a cursive style with a large, sweeping initial "T".

Todd J. Zinser

Enclosure

cc: The Secretary

Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere

This enclosure addresses the specific issues that the Office of Inspector General was requested to review in the March 5, 2010, request from Chairwoman Cantwell and Senator Snowe. Each issue is stated below, followed by our assessment.

## Issue 1

### ***Whether the Department of Commerce improperly exempted the MOC-P lease acquisition from the policies and procedures set out in NOAA's Facility Capital Planning and Project Management Manual.***

#### *OIG Assessment*

We found that NOAA determined that the MOC-P lease acquisition was not subject to its policies and procedures for capital planning because it did not meet the applicable thresholds. This decision, which was not well-documented, permitted a diminished level of oversight and planning compared to construction and repair projects of comparable or even lesser cost. As discussed below, NOAA's policy is ambiguous and convoluted but can reasonably be read as requiring categorization of MOC-P as a major investment, making it subject to the *Facility Capital Planning and Project Management Manual*. Our observations indicate that NOAA should revisit how it addresses lease acquisitions under its policies.

NOAA's policy on facility capital planning, which is set forth in NOAA Administrative Order (NAO) 217-104 (Facility Capital Planning and Project Management Policy) and the accompanying *Facility Capital Planning and Project Management Manual*, does not explicitly establish rigorous planning and oversight requirements for lease acquisitions below the General Services Administration (GSA) prospectus threshold. In addition, both documents fail to indicate clearly how such leases should be categorized and analyzed. NOAA has informed us that the NAO's requirements, including a business case analysis, only apply to lease acquisitions above the prospectus threshold. Further, NOAA's position throughout our fieldwork was that the accompanying manual sets forth procedures for construction and repair of NOAA-owned facilities and therefore does not apply to leases such as MOC-P.

At our June 17, 2010, exit conference, NOAA's Chief Administrative Officer (CAO) informed us that our reliance on the manual's requirements is not appropriate because the manual was prepared to support the OCAO's Project Planning and Management Division's construction project planning and management process. This division is separate from the Business Analysis and Investment Planning staff, which is in the immediate office of the CAO and is responsible for the capital investment planning process under the NAO including its application to MOC-P. The CAO also informed us that the manual, which we found was publicly available on NOAA's website without a designation as a draft document as recently as June 24, 2010, has not been reviewed, approved, or implemented by the NOAA CAO staff or by the capital investment planning staff. NOAA did not inform us of the status of this manual during the course of our discussions regarding its provisions and applicability to MOC-P. Nevertheless, our reliance on the manual was reasonable and correct. Issued in 2005, the NAO authorized development of the manual, stating, "The Manual will be issued, updated, and maintained by the OCAO." The manual was published on a website maintained by a division of the OCAO.

Our review of the NAO revealed apparent internal inconsistencies and ambiguous provisions. The NAO divides capital planning projects into two categories—major and minor investments. This classification is fundamental because major investments are subject to the requirements of the NAO, while minor investments are subject to the lesser requirements specified in the manual.

The NAO categorizes investments as major or minor based on total project costs, which explicitly include “moving and relocation associated with occupancy of new or significantly renovated buildings, or for lease acquisitions covered under this Order.”

According to NOAA’s CAO, leases of space are only subject to the NAO’s procedural requirements when the dollar value of the rental payments exceeds the GSA’s lease prospectus threshold. However, the NAO does not state that leases are exempted from the total project costs measure. Likewise, the manual states: “NAO 217-104 requires a Total Project Cost estimate to determine the classification of a project as Major or Minor.” NOAA may have intended to tie the threshold for major lease investments directly to the lease prospectus threshold, but the policy’s language is unclear.

This inconsistency illustrates the complexity of the policy, which does not provide clear direction on evaluating and planning for lease acquisitions. Several critical threshold provisions are ambiguous and convoluted. NOAA’s responses to our inquiries did not clarify how the policy, read on its own, supported NOAA’s decision not to subject this project to the NAO’s requirements, including a business case analysis.

NOAA’s assertion that the manual was not intended to address lease acquisitions for space, but instead was developed for construction and repair projects in government-owned space, highlights another apparent contradiction. The NAO authorized the development of the manual and states that the manual sets forth procedures for minor investments. But NOAA’s position is that leases do not follow this decision-making path and only receive the oversight described in the NAO and manual when they exceed the prospectus level. It is worth noting that such leases would also be subject to oversight by the Department and GSA in any event. This position lacks clear support in the text of the policies. Had the MOC-P project been subjected to the total project costs measure, it would have been designated a major investment requiring greater NOAA oversight.

The various ambiguities and internal inconsistencies in the NAO and the manual suggest that leases did not receive detailed consideration when the policy was developed, or alternatively that the policy was developed to provide these strictures only when the leases would simultaneously be subject to Department and GSA oversight through the prospectus process. NOAA should revise the policy to provide rigorous planning and oversight procedures for significant leases whose annual lease rate falls below the prospectus threshold.

NOAA had discretion under the NAO and the manual to subject the MOC-P lease acquisition to the more stringent requirements of a major investment. After defining the dollar thresholds for major investments, the NAO goes on to state,

*Major Investment thresholds may be modified downward at the discretion of the NOAA CAO or the CAO’s designee. Such adjustments might be appropriate in situations involving the relocation of significant numbers of employees, projects with significant political or environmental sensitivity, or projects of great importance to the agency’s mission.*

These factors would have been relevant for MOC-P. The CAO has informed us that resource levels dictated the decision not to exercise this discretion.

Ultimately, the language in the policies provides conflicting answers on whether this project should have been subject to a stringent set of planning and oversight requirements. NOAA's position on how the project was classified as minor and subject to none of the specific requirements in the policies lacks clear support in the text. However, NOAA missed an opportunity to exercise its discretion to invoke the requirements based on the characteristics of the project. Such a decision would have required greater rigor and more deliberate planning for MOC-P. In addition, taking steps such as preparing a business case analysis would have produced clearer documentation to explain how NOAA reached its key decisions. Whatever the status of the manual, NOAA has affirmed that the immediate office of the CAO, through the Business Analysis and Investment Planning staff, has the responsibility for the facility capital investment planning process as outlined in the NAO.

Considering the total project cost of MOC-P, the NAO itself could reasonably be interpreted to classify this project as a major investment, requiring a business case analysis, and it also gives the CAO discretion to treat such projects as major. The uncertain status of the manual only highlights the difficulty in determining the content and application of these key policies.

Finally, chapter 5 of the Department's *Real Property Management Manual* provides policies and procedures applicable to real property lease acquisitions. NOAA did not follow a number of these key policies and procedures, most notably those involving:

- adequately surveying and periodically inventorying government-controlled facilities with the intent of relocating programs from leased space (Sections 5.1.3(b)(1) and 5.4.1. (d));
- conducting lease versus purchase analyses (Section 5.4.16);
- providing due consideration to maintenance and operational efficiency (Section 5.1.3(b)(10)); and
- ensuring all justifications and background information for all major decisions and all documentation is contained in the official lease file (Section 5.6.4).

The first listed requirement is discussed in greater detail in Issue 4; the second and third requirements are further addressed in Issue 11. The fourth requirement is discussed throughout the enclosure.

## **Issue 2**

### ***Whether the MOC-P lease acquisition inappropriately bypassed internal agency oversight from the NOAA Facilities Investment Management Board (FIMB) and Department of Commerce Real Property Review Board.***

#### *OIG Assessment*

The MOC-P lease was below the FY 2009 GSA prospectus threshold for lease of space, and in NOAA's interpretation of its real property policy, the total project cost did not have to be considered in the determination of whether it was a major or minor investment. NOAA therefore did not deem MOC-P a major investment, and the project did not receive review by NOAA's Facilities Investment Management Board or the Department of Commerce Real Property Review Board. However, as discussed in Issue 1, NOAA's policy is ambiguous at best in its treatment of lease acquisitions.

As was also noted previously, NOAA's Facility Capital Planning and Project Management Policy and the accompanying manual provide the agency the discretion to apply the same stringent oversight requirements (including review by FIMB) to projects that fall below the prospectus threshold, but NOAA chose not to exercise this option.

Also, as we reported in Issue 1, NOAA's CAO has recently informed us the manual is an unapproved draft. In any event, given the total project cost of MOC-P, we reiterate our observation that NAO 217-104 could reasonably be read to treat it as a major investment, and further that NOAA's CAO had discretion under the NAO to revise the relevant threshold to treat it as major. This point stands despite the unclear status of the manual.

### Issue 3

***Whether the MOC-P lease competition's evaluation of technical factors and subfactors meet FAR 15.304(b)(2) requirement to "support meaningful comparison and discrimination between and among competing proposals."***

#### *OIG Assessment*

We found weaknesses and errors with NOAA's application of the technical factors and subfactors. NOAA's decision to award the MOC-P lease to an offeror located in a base flood plain, without consideration of practicable alternatives, was contrary to the solicitation and led to a successful protest of the MOC-P award. Upon learning that we had identified source selection issues, NOAA's CAO requested that the Department's Senior Procurement Executive and Director of Acquisition Management review the MOC-P source selection documentation. In a June 3, 2010, memorandum in response to this request, the Senior Procurement Executive raised significant concerns about the source evaluation process. The Senior Procurement Executive's memorandum identified a dozen process deficiencies, but also pointed out the great disparity in pricing (i.e., low annual rental cost of the Port of Newport) and indicated her concurrence with the ultimate decision that was reached, based on review of the documentation provided.

Our review similarly indicates that the outcome is unlikely to have changed in the absence of the weaknesses and errors, given that two of the four unsuccessful offerors were deemed to have proposals that were not under the prospectus threshold, as required by the solicitation, and the remaining offer, although below the threshold, received a lower technical rating. Nonetheless, the missteps that were identified are sufficiently numerous and serious to raise questions about the quality, integrity, and oversight of NOAA's real property procurement processes.

Examples of weaknesses identified by our analysis or that of the Department's Senior Procurement Executive include the following:

- A new evaluation factor, "Quality of Building and Pier," was added late in the source selection process, after the initial evaluation of offers and request for best and final offers. As the Senior Procurement Executive noted, this was a questionable action that can give the appearance that "the Government is trying to 'gear' the award decision to a specific offeror." She also noted that it raises the question of whether NOAA's requirements were adequately defined in the solicitation and whether the competition should have been reopened for other potential offerors.
- An overly complex and convoluted rating method was established. The method was difficult to understand and use in the evaluation, and it appears to have been only loosely applied as described in the solicitation.

- The narrative evaluations did not always clearly support the ratings that were given. For example, the adjectival rating scale (Outstanding, Acceptable, Marginal) did not include a category for an unacceptable rating in any evaluation factor or subfactor, yet—in some instances and as would be expected in most source selections—deficiencies were identified by Source Evaluation Board members that should have led to an unacceptable rating in a certain factor or subfactor.
- The narrative evaluations indicate that the Source Evaluation Board members did not have all their questions answered in preparing their final evaluations. This appeared to cause evaluators to make assumptions and inferences about the proposals rather than getting their questions answered in the appropriate manner. The real property contracting officer should have ensured that all questions and clarifications were addressed through discussions and negotiations with the offerors. To the extent that this may have been done, the information should have been reflected in the final Source Evaluation Board report.

#### Issue 4

***NOAA's failure to formally evaluate the potential use of existing federal properties, including the NOAA Western Regional Center (WRC) at Sandpoint, and whether utilizing such federal properties could have saved taxpayer dollars, increased efficiencies, and provided more ideal operations.***

##### *OIG Assessment*

Federal and Department policy state that leasing may only be considered in the event that there is no government-controlled facility available to meet space requirements. Although the Department's *Real Property Management Manual* requires agencies to make "every reasonable effort to utilize Government-controlled space that meets or can be economically altered to meet DOC's requirements," in our view, NOAA did not do this. This is especially significant given the Administration's emphasis on containing costs associated with federal facilities.

In its June 16, 2010, legal opinion regarding certain MOC-P issues, the Office of General Counsel (OGC) concludes that NOAA's various unrelated efforts to consider other homeporting sites spanning nearly a decade constitute compliance with this requirement. While we recognize that the relevant regulation does not provide clear criteria for compliance, NOAA's failure to systematically review and update information related to federal sites suggests that a reasonable effort was not made. Furthermore, the opinion's recent citation of various documents that purportedly support NOAA's compliance with this requirement is at odds with NOAA's December 2009 response to the Committee's inquiry in which NOAA indicated that it had "no responsive documents" on the issue of analyzing the feasibility of utilizing existing federal properties.

Our review uncovered some evidence that NOAA considered other federal facilities. However, NOAA was not able to provide evidence that other federal facilities were systematically inventoried, analyzed, and rejected before initiating efforts to acquire a follow-on lease from other sources for MOC-P, nor was the decision to reject other federal facilities well-documented. Without any evidence of a systematic and documented approach, NOAA cannot demonstrate that there are no government-controlled facilities that meet its requirements and that it has fully complied with federal and Departmental requirements.

For example, according to NOAA officials, NOAA had considered collocating with select Coast Guard and Navy facilities, but its consideration was not documented. In preparation for the lease acquisition, NOAA awarded a contract to *Fraser & Fogle Architects*, who subcontracted with *MAKERS architecture and urban design* to conduct an alternative site analysis to (1) investigate the most functional, efficient, and cost-effective options for reconsolidating MOC-P and (2) provide an indication of how each site might perform during the subsequent lease solicitation process. That study was completed in September 2008. Of the 32 ports, cities, and economic development councils contacted, 11 responded, offering a total of 22 potential site options for further analysis. The 22 were narrowed to a total of 15, only 3 of which were federally-owned: GSA's Federal Center South, the Department of Labor's Tongue Point, and NOAA's Western Regional Center. In November 2008, in an apparent—but undocumented—rejection of those federal sites, NOAA issued the Solicitation for Offers.

Prior to extending the lease at Lake Union in 2003, NOAA awarded a contract to SRI International to identify and evaluate potential facilities should the lease not be extended beyond 2003. The study, released in June 2000, reviewed potential sites in select areas of Alaska and the greater Puget Sound in Washington State. In its legal opinion, OGC has argued that the review of potential sites in this study should be considered as part of its review of available federal facilities for the current MOC-P effort. However, in our view, the results of the study are too outdated to be considered relevant to the current procurement. SRI anticipated this, stating that the conditions for the facilities could “change rapidly” and that to effectively use the analysis further, study of the recommended sites should be performed “at the earliest possible time.”

There is no indication that NOAA followed up on most of the federal facilities identified in the SRI study to determine their current status. In particular, as discussed below, NOAA did not adequately consider other opportunities to consolidate MOC-P operations at GSA's Federal Center South or NOAA's Western Regional Center (WRC) or support its contention that those facilities could not reasonably meet MOC-P requirements.

#### *Discussion of Federal Center South*

GSA made a specific offer of Federal Center South (FCS) in May 2008 prior to the solicitation being issued for the lease acquisition. The feasibility of FCS was brought up again in mid-July 2009, prior to the award of the lease. In the latter instance, the Commanding Officer, NOAA Pacific Fleet, MOC-P, viewed the GSA offer as worthy, at least, of greater consideration and specifically asked that it be further explored. This request was based on the Commander's operating experience at FCS since the 2006 fire and new developments, including American Recovery and Reinvestment Act (ARRA) funding, which would have made more space available since GSA's previous offer. The Commander was suggesting that NOAA may want to determine what GSA could offer under these changed circumstances, whether NOAA could make it work, and if there would be a cost savings to NOAA, GSA, and the taxpayer.

In a July 24, 2009, e-mail responding to the MOC-P Commander's request to reconsider FCS, the Chief of NOAA's Real Property Management Division, Western Region noted concerns about the narrow waterway under federal control and need for construction at a Superfund site. The e-mail also stated,

*In my opinion, even if GSA represented that they could develop the facility to meet your needs with ARRA funds, it is highly unlikely they could do so in any predictable time frame, if at all. In short, if the current procurement is canceled*

*in the hopes of relocating to FCS, OMAO [Office of Marine and Aviation Operations] runs a substantial risk of having a dispersed fleet for the foreseeable future.*

*Unless directed otherwise by my chain of command, my staff will remain focused on preparing to award a lease under the current procurement after a decision by the SSO [Source Selection Official].*

After receiving this e-mail, the Commanding Officer immediately sent an e-mail to the Director of the Office of Marine and Aviation Operations and other OMAO staff stating,

- 1) We know that since power improvements have been made and sewage hookups added, we can get three vessels into FCS. XO has confirmed that.*
- 2) We have also upgraded power at WRC since. Providing us more moorage options than we had a yr ago.*
- 3) The river front development part of FCS could be held as a longer term development opportunity, that would not require immediate implementation. FCS is not required to meet the SFO.*
- 4) The new development there may change things since a yr ago.*
- 5) We successfully worked two ships there last yr and had no trouble with getting one ship by the other (MCII and DY). We know a third could be moored there without any further waterfront development of the site.*

*Things have changed since our first look, but [Chief, NOAA's Real Property Management Division, Western Region] was not approachable about this last night.*

*The real question is what could they offer and could we make it work and is there a cost savings to NOAA GSA and the taxpayer to look at that option? Is there risk in looking at it at this late date?*

*I don't know if we'd have to cancel the solicitation process or just do a parallel look at FCS to see what is possible and flesh out the FCS option. It could save us and the taxpayer a lot of money.*

On August 7, 2009, NOAA awarded the lease to the Port of Newport. NOAA's focus was clearly to place MOC-P in a consolidated facility by the June 30, 2011, termination date for the current lease. It is unclear why the project was so schedule driven. Given the apparent importance of the schedule to NOAA, it is also unclear why availability/timeline was made significantly less important in evaluating proposals than a variety of other factors. In essence, under the solicitation, NOAA considered proposals that involved occupying interim facilities to be acceptable for the lease acquisition, but did not consider use of interim facilities in order to take the time to thoroughly investigate existing federal properties.

#### *Discussion of Western Regional Center*

NOAA's Western Regional Center was developed in the 1970s as a consolidated facility to house all of NOAA's West Coast and Pacific operations, including MOC-P's predecessor agency. The facility was dredged in anticipation of providing moorage for up to 17 vessels, and infrastructure was installed for two additional buildings before development was halted in the

early 1980s due to budgetary issues. Currently MOC-P has a fleet of 10 vessels, only four of which are officially homeported in Seattle. None of the 10 are the large Class I vessels of the type in the Pacific fleet in the 1970s and 1980s. In fact, the Ronald H. Brown, which is homeported in Charleston, SC, is the only Class I vessel in the entire NOAA fleet.

Despite WRC's capacity, NOAA rejected it as a long-term, owned solution for MOC-P because of what NOAA characterized as litigation risk. NOAA's assumptions regarding community opinion and litigation risk were based on actions from the 1970s and early 1980s, when public controversy arose around GSA's disposition of the former Puget Sound Naval Air Station. NOAA wanted 100 acres for its Western Regional Center, the City of Seattle wanted a portion for a park, and another group sought to retain the former airstrip for use as a small airport. After considerable public controversy, haggling, and finally the intervention of U.S. Senator Warren G. Magnuson, NOAA and the City of Seattle prevailed.

In 1976, NOAA published a final environmental impact statement (EIS) that concluded that location of all facilities at WRC would represent the most cost effective alternative to the various sites that had been under consideration. In December 1977, a local community group and numerous private citizens filed a lawsuit seeking injunctive and declaratory relief against the construction of ocean vessel berths at Sand Point. A preliminary injunction was granted in March 1978 on the grounds that NOAA's final EIS was deficient in its failure to adequately discuss alternative sites and for failing to discuss increased navigational hazards that would result from passage of large vessels through Montlake Cut to Lake Washington.

NOAA subsequently prepared a supplemental EIS and issued a decision memorandum approving the consolidation of Seattle facilities at Sand Point. In response to NOAA's request, the district court vacated the preliminary injunction. The plaintiffs then appealed, and in 1981, a federal appeals court decision affirmed the judgment of the lower court in NOAA's favor and lifted the injunction on further construction at WRC. While the appeal was pending, NOAA scaled back its plans due to budgetary constraints. In 1983, NOAA entered into a second 20-year lease at Lake Union. While NOAA contends that it has since been operating under a commitment to the community to not homeport its fleet at WRC, it cannot provide any documentation of a formalized agreement to support its contention.

NOAA has not done any recent work to reassess the feasibility of locating at WRC, including canvassing its Sand Point neighbors regarding their current views, documenting its litigation risk assessment, or even identifying what litigation risk it contemplated. In fact, the questions and answers document from NOAA's December 2009 all-hands meeting with MOC-P employees states that NOAA is not certain of where the community's views currently are on this issue. Our discussions with personnel from the City of Seattle's Office of Economic Development and February 2010 letters from the City of Seattle and several key neighborhood associations adjacent to WRC show considerable local support for relocating MOC-P to WRC.

NOAA has argued that moving the homeport to the WRC site would "pose unresolved hazards to recreational boating and navigation hazards to the fleet." These issues surfaced during the litigation discussed above when there were a number of Class I vessels in NOAA's fleet. As noted, no Class I vessels would need to be accommodated at MOC-P now. Further, NOAA has not demonstrated that hazards have posed problems while using the WRC pier since the 2006 fire.

NOAA has argued that moving the homeport to either the FCS or WRC would require funds to build new or expand existing pier facilities. Since the fire in 2006, MOC-P has used a combination of both facilities while only occupying office space at the Lake Union site. NOAA has not demonstrated why continued use of both facilities, in addition to other government-controlled or leased office space, is not a viable solution either in the long-term or in the short-term to allow for additional time to determine if a government-controlled facility can be used in the long-term.

We recognize an agency's discretion to define its requirements, and contrary to OGC's June 2010 legal opinion, we do not suggest that an ill-suited solution should drive the requirements. However, our review has indicated that the requirements were not clearly and systematically defined, and available options were not fully pursued. Regardless of what conclusion a more thorough and carefully planned process may have produced, NOAA should have treated the possible use of existing federal properties in a more systematic and comprehensive manner.

### *Issue 5*

***Whether the MOC-P lease was executed under proper authorities, including whether the lease signed with Newport exceeded the leasing authority delegated to the Department of Commerce by the General Services Administration.***

#### *OIG Assessment*

In 2008, NOAA applied for and received special GSA lease delegation authority covering all aspects of the MOC-P lease prior to commencing the acquisition. NOAA was aware that if the MOC-P lease could not be accomplished under the GSA FY 2009 annual prospectus threshold (\$2.66 million), it would have to turn the lease acquisition over to GSA. Although all of the initial offers were in excess of the prospectus, NOAA was able to negotiate with the offerors, resulting in two that were below the threshold. NOAA, with necessary delegated lease authority, awarded the lease to the Port of Newport.

### *Issue 6*

***The appropriateness of the Department of Commerce's decision to not include a termination for convenience clause in the MOC-P lease, and any negative consequences of that omission.***

#### *OIG Assessment*

NOAA uses GSA's standard lease for its lease awards for build-to-suit leases. NOAA stated that GSA does not include a termination for convenience clause in such leases because lessors must generally secure financing for such ventures and inclusion of a termination clause in the lease could cause lessors problems in securing financing if it were possible to break a lease for convenience. We reviewed both the lease and NOAA's rationale and confirmed that omitting a termination for convenience clause was in keeping with GSA's practice and the rationale given was supported by the relevant legal literature.

Commerce's General Counsel opined that if the government broke the lease in the absence of a cancellation clause, it could be responsible for damages. The GAO's bid protest decision did not recommend that the Port of Newport suspend its work in delivering the site and buildings to the government, and the lease does not include a suspension of work clause that would authorize the government to issue a stop-work order. The Port of Newport continued to incur development

costs under the lease, and NOAA did not mitigate potential damages while conducting the required practicable alternatives analysis.

### *Issue 7*

***The Department's handling of the GSA prospectus threshold during the MOC-P competition, including whether bidders were misled or ill-informed as to the actual role and importance of the prospectus threshold in the evaluation of their bids.***

#### *OIG Assessment*

The *MAKERS* site selection analysis, which was completed in 2008, estimated the probable range of bids as compared to the prospectus threshold and concluded that the MOC-P solicitation was likely to produce offers under the threshold. Based on this analysis, NOAA expected to complete the lease acquisition within the special delegated lease authority granted to it by GSA.

NOAA did not include a provision regarding the prospectus threshold in the Solicitation for Offers, and all of the initial offers exceeded the threshold. After receiving the proposals, NOAA advised all four offerors of the prospectus threshold three times:

- First, letters of clarification were sent to each offeror, which stated, “The annual rental rate (base rate + tenant improvements) offered is above the fiscal year 2009 threshold annual rental rate for leases, known as the prospectus threshold (see [www.gsa.gov/annualprospectusthreshold](http://www.gsa.gov/annualprospectusthreshold) ). NOAA’s real estate broker, Public Properties LLC, and the Contracting Officer would like to schedule a conference call or meeting to clarify the rental rate.”
- Second, the significance of the prospectus was explained during meetings held prior to the best and final offers
- Third, letters were sent to each offeror requesting best and final offers, which said, “The lease rate is currently over the annual rent per year approved for this project. The Government may not award a lease for an amount that exceeds the prospectus level approved by Congress.”

Two offerors researched the prospectus threshold on their own or with the assistance of their consultants and understood its significance clearly. One read the letter requesting the best and final offer, misinterpreting the term “may,” to mean that NOAA had the option of awarding a lease in excess of the prospectus by requesting congressional approval.

A fourth explained that upon learning of the prospectus threshold during the meeting with NOAA procurement officials, it informed NOAA that it could not comply with the threshold and would not submit a best and final offer. Instead, it offered to sell the facility to NOAA. The same offeror advised that NOAA did not acknowledge the sales offer but encouraged it to submit a best and final offer anyway, stating that selection of the successful offer would be decided by a combination of technical evaluations and price, not on price alone. Ultimately the offeror submitted a two-lease best and final offer, one lease for the ground and another for the facilities, each of which was priced under the prospectus threshold but which in combination exceeded the threshold.

Including the prospectus threshold in the solicitation is permitted but agencies are not required to do so. GSA has not historically included this information in its standard solicitation format.

Going forward, it is our opinion that bidders should be apprised of such a limitation on an agency's spending authority. Publishing this information would have aided NOAA in obtaining best value. It would have given potential offerors critical information for determining whether to bid and if so, for structuring their proposals to best suit NOAA's requirements while maintaining the incentive to offer a fair and reasonable price through use of the competitive process. According to an attorney in GSA's real property division, GSA occasionally does include the prospectus threshold in solicitations and is currently considering including this information in its standard solicitation template as part of an effort to re-engineer its lease acquisition process.

### ***Issue 8***

***The significant disparities between initial estimates provided by a third-party contractor for the MOC-P lease and the bids ultimately received by NOAA.***

#### *OIG Assessment*

The initial estimates reported by the *MAKERS* market assessment were developed for 11 sites from September 2007 through September 2008. The MOC-P Solicitation for Offers was issued in November 2008 and initial offers were due February 2009. Of the four initial offers received, all were in excess of the FY 2009 prospectus threshold for leased space. In their June 2009 best and final offers, two of four offers exceeded the prospectus threshold.

NOAA did not prepare a contemporaneous analysis of the differences between the government estimates developed as part of the *MAKERS* study and the initial offers. However, in documents prepared in response to congressional inquiries and in discussions with us, NOAA attributed the disparity between the September 2008 *MAKERS*' study estimates and the February 2009 initial offers to the effects of the financial system crisis on financial/credit markets—writing that "...the cost and availability for credit were likely directly impacted by this change in the financial/credit market. To the extent an offeror was impacted by the rate and availability of securing financing, this could have impacted their price proposal." NOAA maintained that since two of the four best and final offers came in under the GSA prospectus, "NOAA's determination that the lease could be executed below the prospectus level was validated."

We contacted the two offerors who submitted offers in excess of the prospectus threshold. Both stated that their estimates of costs associated with NOAA's MOC-P requirements, rather than financing issues, caused them to exceed the prospectus threshold.

### ***Issue 9***

***Whether the Department of Commerce sufficiently analyzed, understood, and incorporated long-term and indirect life-cycle costs for the MOC-P facility, as well as the operational and logistical implications of the proposed relocation.***

#### *OIG Assessment*

NOAA's financial analysis of the four offers submitted in response to the solicitation did not assess the total cost to the government, and NOAA provided no evidence that it had thoroughly considered the operational and logistical implications of the relocation. NOAA did make an adjustment to each offer during its evaluation of proposals to account for initial moving-related costs for locations beyond a 50-mile radius of the current Lake Union site. Intended to represent average move-related costs, the same cost (\$7.3 million) was applied to the analysis for all

applicable sites. According to NOAA, a complete life-cycle cost analysis could not be conducted because future travel, fuel, and support service contract costs were too speculative.

Yet months after awarding the lease to the Port of Newport—as a result of questions raised concerning the total NOAA cost associated with the Newport award relative to the other offerors and to ensure that future year budget implications were addressed—NOAA developed a cost analysis with the objective of more fully forecasting and comparing the cost impact of the four offers that included estimated ship maintenance costs and associated contractual labor. We have not examined this analysis and cannot draw conclusions as to its adequacy. The analysis had no role in the source selection.

A more extensive cost analysis than the analysis done later for source selection had been completed in 2008 as part of the *MAKERS* study of alternative sites. The *MAKERS* analysis was conducted primarily to compare prospective sites and determine whether they could potentially offer leases within the prospectus threshold. The cost analysis included some life-cycle costs such as operations and maintenance, cost of travel for MOC-P and NOAA personnel, cost to transport equipment to ships from customer locations, and the cost to relocate families to a new site. However, this analysis also omitted some life-cycle costs, stating that those such as additional travel for contract labor and additional cost of ship refueling due to the distance to government fuel sites, were too unpredictable to include. *MAKERS* claimed that the costs associated with these activities were not expected to significantly alter the relative life-cycle costs between potential sites.

According to the “Capital Programming Guide,” Supplement to Office of Management and Budget (OMB) Circular A-11, consideration of full life-cycle costs is a key tenet of capital asset planning; thus, it should have been considered in NOAA’s lease award decision. In reviewing the MOC-P solicitation and source selection process, the Department’s Senior Procurement Executive also questioned NOAA’s failure to include total cost in its MOC-P evaluation and decision to relocate the operation and noted that the financial analysis would have been strengthened by inclusion of other costs to NOAA, although given the great disparity in pricing, such an analysis would not have been likely to change the outcome.

### ***Issue 10***

***Whether the Department of Commerce sufficiently analyzed and considered the impacts on NOAA’s current employees and future workforce needs.***

#### ***OIG Assessment***

The *MAKERS* site selection analysis included factors assessing (1) the availability of skilled labor for each of the sites considered, noting that it was important that the appropriate type and variety of skilled labor be accessible and (2) a number of quality of life factors. NOAA also included a factor in the Solicitation for Offers that provided a qualitative assessment of the effects on NOAA’s future workforce needs and current employees. Access to labor was one of the most critical subfactors. However the subfactors making up the quality of life consideration, including—housing availability; schools; proximity to hotels, motels, food and recreational facilities; and proximity to a business district—were assigned the least weight in the overall technical evaluation process. To date there has been no formal assessment of whether current MOC-P staff would make the move to Newport and if not, what immediate and long-term

impacts may be anticipated on MOC-P's ability to fulfill its mission subsequent to the impending relocation.

### ***Issue 11***

***Whether key decisions in the MOC-P acquisition, such as the decision to pursue only lease-based solutions for the MOC-P facility, and the selection of the geographic scope of the agency's initial Market Analysis, were sufficiently documented and based on proper analyses and procedures.***

#### *OIG Assessment*

As discussed below, key decisions such as to pursue only leased-based solutions for MOC-P and the choice of delineated geographic area were not sufficiently documented, and the requirements and alternatives analyses that would help support such decisions were not performed.

#### *Pursuit of Leased-Based Solution Only*

Although Department of Commerce policy states that leasing is not a long-term solution for space needs, NOAA did not consider a purchase solution for MOC-P facilities requirements. It did not conduct a lease versus purchase analysis as is required by OMB Circular A-94, or otherwise analyze the relative merits of continuing its over 60-year history of a leased solution to MOC-P space requirements for another 20 years. Nor did it attempt to obtain funding for an owned solution at any time since 2000.

In the past 10 years, the matter of purchasing the present Lake Union site for MOC-P was briefly discussed several times; however, no evidence was provided showing this approach was seriously explored. NOAA could provide no evidence of systematic efforts to assess the feasibility of purchasing or constructing facilities elsewhere except in the early consolidation efforts associated with the development of its Western Regional Center in the late 1970s and early 1980s. According to NOAA management, leasing was preferred because acquiring funding for an owned solution would have required considerable lead time and because funding of facilities has historically received lower priority than other funding requirements. NOAA management also cited MOC-P's historical use of leased sites and its limited resources for conducting lease versus purchase analysis.

NOAA emphasizes that it lacks general legal authority to purchase land and has failed in previous efforts to secure budget authority to proceed with federal-construction solutions to its real property needs. However, the fact remains that MOC-P and its predecessor agency have occupied leased space for decades despite a Department policy that leased facilities are not to be considered a permanent solution to space needs. Furthermore the Department clearly requires that a lease versus purchase analysis be accomplished in every instance where the asset considered for lease has a total fair market value in excess of \$1 million. Accordingly, the expectation is that NOAA would prepare the required lease versus purchase analysis and if the analysis supported a purchase decision, would make an attempt to secure funding for the project. Had NOAA done so and documented its efforts, it would not only have complied with basic Department policies but also would have had a more convincing argument for its subsequent actions to secure yet another lease solution for MOC-P.

### *Choice of Delineated Geographic Area*

NOAA's choice of a delineated geographic area for the lease competition was not well supported. The area was expanded from Washington to Oregon—specifically to Portland and Astoria—based on an e-mail request from OMAO, which believed that the expansion would enhance competition. The subsequent study performed by *MAKERS* was designed to determine whether competition within the area was likely. NOAA provided no evidence that it had assessed the decision factors described in the Department's *Real Property Management Manual* such as the desirability of a consolidated location over split locations, program client accessibility, environmental impact, personnel hiring and retention, travel time, transportation costs, and program needs that may require close proximity to other entities and agencies. NOAA also did not analyze the potential long-term or ancillary costs of various locations as a way to determine the appropriate geographic scope for the competition.

The rationale for extending the delineated geographic area down the Oregon coast to Newport, is unclear. Consistent with the OMAO e-mail, the statement of work for the *MAKERS* study called for a study area consisting of the greater Puget Sound area, including U.S. waterside properties north to Bellingham, west to Port Angeles, south to the Columbia River, including Astoria, Oregon and southeast to Portland, Oregon on the Willamette River. This definition of the area persisted from *MAKERS*' initial proposal through page 1 of the final report. However, page 2 of the final report included a study area map and states that NOAA and MOC-P identified a study area as “the Northwest coast and the Puget Sound region from Bellingham, Washington to Newport, Oregon.” NOAA and *MAKERS*' management were unable to provide an explanation or documentation supporting the change in the study area.

### *Analysis of Requirements and Alternatives*

Because NOAA did not follow a rigorous facilities capital investment planning process, requirements were not thoroughly assessed and documented, and acquisition alternatives were not systematically considered. This resulted in a requirement for a solution that consolidated all ships and related facilities in one location, an approach that reduced the locations available for consideration. By limiting its options, NOAA may have missed an opportunity to reduce costs. It also resulted in insufficient assessment of federal facilities and the lack of adequate consideration to the purchase of a facility.

In November 2008, NOAA published its Solicitation for Offers, which presented requirements for a consolidated MOC-P facility. A dispersed solution had been considered by NOAA as the basis for the 2000 SRI study mentioned in Issue 4. At that time, SRI International was tasked with studying a dispersed model on the premise that it was the most efficient and economic solution for MOC-P. In addition, NOAA has been operating in a dispersed configuration since the 2006 fire at Lake Union site, which housed all MOC-P operations before the 2006 fire.

In its June 2, 2010, Practicable Alternatives Analysis, NOAA asserts that the centralized solution was presented by senior program officials in NOAA's Office of Marine and Aviation Operations and that it is NOAA's preferred business model for conducting its MOC-P operations, based on consideration of operational efficiencies NOAA has experienced over the last several decades. NOAA maintains that the SRI study is no longer relevant to its requirements because at the time it was conducted, the NOAA Corps was significantly declining in size. Specifically, according to NOAA, at the time of the SRI study, “Saving money in the context of a shrinking requirement was a central theme.” We note that at the same time that NOAA maintains the SRI study is not

relevant, OGC's legal opinion cites the SRI study as a key part of its position that NOAA adequately considered existing federal facilities.

In our view, consideration of a dispersed facility is still relevant. At the time of the SRI study, NOAA homeported four vessels at the Lake Union facility, the same number as are homeported at Lake Union today. Similarly, there has been little or no change in MOC-P shoreside staffing since the SRI report was issued. It is thus unclear why NOAA now contends that dispersed operations are not worthy of consideration and why it would not continue to seek efficiencies through alternative operating approaches.

Finally, while the Department's *Real Property Management Manual* provides for the operating unit head to determine space or facilities to meet authorized program needs, agencies should have a process in place to ensure that appropriate alternatives have been considered and that the most cost-effective solution to meeting the agency's mission will be obtained. No such process appears to have existed for the MOC-P project.