

Congress of the United States
Washington, DC 20515

August 5, 2010

The Honorable Jeffrey Zients
The Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Acting Director Zients:

On August 4, 2009, NOAA announced that it was awarding a 20-year long-term lease to the Port of Newport, Oregon for the relocation of Marine Operations Center-Pacific (MOC-P) from its current home in Seattle, Washington. On June 28, 2010, Department of Commerce Inspector General Todd Zinser publicly released a report which exposed that this acquisition was deeply-flawed, violated department policies, and we believe exposes the Obama Administration to the appearance of conflicts of interest which such policies are designed to avoid. The report, along with previous findings by the Government Accountability Office (GAO), shows malfeasance and irregularities which must be brought to your attention and which merit a review by the Administration.

MOC-P is the base of operations for NOAA's Pacific fleet of ships, and serves as the home-port for four of NOAA's research vessels. These ships, and those of NOAA's predecessor agency, have been located in the Puget Sound since at least 1916. In the face of criticism from the GAO, the Commerce Department Inspector General, and numerous members of Congress, NOAA has continued to pursue the relocation of the MOC-P from the Puget Sound to Newport, Oregon. Despite the criticisms of independent audits, NOAA continues to ignore the consideration of indirect, operational, logistical and some direct costs of the move as they would compare to the value of using government-owned facilities.

NOAA and the Department of Commerce appear to continue efforts to preserve the outcome of the flawed contest they designed. We believe the Administration must intervene immediately to protect American taxpayers from needless government waste. While Commerce Department officials have argued that a new process will not bring a new result, this assumes that no new facilities or options can or should be considered for the award. The Inspector General and the GAO both indicate that other facilities should be considered. The Inspector General clearly shows in his report that NOAA has violated its own policies by excluding existing government facilities from their process. At a minimum, this should be done.

The award of a 20-year lease to the Port of Newport was surprising, and raised immediate concerns about whether the decision was truly in the best interest of NOAA and taxpayers. The

raising of these concerns led to an investigation by GAO into the bidding and award process undertaken by NOAA. Some of the striking facts included:

- Roughly 80 percent of the programs supported by MOC-P are located in Seattle, so a move to Newport would place the fleet 310 miles from many of the NOAA scientists that use the ships;
- Newport, Oregon is located over 140 miles from the nearest major shipyard and maritime center;
- The proposed new site is located hundreds of miles from the nearest government and commercial ship fueling terminals, meaning that fuel for NOAA's ships would have to be brought in by truck; and
- The proposed site in Newport is in the middle of NOAA-designated critical habitat for two Endangered Species Act-listed species (green sturgeon and Oregon coast coho salmon) and construction of the pier would require destruction of fragile eel-grass habitat.

Following NOAA's award to the Port of Newport, two of the losing bidders (the Port of Bellingham and private property owners for the currently-utilized site in Seattle) filed protests with the Government Accountability Office (GAO). The GAO upheld the Port of Bellingham's protest in a decision dated December 2, 2009, concluding that NOAA had failed to comply with its own Solicitation for Offers and Executive Order 11988 when it awarded the MOC-P lease to Newport, which was located in a floodplain. Under GAO's direction, NOAA agreed to remedy this disparity by conducting an "analysis of practicable alternatives" to reexamine the agency's alternatives in light of the floodplain issue. NOAA's final analysis in response to the GAO, however, hardly appears to have abided by the spirit of GAO's recommendations. According to Inspector General Zinser, it is difficult to understand how the final analysis of practicable alternatives issued by NOAA actually constitutes a true alternatives analysis because "NOAA did not expand its definitions of practicable alternatives to permit consideration of other options such as government-owned space."

While GAO underwent its review of whether the lease competition was fair, we expressed numerous and significant policy concerns about the proposed MOC-P relocation. We continue to question whether the conduct of the competition was truly in the best interest of NOAA, its missions, its employees, and the American taxpayers. Because of these and other ongoing policy concerns which were outside the scope of GAO's review, we requested that the Department of Commerce undertake a formal, independent review of the MOC-P lease award decision and its policy implications. Despite calling for this independent review six separate times in various letters, our request for an independent review went unfulfilled. We asked for prudence, caution, and attention to detail in moving forward with a new MOC-P facility, but none of our requests resulted in any substantive action.

On December 11, 2009, we called on NOAA to use the GAO's ruling as an opportunity for a "fresh start" to conduct a genuine reevaluation of its options for MOC-P. On January 15, 2010 we outlined steps that we believed NOAA must take to comply with the Endangered Species Act and National Environmental Policy Act. And on February 17, 2010 we sent a letter stating that NOAA should stop work at the Newport site pending the outcome of NOAA's GAO-mandated analysis of practicable alternatives. Neither NOAA nor the Department of Commerce followed

any of our advice, choosing instead to move forward implementing what we believe is a flawed long-term lease with the Port of Newport.

Watching the inflexibility of the Department of Commerce on this issue, on March 5, 2010 Senators Maria Cantwell and Olympia Snowe, as chair and ranking member of the Senate Commerce Committee's Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard, formally requested an investigation into the MOC-P acquisition from the Department of Commerce Inspector General. That report, which was released on June 28, confirmed many of our worst fears about NOAA's MOC-P acquisition.

The Inspector General reported that NOAA's acquisition for the Marine Operations Center-Pacific was severely flawed and raises many questions as to the soundness and integrity of NOAA's acquisition and real estate programs. Most notably, the Inspector General concluded that, "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." Because NOAA failed to consider existing federal properties or a dispersed configuration for mooring its ships, the IG has no confidence that a long-term lease with the Port of Newport is the best deal for taxpayers.

Among the Inspector General's other key findings:

1. **"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."** The Inspector General alerted NOAA of this concern on May 26, and advised that NOAA should address these concerns before finalizing its analysis of practicable alternatives. NOAA ignored that advice and finalized its analysis on June 2, 2010, showing great disregard for fixing the problems with the MOC-P acquisition.
2. **"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 fact, NOAA had done a study of just such a dispersed configuration in 2000 and has been operating in a dispersed mode since the 2006 fire that destroyed NOAA's pier at the current Lake Union site, but still failed to consider it as an option before moving forward with a costly long-term lease.
3. **"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."** At least a dozen weaknesses have been identified, 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. The IG concedes, though, that the way the competition was structured, the outcome of the lease competition is unlikely to have changed.

4. **“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... 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 of an operating lease, based on justification and consideration of alternatives that on their face and without additional documentation were significantly lacking.”**
5. **“NOAA’s financial analysis of the four offers submitted in response to the (lease) 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.”**
6. **“The issues surrounding the MOC-P acquisition exemplify the importance of effective capital planning and investment processes... 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.”**

On June 23, 2010, Commerce Secretary Gary Locke spoke of the Inspector General’s report, which had not yet been publicly released at that point, saying:

“We’re very concerned about the fact that we have a defect and consistency of the evaluation of, for instance, the new home porting of NOAA ships in the Pacific Northwest. The inspector general indicated that the defects were not sufficient to overturn that and still that the award should have gone to the ultimate site, which is Newport.”

We respectfully disagree with the Secretary’s characterization. While the IG stated that many of the “errors and weaknesses in NOAA’s competitive lease acquisition wouldn’t change the outcome of the competition,” the IG then went on to say “the more fundamental problems pertain to NOAA’s process prior to the competitive lease process,” and continued on for fifteen pages about how the true acquisition process should have included an analysis of existing federal facilities and an analysis of dispersing the operations across several locations. According to the IG’s report, because “NOAA did not adequately, in our view, consider federal facilities,” the IG was “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.”

In our view, it is totally unacceptable that the federal government would enter into a twenty-year lease worth tens-of-millions of dollars and not be able to guarantee to the American taxpayer that it is the most cost-effective solution based on a coherent and rigorous process. According to the Inspector General’s review, the MOC-P acquisition was deeply and fundamentally flawed because the government simply refused to consider all its options and failed to follow its own

policies, procedures and best practices. Such an acquisition cannot be allowed to stand unquestioned and unchallenged. The American taxpayers deserve better than mere regret.

Respectfully,



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



Patty Murray
United States Senator



Norm Dicks
Member of Congress



Jim McDermott
Member of Congress



Adam Smith
Member of Congress



Jay Inslee
Member of Congress



Brian Baird
Member of Congress



Rick Larsen
Member of Congress



Dave Reichert
Member of Congress