

# United States Senate

WASHINGTON, DC 20510

March 5, 2010

Todd J. Zinser  
Inspector General  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230

Dear Inspector General Zinser:

On August 4, 2009, the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) announced that it was awarding a 20-year long-term lease to the Port of Newport, Oregon for its Marine Operations Center-Pacific (MOC-P). There were four finalist bids in the lease competition for this facility, which will serve as the center for operations of NOAA's Pacific fleet of research vessels. NOAA signed the lease with the Port of Newport on August 7, 2009.

Following the award to the Port of Newport, two of the three unsuccessful bidders launched a formal protest with the Government Accountability Office (GAO). One of the protesters dropped out partway through the protest, but the remaining protester – the Port of Bellingham – ultimately prevailed. On December 2, 2009, the GAO sustained the Port of Bellingham's protest on grounds that “the contract award to Newport failed to comply with the solicitation requirements regarding lease of property within a base floodplain.” GAO recommended that NOAA comply with the requirements of the competition's Solicitation for Offers, and “consider, and document, whether there was a practicable alternative to Newport's offer.” The Department of Commerce is currently undergoing an analysis of practicable alternatives that it claims will bring the agency into compliance with GAO's recommendations.

In light of GAO's findings, we requested numerous documents from the Department of Commerce to help us understand the Department's rationale behind the MOC-P lease award, and to determine if there were other areas where the Department of Commerce failed to comply with its own rules for the MOC-P lease acquisition. Information provided by NOAA and the Department of Commerce raises serious concerns about both the MOC-P lease acquisition specifically and NOAA's facilities acquisition management systems more generally. For this reason, we request that you undertake both an audit of the MOC-P lease acquisition, and a broader review of NOAA's facilities acquisition processes.

With respect to an audit of the MOC-P lease acquisition, we request that you examine at least the following issues:

- 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 Policy Manual;
- Whether the MOC-P lease acquisition inappropriately bypassed internal agency oversight from the NOAA Facilities Investment Management Board and the Department of Commerce Real Property Review Board;
- Whether the MOC-P lease competition's evaluation of technical factors and subfactors meet the Federal Acquisition Regulation 15.304(b)(2) requirement to "support meaningful comparison and discrimination between and among competing proposals;"
- NOAA's failure to formally evaluate the potential use of existing federal properties, including the NOAA Western Regional Center at Sand Point, and whether utilizing such federal properties could have saved taxpayer dollars, increased efficiencies, and provided more ideal operations;
- 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 (GSA);
- 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;
- The Department of Commerce'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;
- The significant disparities between initial estimates provided by a third-party contractor for the MOC-P lease and the bids ultimately received by NOAA;
- 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;
- Whether the Department of Commerce sufficiently analyzed and considered the impacts on NOAA's current employees and future workforce needs; and,
- 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.

In addition to an audit of the MOC-P lease acquisition, we believe that the questions raised above are serious enough to warrant a broader review of NOAA's facilities planning and investment processes. When the federal government makes multi-decade financial commitments worth tens-of-millions of dollars, taxpayers have the right to know whether their tax dollars are being put to wise use. As stewards of taxpayer dollars, Congress has an obligation to ask the

tough questions and provide appropriate oversight where lapses may have occurred. With that in mind, we respectfully request your attention on this important issue.

Sincerely,



Maria Cantwell  
Chair  
Subcommittee on Oceans, Atmosphere,  
Fisheries and Coast Guard



Olympia J. Snowe  
Ranking Member  
Subcommittee on Oceans, Atmosphere,  
Fisheries and Coast Guard

cc: The Honorable Gary Locke, Secretary, Department of Commerce  
The Honorable Jane Lubchenco, Undersecretary of Commerce for Oceans and  
Atmosphere