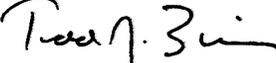




**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Inspector General**  
Washington, D.C. 20230

May 26, 2010

MEMORANDUM FOR: Jane Lubchenco, Ph.D.  
Under Secretary of Commerce for Oceans and Atmosphere

FROM:   
Todd J. Zinser

SUBJECT: NOAA's Acquisition of Facilities to House the Marine Operations Center—Pacific

By letter dated March 5, 2010, Chairwoman Maria Cantwell and Ranking Member Olympia Snowe of the Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, Committee on Commerce, Science, and Transportation, requested that the Office of Inspector General review NOAA's decision to award a lease to the Port of Newport, Oregon, to house NOAA's Marine Operations Center-Pacific (MOC-P). Their letter raised several specific questions regarding the decision-making process that resulted in this lease.

NOAA began the lease acquisition process as early as September 2007, when it initiated a market analysis. It published a Solicitation for Offers for a new lease on November 24, 2008. Four bidders submitted offers, and NOAA awarded a lease to the Port of Newport on August 4, 2009. One of the unsuccessful bidders, the Port of Bellingham, Washington, filed a protest with the Government Accountability Office (GAO) on August 27, 2009—10 days after it received a post-award debriefing from NOAA. On December 2, 2009, GAO sustained Bellingham's protest against NOAA's lease award and recommended that NOAA conduct an analysis of practicable alternatives to the Newport offer. In its January 29, 2010, response to GAO, NOAA stated that it expected to complete all corrective actions relating to the successful bid protest by May 28, 2010.

Although the lease acquisition process began in 2007, the decision-making process related to the acquisition can be traced back approximately 10 years. Together, these processes involved several separate offices within NOAA, the Department, and other federal agencies. In addition, they involved many statutory provisions, regulations, NOAA and Department policies, other administrative directives, and changes in personnel. Given the scope and complexity of these processes, we continue to gather and evaluate information, and in order to gain the best understanding of the facts and circumstances surrounding NOAA's process, we will need to continue our work beyond the time by which NOAA intends to finalize its assessment of practicable alternatives.

Although our review is ongoing, we have identified one issue that warrants higher-level review by NOAA before it finalizes its examination of practicable alternatives. Specifically, based on our review, we believe that NOAA should examine whether it sufficiently complied with the



requirement to consider existing federal facilities before pursuing a new lease acquisition. Such an examination will help to ensure that the ultimate decision—whether it be to affirm the original choice or select an alternative approach—is grounded in a more thorough, well-substantiated, and well-documented analysis.

According to 41 C.F.R. § 102-73.10, before acquiring real estate by lease, purchase, or construction, federal agencies should first use space in government-owned and government-leased facilities. Similarly, Department of Commerce policy generally disapproves of long-term lease solutions (Department of Commerce, Real Property Management Manual, § 5.4.1(d) (2003)). These issues are separate, but both relate to how NOAA assessed its options for MOC-P. We address each issue separately here, detailing factors that may potentially impact NOAA's own assessment of how well it followed these directives.

While there is a lack of detailed criteria against which to measure NOAA's efforts to consider other federal facilities, the Department's Real Property Management Manual does require the Department to make "every reasonable effort to utilize Government-controlled space" before leasing space. 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.

For example, we were told by NOAA officials that NOAA had considered collocating with select Coast Guard and Navy facilities, but its consideration was not documented. In preparation for the lease acquisition, NOAA received proposals in mid-2007 for 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, conducted under contract, 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 further 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 rejection of those federal sites, NOAA issued the Solicitation for Offers.

NOAA also considered and declined GSA's May 2008 offer to fulfill the MOC-P requirements at the GSA-owned Federal Center South (FCS) facility. NOAA's Western Regional Center (WRC) was also rejected as a long-term solution because of what NOAA characterizes as litigation risks in that area. Having ultimately rejected the use of other federal facilities, it is also unclear whether NOAA adequately considered other required alternatives. Office of Management and Budget (OMB) Circular A-94, which requires cost-benefit analyses of decisions on whether to lease or purchase, is an example of other potentially applicable requirements that may apply to NOAA's decision-making.

Our review has thus far uncovered three key issues regarding NOAA's consideration of other federal facilities.

First, at some time between 2000 and 2007, as detailed below, NOAA may have changed from considering a dispersed model for fulfilling the MOC-P requirement, which could have affected the analysis of available federal facilities.

- Although NOAA's 2008 Solicitation for Offers was limited to the lease of a consolidated facility (which would collocate all ships and staff), it commissioned a June 2000 Homeport Alternatives Analysis, conducted by SRI International, in which it contemplated operating from dispersed facilities as a cost-saving measure. This study was commissioned to explore alternative homeports, given the possibility of the Lake Union lease not being extended beyond 2003.
- The 2000 study indicated that NOAA was seeking to reduce costs by moving MOC-P staff to the WRC. Noting that NOAA was evaluating split homeporting, the study also explored homeporting two of four MOC-P vessels in Alaska to reduce ship travel time.
- To date, NOAA has not provided an explanation of what factors led to the apparent shift from the 2000 study to the current preference for a consolidated, leased solution. This apparent change in the vision for meeting the MOC-P requirement may have had a significant impact on how NOAA approached its available alternatives.
- Notably, since the July 2006 fire that destroyed the MOC-P piers at Lake Union, MOC-P has operated under a dispersed model, using piers at NOAA's WRC and GSA's FCS. Also, NOAA's Marine Operations Center-Atlantic operates in dispersed facilities. This suggests that a dispersed model may be feasible and should have been assessed as part of NOAA's requirements-planning process.

Second, NOAA's analysis of how well it considered other federal facilities should include an examination of how thoroughly it analyzed and weighed its potential long-term options at the WRC and FCS, where it currently operates.

- NOAA should consider whether it would have been feasible to maintain its current dispersed configuration while relocating staff to the WRC or other leased offices.
- Specifically, we found that the WRC was dredged in the 1970s in anticipation of developing four long piers to accommodate many more vessels, and utilities may already be in place for two additional planned buildings that were not developed.
- Although NOAA has cited neighborhood opposition to expanded use of the WRC and litigation against NOAA in that area in the 1970s, MOC-P has been homeported there since 2006. We have reviewed recent letters from some surrounding neighborhood groups that support locating MOC-P at the WRC. The potential cost savings of using these existing facilities may outweigh the litigation risks.

Third, GSA's pre-solicitation offer to serve the MOC-P requirements at FCS may have presented a viable federal facility for NOAA's consideration. This is particularly relevant because of the changed circumstances at this site.

- GSA's May 2008 offer arrived well before NOAA issued its Solicitation for Offers in November 2008. NOAA declined this offer one month later, citing the narrowness of the

waterway adjacent to the existing FCS pier, the fact that the waterway was a Superfund site, and NOAA's established goal of being operational in a new lease by July 1, 2011.

- Since then, GSA has obtained American Recovery and Reinvestment Act funds to redevelop three FCS buildings and plans to relocate a large tenant, leaving an existing building potentially available for NOAA, with some modification.
- We have been advised that NOAA currently has access to a pier that is sufficiently equipped and sizable to accommodate three of its vessels.
- Although NOAA has cited concerns regarding underwater property lines, it has not provided an indication that this situation has been a problem during its use of the pier since 2006.
- Regarding FCS being a Superfund site, according to a senior official at GSA with whom we spoke, this would be an issue for GSA, not NOAA. While the potential issue exists and an environmental impact statement would be required, Superfund liability would lie with GSA or another FCS tenant.
- NOAA cited its June 30, 2011, deadline for vacating the Lake Union site in its June 2008 letter declining GSA's offer. However, this deadline was driven by the expiration of the Lake Union lease, and suitable workarounds—such as short-term office leases through GSA—may potentially have been available.
- Pursuing such workarounds may have enabled NOAA to garner the necessary time and funding to develop the WRC and FCS individually or together for the MOC-P requirement.

In our view, NOAA's examination of these issues related to its consideration of other federal facilities will ensure that the final decision regarding practicable alternatives to Newport is thorough and well-documented.

We noted above that Department policy generally disapproves of long-term lease solutions, and it states that leased facilities should not be considered a permanent solution. Yet although the Newport lease award will commit NOAA to a leased solution for another 20 years, our review of how NOAA approached government-owned solutions found little documented analysis. NOAA has told us that leasing was preferred because acquiring funding for such an acquisition would have required considerable lead time and because funding of facilities has historically received lower priority than other funding requirements.

- NOAA officials also cited the fact that MOC-P has historically used leased sites.
- The relevant documents show that on at least two occasions, NOAA briefly considered acquiring the Lake Union site, which housed all MOC-P operations prior to the fire, but documentation of those efforts was limited to what can be characterized as passing comments. We have not been provided with evidence of systematic efforts to assess the feasibility of purchasing or constructing facilities elsewhere.

We understand that NOAA's consideration of the practicable alternatives to the Newport site is in progress and scheduled to be completed by May 28, 2010. Although NOAA had the authority to define the scope of the practicable alternatives as it saw fit, it limited its assessment to the four offers that it received under the solicitation. However, considering the range of options that were available to NOAA in government-owned and government-leased space, a broader examination may be warranted as part of this analysis.

According to NOAA, it is standard GSA practice for lease-to-build leases not to include a termination clause in the lease, and such a clause was not included in the Port of Newport award. We understand that NOAA obtained a preliminary estimate of potential lease termination costs from the Department of Commerce Office of General Counsel. However, as part of its decision-making process, NOAA should conduct a rigorous analysis of the potential termination costs and document the specific components of this estimate. As it continues to evaluate its practicable alternatives, it would be prudent for NOAA to minimize these potential costs to the extent possible.

Whatever conclusion NOAA reaches, it should carefully examine and document all pertinent factors, including those that we have highlighted. In order for both of our offices to be responsive to the Subcommittee, it is important to examine these issues regarding NOAA's consideration of other federal facilities. As we finalize our response to the Chairwoman and Ranking Member, we will follow up with your office to determine what additional information NOAA may have identified.

If you have any questions, please do not hesitate to contact me at (202) 482-4661.