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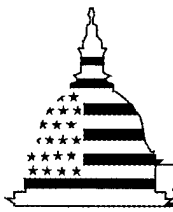
Report to Congressional Committees

May 1999

PUBLIC-PRIVATE COMPETITIONS

Reasonable Processes Used for Sacramento Depot Maintenance Award



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National Security and
International Affairs Division

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May 12, 1999

The Honorable John Warner
Chairman
The Honorable Carl Levin
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Floyd Spence
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on Armed Services
House of Representatives

This report is a redacted version of a report issued on November 23, 1998, which contained sensitive and protected information. The report responds to one of several requirements in the National Defense Authorization Act for Fiscal Year 1998 relating to depot maintenance activities.[1]

As required, we reviewed the Air Force's selection of a source of repair for depot maintenance work at the closing Sacramento Air Logistics Center (ALC), McClellan Air Force Base, California. Specifically, we assessed whether the (1) Air Force's procedures for conducting the Sacramento competition provided substantially equal opportunity for the public and private offerors to compete for the work without regard to performance location, (2) procedures for conducting the competition were in compliance with 10 U.S.C. 2469a and other applicable laws and regulations, (3) appropriate consideration was given to factors other than cost, and (4) award resulted in the lowest total cost to the Department of Defense (DOD) for performance of the work.

Results in Brief

Our review of the Air Force's competition for work at the Sacramento ALC showed that (1) the competition procedures provided an equal opportunity for public and private competitors without regard to where the work could be performed; (2) the procedures did not appear to deviate in any material respect from applicable laws and regulations; (3) the Air Force

[1]Appendix I lists the depot maintenance reporting requirements contained in the act.

appropriately considered factors other than cost in the selection; and (4) within the framework set forth for the competition, the award resulted in the lowest total cost to DOD for performance of the work.[2] We also identified several issues that may be useful for the Air Force to consider in future competitions.

Background

As a result of a 1995 Base Realignment and Closure (BRAC) Act decision, the Sacramento and San Antonio ALCs, including their maintenance depots, are to close by 2001. To mitigate the impact of the closings on the local communities and employees, the administration announced its intention to maintain employment levels by privatizing the maintenance depots' workloads in place at each location. The Air Force followed by announcing a strategy to privatize in place five prototype depot maintenance work packages at the two closing centers. In response to congressional concerns regarding this strategy, the Air Force decided to use public-private competitions to determine the most cost-effective source of repair for the closing maintenance depots' work. Appendix II provides a more detailed description of the closure history for both the Sacramento and San Antonio centers.

On March 20, 1998, the Air Force issued a solicitation for the purpose of conducting a public-private competition for various aircraft and commodity depot maintenance workloads being performed at the Sacramento ALC.[3] The Air Force received one private sector proposal from Lockheed Martin Corporation, which had AAI Aerospace Corporation and GEC-Marconi Avionics Incorporated as major subcontractors, and one public sector proposal from the Air Force's Ogden ALC, which was teamed with Boeing Aerospace Corporation. After performing technical and cost evaluations, on September 21, 1998, the Air Force selected the Ogden ALC's proposal as the best value to the government. Following

[2]In our previous report entitled Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation (GAO/OGC-98-48, May 4, 1998) and in a bid protest decision, Pemco Aeroplex, Inc., cited earlier, we concluded that the Air Force had not provided a sufficient basis to show that the combined workloads were necessary to meet its needs. We have not changed our view.

[3]Some of Sacramento's maintenance work was to be transferred to other DOD depots outside the competition process. For example, the BRAC Commission required that ground communications and electronics work be transferred to the Tobyhanna Army Depot in Pennsylvania. The Air Force F-15 repair work has been consolidated with other F-15 work at the Warner Robins ALC in Georgia, and software work has been transferred to the Ogden ALC in Utah.

resolution of a bid protest filed with our Office, the Air Force proceeded to award the work to Ogden, on October 9, 1998.[4]

Sacramento Air Force Depot Competition Placed No Limitation on Performance Location

Under 10 U.S.C. 2469a(d), a competitor must be allowed to perform at the location of its choosing and is not to be given preferential treatment for, or be limited to, performing the work in place or at any other single location. On the basis of our review of the Air Force's evaluation and selection documents related to the Sacramento competition, we found no basis to conclude that the procedures did not provide a substantially equal opportunity for the offerors to compete without regard to performance location. For example, while, in its evaluation, the Air Force expressed concerns about the risks inherent in Ogden's plan to transition the workloads to facilities at San Antonio, Texas, and Ogden, Utah, these concerns were based upon legitimate performance considerations related to the transition plan and did not reflect a bias toward performing the work at the closing Sacramento facility. Appendix III provides the details of our analysis.

Competition Procedures Complied With Applicable Laws and Regulations

Overall, the Air Force's evaluation and selection of Ogden appeared to be reasonable, fair, and consistent with the solicitation and depot competition procedures. We found no reason to conclude that the competition procedures used in selecting Ogden deviated in a material way from 10 U.S.C. 2469a and other applicable laws and regulations. (See app. III for our detailed analysis.) In assessing the Air Force's compliance with applicable laws and regulations relating to the competition for Sacramento's work, we reviewed the Air Force's evaluation of the proposals and the selection in the context of applicable laws and regulations. This review included examining documents, reviewing processes and procedures, and discussing the competition with Air Force and DOD officials.

[4] Pemco Aeroplex, Inc. (B-280397, Sept. 25, 1998). On June 17, 1998, Pemco Aeroplex, Inc. (Pemco), filed a protest of the provisions of the solicitation with our Office under 31 U.S.C. 3551-3556. Pemco objected to the solicitation of the workloads on a combined basis. In a decision dated September 25, 1998, our Office sustained the protest, concluding that the Air Force was unable to show that combining the requirements was reasonably required to satisfy its needs and recommending that the agency cancel the solicitation and resolicit its requirements without bundling the workloads. On October 9, 1998, the Air Force decided to proceed with the award to Ogden. On October 13, 1998, Pemco filed civil action no. Cv.98-B-2584-S, in the U.S. District Court for the Northern District of Alabama, Southern Division, seeking a declaration that the award is void and an injunction preventing the Air Force from moving forward with performance.

Competition Procedures

Pursuant to 10 U.S.C. 2469a and its depot competition procedures, the Air Force issued the solicitation in accordance with the Federal Acquisition Regulation (FAR), part 15, which sets forth the source selection procedures for competitively negotiated acquisitions. The solicitation called for proposals from public and private sector sources for some of the aircraft and commodity work currently being performed at the closing Sacramento ALC at McClellan Air Force Base. The solicitation also provided for award to the public or private competitor that was responsible and whose proposal conformed with the solicitation and represented the best value to the government. The proposals were to be evaluated using transition, operation, and cost criteria; a risk assessment; and other general considerations.

Applicable Laws and Regulations

Several statutes, in particular, 10 U.S.C. 2469a, govern the solicitation and award process for public-private competitions for the depot workloads of the closing Sacramento and San Antonio ALCs. Because the Air Force used the competitive acquisition system, the standards in chapter 137 of title 10 of the United States Code and the FAR apply to the extent they are consistent with 10 U.S.C. 2469a and the other applicable provisions relating to the outsourcing of depot workloads.

Consistent with these standards, the Air Force followed the criteria announced in the solicitation, which in this case included those required by 10 U.S.C. 2469a, and exercised its judgment in a reasonable manner in selecting the successful competitor.

Air Force Considered Factors Other Than Cost

While the competitor selected represented the lowest evaluated cost to the government, the Air Force considered the relative merits of the technical and management approaches of both proposals. For example, the Air Force considered the private competitor's plan to recruit and maintain the existing work force in place at the Sacramento facility was beneficial. On the other hand, the Air Force concluded that Ogden's plans for relocating the workloads to San Antonio and Ogden were risky. Thus, for these and other reasons, we found no basis to conclude that factors other than cost were not appropriately considered.

Evaluation Resulted in the Lowest Total Cost to the Government

The Air Force's award of aircraft and commodity depot maintenance work previously performed at the Sacramento depot was made to the Ogden ALC. The award, which was valued at $1,794,488,861, was made in accordance with the provisions of the solicitation and resulted in the lowest total cost to the government.[5] Overall, the cost evaluation results appear reasonable. However, while not affecting the selection, we do question some of the estimates supporting the evaluation. However, the selection decision would not have been affected by these questions. Questions relate to estimating costs for (1) overhead, (2) commodity rate risk, (3) warehousing, (4) base operating support, and (5) material surcharge.

Cost Evaluation Appears Reasonable

Ogden's total evaluated cost of $1,794,488,861 for the competed Sacramento depot maintenance workloads was about 6 percent less than Lockheed's evaluated cost of $1,902,848,080. The Ogden proposal, after cost comparability adjustments provided for in the solicitation and the depot maintenance cost comparability handbook, was determined by the source selection authority to offer the lowest total evaluated cost to the government. Both before and after the cost comparability adjustments, the Ogden proposal was evaluated lower than the private sector proposal.

We examined the accuracy and soundness of the data, assumptions, and methodology supporting a number of these adjustments, including an analysis of the various cost elements in each proposal and the final adjustments made by the cost evaluation team in its proposal analysis report. For our analysis, we selected cost elements having variances of 10 percent or more between the competitors or between amounts contained in the competitors' final proposals versus the final evaluated cost estimated by the evaluation team. For these cost elements, we (1) discussed with members of the evaluation team, the methodology they used in determining the evaluated cost; (2) reviewed the calculations and supporting documentation for the various cost elements; (3) attempted to independently collect data to corroborate the evaluated cost estimates, where warranted; and (4) offered to discuss competition issues with both the public and private sector competitors. In some instances, our review

[5]As we have previously reported, we were concerned that because the Department bundled the aircraft and commodity workloads, competition may have been limited. Consequently, there may have been opportunities for increased savings had there been more competition. Notwithstanding this, we based our review of costs under the terms of the existing solicitation.

was limited by a lack of supporting source data. Notwithstanding this limitation, our analysis did not disclose any material weaknesses in the overall cost evaluation. However, as discussed below, in several cases, we identified weaknesses in the evaluated cost estimates.

Cost Estimate Issues

While the overall cost evaluation was reasonable, we question several of the cost estimates. In each case, these questions relate to actions that would have decreased the evaluated cost of the public sector's offer. Therefore, these cases had no impact on the award decision. However, we present them as potential opportunities for improving cost estimates for future competitions. These issues relate primarily to refining cost estimating methodologies and using more accurate data.

Overhead Savings

The Air Force evaluation team reduced Ogden's projection of overhead savings by 85 percent—from $294.5 million to $46.2 million.[6] The team based the reductions primarily on (1) the Defense Contract Audit Agency's (DCAA) assessment of Ogden's overhead savings analysis, (2) its decision to limit the number of years overhead savings would be considered, and (3) its assessment of Boeing Aircraft's proposed cost savings on the C-17 maintenance program.[7] The first two adjustments were based on conservative assumptions and likely understated the savings between the proposals. Also, in some cases, supporting documentation was lacking or inconsistent approaches to estimating costs were used. Given these issues, we did not attempt to determine a cumulative effect of these adjustments.

Directions regarding the preparation of overhead savings were provided in the Sacramento solicitation. It stated that the evaluation of overhead savings would emphasize a competitor's analysis and documentation of proposed management initiatives to ensure that the projected savings would occur—particularly those predicted for more than 24 months after

[6]Ogden's projection of $294.5 million in overhead savings over the performance period consisted primarily of savings for existing maintenance workloads performed at the Ogden depot as a result of the consolidation of the competition work at that facility, a lesser amount in overhead savings on the C-17 aircraft maintenance program proposed by Boeing Aerospace Corporation as a result of consolidating the KC-135 work with the C-17 and KC-10 work at its new San Antonio facility, and a minor amount in contractor engineering technical support at Sacramento that would no longer be needed if the KC-135 workload was performed by Boeing, the original equipment manufacturer.

[7]The evaluation team did not include the proposed savings in the total evaluated cost because the evaluators concluded that they were not adequately supported in the proposal. Air Force officials stated that they intend to pursue this issue further with the C-17 Program Office.

award. The solicitation evaluation criteria provided that the proposed first-year savings, if determined to be reasonable, would be allowed. The second-year savings, if supportable, would also be allowed but discounted for risk. The solicitation also stated that proposed savings for 3 years and beyond might be allowed if clearly appropriate but would be considered under the best-value analysis.

Ogden used a regression-based methodology to develop its estimate of projected overhead savings that should result from consolidating the commodity and A-10 aircraft work with existing work at Ogden. Ogden based its analysis on 8 years of historical data to capture the relationship between changing workloads and their effect on overhead rates. In its assessment, Ogden normalized the data to reflect cost accounting changes that occurred over the 8-year period.

After reviewing Ogden's projections, the Air Force evaluation team concluded that the regression methodology was an adequate starting point for projecting future overhead and general and administrative savings. However, they expressed concern about Ogden's application of this methodology and asked DCAA to evaluate Ogden's overhead savings analysis. DCAA concurred with the use of the regression methodology but questioned the workload baseline Ogden used in developing the savings estimate. DCAA found that in establishing the baseline, Ogden did not include all the workload that is expected to be transferred into the depot separate from the competition process.[8] The evaluation team reduced Ogden's proposed overhead savings for the commodity and A-10 workload by a significant amount over the 8-year performance period. The team said they based this reduction on a more realistic projection of Ogden's baseline due to the transition of workloads transferring separate from the competition. We were unable to reconstruct how this figure was derived because the Air Force did not provide supporting documentation.

After making this adjustment, the evaluation team determined the number of years that overhead savings would be allowed. Team members said they had a general lack of confidence in the regression analysis, the overhead

[8]The Air Force's plan for transitioning workloads from the closing Sacramento and San Antonio depots includes the transfer of core workloads to remaining military depots outside the competition process. For example, Sacramento's F-15 aircraft were transferred to Warner Robins and San Antonio's gas turbine engines will be transferred to Ogden. Additionally, Ogden is expected to receive depot maintenance work from other sources during the performance period. About 1.6 million hours of work is expected to be transferred to Ogden separate from the competition process.

rates, and the application of savings beyond the initial years of the performance period. They said that all overhead fixed costs associated with excess capacity would be eliminated in the long run. Consequently, the team said that production overhead savings would occur only on a prorated basis for the first 3 years.[9] Likewise, the team estimated general and administrative savings for 8 years—with the annual amount prorated progressively beginning with the second year.[10] Taken together these estimates represent the evaluation team's $46.2 million estimate for overhead savings.

The Air Force's estimate of overhead savings is conservative and is likely understated. We question the Air Force's assumption that overhead fixed costs associated with excess capacity would be eliminated beginning in the first and second year through reductions in force or attrition. For example, a significant percentage of Ogden's proposed production overhead cost savings were related to nonpersonnel costs such as facilities and capital equipment, which by their nature are long-term assets and would not likely be eliminated in the evaluators' estimated time frame. Additionally, the projected organizational structure in the directorates and divisions projected to gain competition work showed that some positions have only one person assigned and that the costs associated with these positions would likely remain fixed for the life of the requirement. Therefore, it appears reasonable to assume that some level of overhead savings relative to these positions would be achieved during the entire performance period.

We noted an inconsistency in how the evaluation team treated Ogden's regression analysis. On the one hand, the evaluation team accepted the proposed overhead costs for the competition workload that had been developed using Ogden's regression analysis. DCAA officials expressed confidence in this procedure and stated that it provided a reasonable estimate of savings and is applied fairly regularly to commercial firms. On the other hand, when assessing the overhead savings associated with existing workload at the Ogden facility, the evaluation team expressed a lack of confidence in the same regression analysis and, based on these concerns, prorated projected overhead savings associated with this

[9]Using the recalculated production overhead cost savings, the evaluation team estimated 75 percent savings the first year, 50 percent the second, and 25 percent the third. The evaluation team estimated no production overhead savings for the remaining 5 years.

[10]Using the recalculated general and administrative overhead cost savings, the evaluation team gave full credit for the first year of the performance period. The team estimated 75 percent the second year, 50 percent the third year, and 25 percent for each of the remaining 5 years of the performance period.

workload. This approach also likely resulted in underestimating overhead savings.

Commodity Rate Risk

Commodity rate risk refers to the uncertainty the evaluation team placed in Ogden's proposed overhead rates on the commodity workloads. The evaluation team did not question Ogden's identification of projected overhead costs for the combined competition and noncompetition work, but it was concerned that not enough of the total overhead had been allocated to the competition work. Consequently, it made an adjustment to increase Ogden's proposed overhead costs for the competed commodity workloads. However, the team did not make a corresponding adjustment to reduce the overhead costs for the noncompetition work to fairly represent the total government cost. Consequently, this resulted in a corresponding overstatement of the noncompetition overhead costs and a corresponding understatement of overhead savings for the noncompetition workloads. While making this corresponding adjustment would not have had a material effect on the selection, it would have increased overhead savings. Ensuring that adjustments of this nature are made correctly is important in future competitions.

Warehouse

While an upward cost adjustment to the Ogden proposal for the warehousing function was appropriate, the method the evaluation team used for making this adjustment could have been more accurate. As a result of the adjustment, the team significantly overstated costs.

The Defense Logistics Agency (DLA) provides the Air Force material storage, warehousing, and issuing and receiving support. DLA accumulates costs for these services and allocates them to its customers based on standard prices that are computed annually for each type of service. The solicitation required that competitors for the Sacramento workloads provide these services as a part of their proposals.

The evaluation team concluded that Ogden's offer did not represent all the costs associated with the warehousing, storage, and receipt and issuance services. The team estimated that DLA's full costs to support the competed workload at the closing Sacramento depot would be significantly higher than Ogden's proposed costs. Air Force evaluators said that while it is possible that Ogden could add the competed work to its existing workload at a marginal cost, they had no basis for estimating the incremental costs of the Ogden warehouse operations. Therefore, they used the full costs of the Sacramento operations.

After considering cost information and discussions with agency officials, we estimated that not more than about half of DLA's costs for the warehousing function are variable. Consequently, the added warehousing costs were overstated by a significant amount.

Base Operating Support

The evaluation team added a cost comparability adjustment to capture base operating support costs not included in Ogden's proposal. The methodology used to make this estimate was inappropriate, and as a result, the adjustment was overstated by almost half.

"The Defense Depot Maintenance Council Cost Comparability Handbook" provides procedures and techniques to address cost comparability when competing depot maintenance workloads between the public and private sectors. Base operating support cost is one cost category recognized by the handbook. According to the Air Force's evaluation report, DCAA performed a review of base operating support costs and recommended an adjustment. However, we found no references to base operating support costs in DCAA's report. Additionally, DCAA officials said that they had not recommended any adjustments in this area.

Evaluation team members said that their adjustment was based on McClellan Air Force Base operating support costs for 1996. They said that they did not collect base operating support cost data for Hill Air Force Base because there should be no difference in the base operating support costs at the two locations. A more appropriate approach would be to use reported costs at the location being evaluated. Based on reported Hill Air Force Base operating cost data for 1996, we estimated that the comparability adjustment should have been about half of the evaluation team's adjustment.

Material Surcharge

The evaluation team disallowed Ogden's proposed cost comparability adjustment for a material surcharge. While this action was appropriate for this competition, one technical issue may be important for future competitions. The team said that it disallowed the adjustment because Ogden did not include material in its cost proposal. The more appropriate rationale for disallowing this adjustment was that the cost of government furnished material was added as an adjustment to both proposals. Therefore, there was no need for a comparability adjustment. While this was not a factor for this competition, it may be relevant for future competitions if a private competitor chooses to use contractor furnished material.

Conclusions

The Air Force met the requirements of applicable laws and regulations in the competition for depot maintenance work at the Sacramento ALC. However, the process used for estimating overhead, commodity rate risk, warehousing, base operating support, and material surcharge costs provides issues for the Air Force to consider in its future competitions. Specifically, the evaluation team could have better documented support for certain key cost estimates, followed more appropriate or consistent approaches for estimating costs, and used more accurate or appropriate data.

Agency Comments and Our Evaluation

We provided a draft copy of this report to the Air Force for comment and review for procurement sensitive information. Responsible officials stated that they did not have sufficient time to review and comment on the report. As agreed with the responsible committees, to respond to the congressionally mandated reporting date, we issued prepublication and printed copies of this report with appropriate markings to indicate that the report contained procurement sensitive information that must be safeguarded. Subsequently, Air Force officials identified specific data that they said should be removed from the published report. We have removed the sensitive data identified by the Air Force from this version of the report.

Scope and Methodology

In conducting our work, we obtained information from and interviewed officials at the Air Force Headquarters, Washington, D.C.; the Air Force Materiel Command Headquarters, Wright Patterson Air Force Base, Ohio; the Sacramento ALC, McClellan Air Force Base, California; and the Ogden ALC, Hill Air Force Base, Utah. We also discussed contracting issues with DCAA officials. We offered to discuss the Sacramento competition and award with both the public and private sector competitors; however, because of the pending litigation the Air Force has not provided either competitor with a debriefing. Since the competitors were not familiar with the specifics of the evaluation, they could not provide us with detailed concerns regarding the evaluation process. Particularly, when we contacted the private-sector competitor, its representative stated that discussions of the selection with our Office, without the benefit of a debriefing, would not be productive.

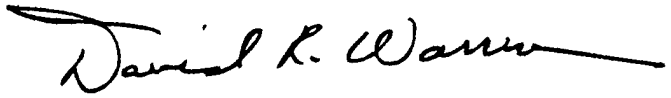
To analyze the Air Force's decision to award the Sacramento depot maintenance workload to the Ogden ALC, we interviewed officials and collected relevant documents from Headquarters, Department of the Air

Force; Headquarters, Air Force Materiel Command; Air Force source selection team members; representatives from the two competitor; and DCAA. To verify compliance with the Sacramento competition and selection with applicable laws and regulations, our Office of the General Counsel performed a legal compliance review. To determine whether cost elements considered in the source selection evaluation were complete and reasonable, we discussed the selection structure with cognizant Air Force and DOD officials, as well as the qualified competitors. We also reviewed the Air Force evaluation team's calculating methods for the various cost estimates for reasonableness and compared the cost elements between competitors to identify material drivers and to further test for reasonableness. We discussed with the evaluation team members their rationale for treating cost elements in the evaluation and in some cases recalculated cost estimates. A list of our related reports is provided at the end of this report.

We performed our review between September and November 1998 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Honorable William S. Cohen, Secretary of Defense; the Honorable F.W. Peters, Acting Secretary of the Air Force; the Honorable Jacob J. Lew, Director, Office of Management and Budget; and interested congressional committees and members. We will also make copies available to others upon request.

Please contact me at (202) 512-8412 if you or your staff have questions concerning this report. The major contributors to this report are listed in appendix IV.



David R. Warren, Director
Defense Management Issues

Contents

Letter 1

Appendix I Summary of Depot Reporting Requirements in the National Defense Authorization Act for Fiscal Year 1998 16

Appendix II San Antonio and Sacramento Air Logistic Centers' Closure History 18

Appendix III Legal Review of Competition for Sacramento Air Logistics Center Workloads 23

Appendix IV Major Contributors to This Report 47

Related GAO Products 49

Table

Table III.1: Cost Adjustments Adopted by the SSA 41

Abbreviations

ALC	Air Logistics Center
BRAC	Base Realignment and Closure
CCH	Cost Comparability Handbook
DCAA	Defense Contract Audit Agency
DLA	Defense Logistics Agency
DOD	Department of Defense
FAR	Federal Acquisition Regulation
GFE	government furnished equipment
GFM	government furnished material
GKDC	Greater Kelly Development Corporation
RIF	reduction-in-force
RFP	request for proposals
SSA	source selection authority
SSAC	source selection advisory council
SSEB	source selection evaluation board

Summary of Depot Reporting Requirements in the National Defense Authorization Act for Fiscal Year 1998

The National Defense Authorization Act for Fiscal Year 1998 contained the following depot-related reporting requirements for our Office.

I. Report on DOD's Compliance with 50-Percent Limitation (Section 358)

The act amended 10 U.S.C. 2466(a) by increasing from 40 to 50 percent the amount of depot-level maintenance and repair workload funds that the Department of Defense (DOD) can use for contractor performance and revised 10 U.S.C. 2466(e) by requiring the Secretary of Defense to submit to Congress by February 1, 1998, a report identifying the percentage of funds expended for contractor performance.

Within 90 days of DOD's annual report to Congress, we were required to review DOD's report and inform Congress whether DOD had complied with the 50-percent limitation.

II. Reports Concerning Public-Private Competitions for the Depot Maintenance Workloads at the Closing San Antonio and Sacramento Air Logistics Centers (Section 359)

The act added section 2469a to title 10 the United States Code to provide for special procedures for public-private competitions concerning the workloads of these two closing depots. It also required us to issue four reports.

First, within 60 days of its enactment, the 1998 Defense Authorization Act required us to review the C-5 aircraft workload competition and subsequent award and report to Congress on whether (1) the procedures used provided an equal opportunity for offerors to compete without regard to performance location, (2) the procedures complied with applicable law and the Federal Acquisition Regulation (FAR), and (3) the award resulted in the lowest total cost to DOD.

Second, the act required the Secretary of Defense to submit a determination to Congress if any of the workloads were bundled in a single solicitation. We were required to report our views on the DOD determination within 30 days.

Third, the act required us to review all DOD solicitations for the workloads at the San Antonio and Sacramento ALCs and report to Congress within 45 days of the solicitations' issuance whether the solicitations provided "substantially equal" opportunity to compete without regard to

performance location and otherwise complied with applicable laws and regulations.

Fourth, the act required us to review all DOD awards for the workloads at the two closing ALCs and report to Congress within 45 days of the contract award whether (1) the procedures used complied with applicable laws and regulations and provided a "substantially equal" opportunity to compete without regard to performance location, (2) "appropriate consideration was given to factors other than cost" in the selection, and (3) the selection resulted in the lowest total cost to DOD for performance of the workloads.

This report addresses the fourth requirement for the award of the Sacramento aircraft and commodity workloads.

San Antonio and Sacramento Air Logistic Centers' Closure History

The 1995 Base Realignment and Closure (BRAC) Commission recommended closing the Sacramento and San Antonio Air Logistics Centers (ALC) and transferring their workloads to the remaining depots or to private sector commercial activities. In making these recommendations, the Commission considered the effects of the closures on the local communities, on workload transfer costs, and the potential effects on readiness and concluded that the savings and benefits outweighed the drawbacks. The Commission's report noted that given the significant amount of excess depot capacity and limited DOD resources, closure was a necessity and would increase the use of the remaining centers and substantially reduce DOD operating costs. The specific Commission recommendations were as follows:

- Realign Kelly Air Force Base, including the ALC; disestablish the defense distribution depot; consolidate the workloads to other DOD depots or to private sector commercial activities as determined by the Defense Depot Maintenance Council;[1] and move the required equipment and personnel to the receiving locations.
- Close McClellan Air Force Base, including the ALC; disestablish the defense distribution depot; move the common-use ground communication electronics to Tobyhanna Army Depot, Pennsylvania; retain the radiation center and make it available for dual use and/or research, or close as appropriate; consolidate the remaining workloads with other DOD depots or private sector commercial activities as determined by the Council; and move the required equipment and any required personnel to receiving locations. All other activities and facilities at the base were to close.

In considering the BRAC recommendations to close the two centers, the President and the Secretary of Defense expressed concerns about the near-term costs and potential effects on local communities and Air Force readiness. In response to these concerns, the President, in forwarding the Commission's recommendations to Congress, indicated that the ALCs' work should be privatized in place or in the local communities. He also directed the Secretary of Defense to retain 8,700 jobs at McClellan Air Force Base, which had been recommended for closure, and 16,000 jobs at Kelly Air Force Base, which had been recommended for realignment, until 2001 to further mitigate the closures' impact on the local communities.

[1]The Defense Depot Maintenance Council is a senior-level council established to advise the Deputy Under Secretary of Defense for Logistics on depot maintenance within DOD.

Additionally, the size of the workforce remaining in the Sacramento and San Antonio areas through 2004 was expected to remain above 4,350 and 11,000, respectively.

The Air Force initially focused on privatizing five prototype workloads—three at Sacramento (for hydraulics, electric accessories, and software) and two at San Antonio (for C-5 aircraft paint/depaint and fuel accessories). The Council approved the Air Force's plans for the five prototype workloads on February 1, 1996. The prototype workloads involved about 11 percent of the San Antonio depot's maintenance personnel and about 27 percent of the Sacramento depot's personnel.[2]

Shortly after the Council approved the prototype program, the concept's appropriateness was questioned. Community and industry groups expressed an interest in having larger packages, and DOD officials were concerned about the cost of administering a large number of smaller contracts. Implementation of the prototype concept was put on hold in May 1996 as the Air Force considered various options. In April 1996, we testified that, if not effectively managed, privatizing depot maintenance activities, including the downsizing of remaining DOD depot infrastructure, could exacerbate existing excess capacity problems and the inefficiencies inherent in underused depot maintenance capacity. Privatizing workloads in place at two closing Air Force depots would not reduce the excess capacity in the remaining depots or the private sector and consequently would not be a cost-effective approach to reducing depot infrastructure.[3] Later that year, we reported that privatizing in place, rather than closing and transferring the depot maintenance workloads at the Sacramento and San Antonio centers, would leave the Air Force with costly excess capacity at its remaining depots that a workload consolidation would mitigate.[4] Our analysis showed that transferring the depot maintenance workloads to other depots could yield additional economy and efficiency savings of over $200 million annually.

[2]The BRAC report specified that the Council should determine where depot maintenance workloads from closing Air Force depots should be moved.

[3]Defense Depot Maintenance: Privatization and the Debate Over the Public-Private Mix (GAO/T-NSIAD-96-146, Apr. 16, 1996) and (GAO/T-NSIAD-96-148, Apr. 17, 1996).

[4]Air Force Depot Maintenance: Privatization-in-Place Plans Are Costly While Excess Capacity Exists (GAO/NSIAD-97-13, Dec. 31, 1996).

We recommended that the Secretary of Defense require the Secretary of the Air Force to take the following actions:

- Before privatizing any Sacramento or San Antonio center workload, complete a cost analysis that considers the savings potential of consolidating the two centers' depot maintenance workloads at other DOD depots, including savings that can be achieved for existing workloads by reducing overhead rates through more efficient capacity utilization of fixed overhead at underused military depots that could receive this workload.
- Use competitive procedures, where applicable, for determining the most cost-effective source of repair for workloads at the closing Air Force depots.

In August 1996, the Air Force announced a revised strategy for allocating the depot workloads at the Sacramento and San Antonio centers. The strategy involved several large consolidated work packages, essentially one at Sacramento and two at San Antonio (one for the C-5 aircraft and one for engines). In December 1996, the Air Force issued procedures to conduct public-private competitions for the workloads and to allow one of the remaining public depots to compete with the private sector for each of the three workload packages. The Air Force's procedures allowed evaluation credit for public and private sector proposals that offered overhead savings to other government workloads.

In February 1997, the Air Force issued a request for proposals for the C-5 aircraft depot maintenance workload. In September 1997, the Air Force awarded the C-5 workload to the Warner Robins Air Logistics Center based on the Air Force conclusion that it had the lowest total evaluated cost. As required by the 1998 Defense Authorization Act, we reviewed the C-5 award, issuing our report on January 20, 1998. We concluded that (1) the C-5 competition procedures provided an equal opportunity for public and private offerors to compete without regard to where the work could be performed; (2) the procedures did not appear to deviate in any material respect from the applicable laws or the FAR; and (3) based on Air Force assumptions and conditions at the time of award, the award resulted in the lowest total cost to the government.[5]

[5]Public-Private Competitions: Processes Used for C-5 Aircraft Award Appear Reasonable (GAO/NSIAD-98-72, Jan. 20, 1998).

On December 19, 1997, DOD submitted to Congress a determination and report to support bundling the engine workloads at the San Antonio depot and a determination and report to support bundling the commodity and aircraft workloads at the Sacramento depot. DOD was required to submit these documents before issuing single solicitations at each location for the combined work. In response to 1998 Authorization Act requirements and subsequent requests from the Senate Committee on Armed Services and the House Committee on National Security, we issued two reports and two testimonies providing our assessment of DOD's determinations that it was more logical and economical to combine the workloads being competed at the closing depots.[6] We reported that:

- the determination and reports contained significant weaknesses in logic, assumptions, and data;
- DOD had not considered alternatives that appeared to be logical and potentially cost-effective;
- DOD's assumption that efficiencies from shared personnel and facilities would be best achieved with a single solicitation for combined workloads at each location was questionable; and
- the Air Force's conclusion from its cost analysis that the workload combination would save $22 million to $130 million at Sacramento and $92 million to $259 million at San Antonio was questionable because the Air Force did not consider all cost factors, such as the cost benefits of increased competition resulting from solicitations for individual workloads.

On March 20, 1998, the Air Force issued a solicitation for the combined aircraft and commodity workloads at the Sacramento depot and on March 30, 1998, issued a solicitation for the combined engine workloads at the San Antonio depot. We issued our required report on the Sacramento solicitation on May 4, 1998.[7] We concluded that the Air Force had not provided a sufficient basis to show that soliciting the workloads on a combined basis was necessary to satisfy its needs. Otherwise, we found that the solicitation complied with applicable laws, including 10 U.S.C.

[6]Public-Private Competitions: DOD's Determination to Combine Depot Workloads Is Not Adequately Supported (GAO/NSIAD-98-76, Jan. 20, 1998); Public-Private Competitions: Access to Records Is Inhibiting Work on Congressional Mandates (GAO/T-NSIAD-98-101, Feb. 24, 1998) and GAO/T-NSIAD-98-111, Mar. 4, 1998); and Public-Private Competitions: DOD's Additional Support for Combining Depot Workloads Contains Weaknesses (GAO/NSIAD-98-143, Apr. 17, 1998).

[7]Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation (GAO/OGC-98-48, May 4, 1998).

2469a. On May 14, 1998, we issued our report on the San Antonio solicitation, similarly concluding that the Air Force had not provided a sufficient basis to show that soliciting the workloads on a combined basis was necessary to satisfy its needs but that otherwise the solicitation complied with applicable laws, including 10 U.S.C. 2469a.[8]

[8]Public-Private Competitions: Review of San Antonio Depot Solicitation (GAO/OGC-98-49, May 14, 1998).

Legal Review of Competition for Sacramento Air Logistics Center Workloads

On March 20, 1998, the Department of the Air Force, Sacramento ALC at McClellan Air Force Base, California issued requests for proposal (RFP) No. F04606-98-R-0007 for the purpose of conducting a public-private competition for the depot-level workloads being performed at the closing Sacramento ALC. The Air Force received proposals from one private sector offeror—Lockheed Martin Corporation (Lockheed)—and from one public offeror—the Air Force's Ogden ALC. Following technical and cost evaluations, the Air Force selected Ogden ALC to perform the Sacramento workloads on the basis that its proposal represented the best value to the government. The Ogden ALC proposal also represented the lowest "most probable total evaluated" cost at $1,794,488,861 over the 9-year requirement.[1]

Section 359 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85 (1998 Authorization Act), added section 2469a to title 10 of the United States Code, which provided for special procedures for public-private competitions for the workloads at the closing Sacramento and San Antonio ALCs. Section 2469a also requires us to review the selection process for the awards made for the workloads at the two closing ALCs and report to Congress within 45 days of each award on whether (1) the procedures used to conduct the competition provided a substantially equal opportunity for offerors to compete without regard to performance location and complied with 10 U.S.C. 2469a and all applicable laws and regulations, (2) appropriate consideration was given to factors other than cost in the selection, and (3) the award resulted in the lowest total cost to the DOD for the performance of the workloads.[2]

Our review is based on the record of the proposal evaluation and the selection. In addition, we spoke to Air Force officials and considered concerns raised informally by one of the competitors. We recognize that an offeror may file a protest with our Office pursuant to 31 U.S.C. 3551-3556, or with the courts, or may file an objection to the award with DOD under 10 U.S.C. 2469a(h). If a protest is filed, factual information, issues, and arguments raised by the interested parties will be reviewed in the context of an adversarial process. For that reason, the result of a protest may differ from that of our current review. Similarly, the result of an objection filed with DOD may differ from our review.

[1]The "most probable total evaluated cost" represents the offeror's proposed costs as adjusted by cost comparability factors as well as a range of "dollarized" discriminators and projected overhead savings.

[2]Our analysis of the cost of the award is contained in the body of the report.

Based on our review of the procedures the Air Force used to conduct the Sacramento competition in context of the concerns that were raised by the competitor, we found no basis to conclude that (1) the procedures did not provide a substantially equal opportunity for the offerors to compete without regard to performance location, (2) appropriate consideration was not given to factors other than cost in the selection, and (3) the procedures used in selecting the successful offeror deviated in any material respect from the applicable laws and regulations. While not affecting the legal sufficiency of the selection, we nevertheless identified several issues related to the estimates supporting the cost evaluation. These issues are discussed in the body of the report.

In an earlier review of the Sacramento solicitation, we concluded that the Air Force had not provided a sufficient basis to show that soliciting the workloads on a combined basis was necessary to satisfy its needs. We also concluded that the solicitation was otherwise in compliance with applicable laws, including the provisions of 10 U.S.C. 2469a, and that it provided a substantially equal opportunity for offerors to compete without regard to performance location.[3]

On June 17, 1998, Pemco Aeroplex, Inc. (Pemco) filed a protest of the solicitation's provisions with our Office pursuant to 31 U.S.C. 3551-3556. Pemco objected to the solicitation of the workloads on a combined basis. In a decision dated September 25, 1998, our Office sustained the protest, concluding that the Air Force was unable to show that combining the requirements was reasonably required to satisfy its needs and recommending that the agency cancel the solicitation and resolicit its requirements without combining the workloads.[4] On October 9, the Air Force decided to proceed with the award to Ogden ALC notwithstanding the protest recommendation. On October 13, Pemco filed civil action no. Cv. 98-B-2584-S in the United States District Court for the Northern District of Alabama, Southern Division, seeking a declaration that the award is void

[3]10 U.S.C. 2469a(g) provides that we review all solicitations issued for the workloads at the two closing ALCs and report to Congress within 45 days of the solicitations' issuance regarding whether the solicitations (1) are in compliance with the provisions of section 2469a "and all applicable provisions of law and regulations" and (2) provide a substantially equal opportunity for offerors to compete without regard to performance location. The review of the Sacramento solicitation was the subject of our report entitled Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation (GAO/OGC-98-48, May 4, 1998).

[4]Pemco Aeroplex, Inc., B-280397, Sept. 25, 1998.

and an injunction preventing the Air Force from going forward with performance.[5]

The following describes the legal standards applicable to the Sacramento competition, relevant aspects of the solicitation and evaluation procedures the Air Force used, and our analysis of those procedures under the applicable legal standards.[6]

Applicable Legal Standards

The basic authority for the Sacramento workload competition is 10 U.S.C. 2469a, which provides procedures for public-private competitions for the workloads of the closing Sacramento and San Antonio ALCs that are proposed to be outsourced after the November 18, 1997, enactment of the 1998 Authorization Act. Section 2469a sets forth a number of requirements that the Air Force must satisfy in the solicitations it issues and the source selection process it uses, to make awards for the specified workloads. Particularly, the solicitation and the source selection process must (1) permit both public and private offerors to submit offers; (2) take into account the fair market value of any land, plant, or equipment at a closed or realigned military installation that is proposed to be used by a private offeror in the performance of the workload; (3) take into account the total estimated direct and indirect costs that will be incurred by DOD and the total estimated direct and indirect savings (including overhead) that will be derived by DOD; (4) use cost standards to determine the depreciation of facilities and equipment that provide, to the maximum extent practicable, identical treatment to public and private offerors; (5) permit any offeror, whether public or private, to team with any other public or private entity to perform the workload at any location or locations of their choosing; and

[5]Because of the pending litigation, the Air Force did not provide either competitor with a debriefing. Consequently, the competitors were not familiar with the specifics of the evaluation and were unable to provide us with detailed concerns regarding the evaluation process. Also, the private-sector offeror's representative stated that discussions of the selection with us, without the benefit of a debriefing, would not be productive.

[6]As stated earlier, in the prior reviews of the Sacramento solicitation in our report, Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation, and in a bid protest decision, Pemco Aeroplex, Inc., we found that the Air Force did not provide a sufficient basis to show that the combined workloads were necessary to meet its needs. We have not changed our view. However, in the review of the selection process, we will not again address the issue of the bundled workloads in the solicitation, as our position on the matter is clear and the subject of our review is the selection, not the solicitation.

(6) ensure that no offeror may be given any preferential consideration for, or in any way be limited to, performing the workload in place or at any other single location.[7]

In addition to 10 U.S.C. 2469a, there are a number of other laws that are generally applicable to the outsourcing of government-performed depot workloads. One of the principal laws is 10 U.S.C. 2469, which provides for the use of "competitive procedures for competitions among private and public sector entities" when DOD contemplates changing the performance of a depot workload, valued at $3 million or more, to contractor performance. In addition, section 8039 of the Department of Defense Appropriations Act for Fiscal Year 1998, Public Law 105-56, authorizes public-private competitions for depot workloads as long as the "successful bids" are certified to "include comparable estimates of all direct and indirect costs for both public and private bids." Both provisions state that Office of Management and Budget Circular A-76 is not to apply to the competitions. Other than the reference in section 8039 to the use of comparable estimates of all costs, neither provision prescribes the elements that constitute a competition. Further, 10 U.S.C. 2470 provides that depot-level activities are eligible to compete for depot workloads.[8]

There are other provisions that apply, generally, to converting DOD functions to private-sector performance. Section 8014 of the 1998 DOD Appropriations Act requires that DOD certify its in-house estimate to congressional committees before converting any activity performed by

[7]In addition, 10 U.S.C. 2469a(e) provides that DOD may issue a solicitation for multiple workloads under 10 U.S.C. 2469a only if DOD first determines that individual workloads cannot as logically and economically be performed without combination by potentially qualified sources and submits a report to Congress setting forth the reasons for the determination. The provision also requires us to review and provide our views on the DOD report. DOD decided to issue RFPs, including the one here, containing combined workloads and submitted the required determinations and reports on December 19, 1997. We reported on January 20, 1998, that the DOD reports did not support the determinations. See Public-Private Competitions: DOD's Determination to Combine Depot Workloads Is Not Adequately Supported (GAO/NSIAD-98-76, Jan. 20, 1998). Under 10 U.S.C. 2469a(e), DOD must wait 60 days from the submission of its report to issue an RFP containing combined workloads. There is no other restriction in subsection (e). The Air Force issued the Sacramento solicitation containing multiple workloads on March 20. After our January report, the Air Force provided additional supporting rationale for the combined workloads. We reported that the additional rationale was not well-supported. See Public-Private Competitions: DOD's Additional Support for Combining Workloads Contains Weaknesses (GAO/NSIAD-98-143, Apr. 17, 1998).

[8]We see nothing in the other applicable provisions governing the outsourcing of depot workloads that is inconsistent with 10 U.S.C. 2469a. In fact, the use of comparable cost estimates and the participation of DOD depot-level activities are provided for in 10 U.S.C. 2469a. Consequently, consistent with the rule of statutory construction that statutes be construed harmoniously to give effect to all provisions whenever possible, all of the above-cited provisions are effective and applicable to the Sacramento competition. See Posadas v. National City Bank, 296 U.S. 503-504 (1936); 53 Comp. Gen. 853 (1974).

more than 10 civilian employees to contractor performance; the provisions of 10 U.S.C. 2461 require that whenever a DOD-performed function, such as the workloads involved in this competition, is converted to performance by a contractor, DOD must provide to Congress a cost comparison that shows that a savings will result. Under 10 U.S.C. 2462, DOD is generally required to contract with the private sector if a source can provide the supply or service at a lower cost than DOD can and to ensure that all costs considered are realistic and fair.[9]

The Air Force implements these outsourcing authorities through the Air Force Materiel Command's Procedures for Depot Level Public-Private Competition, December 20, 1996 (Depot Competition Procedures). The procedures are supplemented by the "Defense Depot Maintenance Council Cost Comparability Handbook" (CCH), including the January 28, 1998, revision, the Air Force Materiel Command "Guide to the Cost Comparability Handbook" and the SAF/AQ Public-Private Competition Cost Procedures of February 21, 1998. The procedures provide for issuing a solicitation calling for offers from public and private sector sources and establish the criteria, including those listed in 10 U.S.C. 2469a, for deciding how the Air Force will select a source from either sector to perform depot workloads. According to these procedures, a competitive solicitation is to be issued in accordance with the applicable provisions of the FAR, which set forth uniform policies and procedures for the competitive acquisition system that all executive agencies use and implements the provisions of chapter 137 of title 10 of the United States Code, which govern DOD acquisitions.

This use of the competitive acquisition system subjects a depot workload competition to the applicable provisions of chapter 137 and the FAR to the extent that they do not conflict with the public-private competition statutes cited previously. (Newport News Shipbuilding and Dry Dock Company, B-221888, July 2, 1986, 86-2 CPD 23.) Further, aspects of a competition that fall outside the competitive acquisition system's parameters as defined by chapter 137 and the FAR, such as the comparison of public and private offers for the workloads from the two closing ALCs, are governed by 10 U.S.C. 2469a and the other statutes applicable to public-private depot competitions as implemented by the Air Force.

[9]Again, these provisions do not conflict with the six 10 U.S.C. 2469a competition requirements listed previously and are also applicable to the Sacramento competition. See Posadas v. City Bank, cited above.

In general, the standards in chapter 137 and the FAR (1) require that a solicitation clearly and unambiguously state what is required so that all offerors can compete on an equal basis and (2) allow restrictive provisions to be included only to the extent necessary to satisfy an agency's needs. Under these standards, an agency must follow the criteria announced in the solicitation, which in this case include those required by 10 U.S.C. 2469a, and exercise its judgment in a reasonable manner in determining which of the competing offers is to be selected. (Dimensions International/QSOFT, Inc., B-270966.2, May 28, 1996, 96-1 CPD 257.)

Solicitation

The RFP for the Sacramento workloads provides for the award of several line items representing various performance phases for each of the different workloads to be competed. For example, line item no. 0001, among other things, calls for offers on a cost-plus-award fee basis[10] for the transition period for the KC-135 aircraft, the A-10 aircraft, and commodities, including hydraulics, instruments/electronics, electrical accessories, and nonrouted backshop/manufacturing. Other line items provide for firm-fixed priced offers for the performance of these various workloads, including "over and above" work,[11] once the transition is completed, and for other miscellaneous work requirements. The RFP also provides for a transition period, which is to begin at the award and to end by September 30, 1999, a 5-year basic performance period, and up to 3 additional years based upon the performance of the awardee. The line items representing the work for the KC-135 aircraft and the A-10 aircraft during the basic performance period are to be awarded on a multi-year basis, with guaranteed minimum quantities, while the other workloads are to be awarded on a requirements-type basis, with no minimum quantity guaranteed.[12]

[10]Public sector offers are to be on a cost reimbursement basis. Public offerors will not be paid an award fee.

[11]"Over and above" work consists of work items that are not included in the basic work requirements but are within the scope of the award and may be ordered on the basis of a fixed hourly rate.

[12]The requirements type line items provide that the Air Force will order all the work specified under a particular line item that it needs during the performance period. The estimated quantities stated in the solicitation are for information only; they do not constitute an order obligation. See FAR 16.503. On the other hand, under the multiyear line items, the Air Force is obligated to order the minimum quantity or be subject to cancellation charges that represent costs incurred that would have been amortized over the multiyear period plus a reasonable profit. See 10 U.S.C. 2306(g) and FAR part 17.

According to the solicitation, the competition is to be conducted in accordance with FAR 15.101, which sets forth the source selection processes and techniques to be used in competitive negotiated acquisitions, as well as the applicable Air Force and Air Force Materiel Command supplements. Further, the solicitation provides that the Depot Competition Procedures, the CCH, and their updates are to govern the selection.

The solicitation states that the award will be made to the offeror—either public or private—who is deemed responsible in accordance with the FAR,[13] whose proposal conforms with the solicitation and is judged to represent the best value to the government. According to the RFP, the Source Selection Authority (SSA) will integrate the source selection team's assessments of the proposals under the evaluation criteria listed in the solicitation to arrive at a best value selection.

The evaluation criteria consist of criteria for transition, operations, cost, and assessment. Transition is made up of the integrated master plan, personnel plan, and integrated master schedule. The operations criteria consist of five factors representing the major workloads: (1) KC-135 aircraft, (2) hydraulics, (3) instruments/electronics, (4) electrical accessories, and (5) A-10 aircraft. The assessment criteria, which will be used for measuring the extent to which a proposal meets the transition, operations, and cost criteria, are made up of two parts: (1) understanding of/compliance with the solicitation requirements and (2) soundness of approach.

Under the cost criteria, proposals will first be assessed for completeness, realism, and reasonableness.[14] Then each offeror's total proposed cost is to be determined by calculating the various cost estimates, unit prices, and hourly rates proposed for the different line items. Next, the offerors' total alternative cost is to be developed by factoring in the numerous adjustments to public and private offerors' total proposed cost in accordance with the CCH and the RFP. Finally, the offerors' total evaluated

[13]According to FAR subpart 9.1, a responsible prospective contractor is one that meets the standards in FAR 9-104, which include having adequate financial resources or the ability to obtain them; the ability to comply with the performance schedule; a satisfactory performance record; and the necessary facilities and equipment or the ability to obtain them.

[14]Under FAR 15.404-1(d), a cost realism analysis is the process of reviewing and evaluating specific elements of an offeror's cost estimate to determine whether the proposed elements are realistic for the work to be performed. According to FAR 15.404-1, reasonableness is to be assessed through an analysis of either cost elements or overall price.

cost is to be determined by adjusting the total alternative cost to reflect the "dollarized impact of significant discriminators, to the extent that a dollar value can be assigned to such discriminators, based on identified proposal strengths, weaknesses and risks."[15]

Further, the RFP provides for the evaluation of general considerations such as the results of preaward surveys, site visits, and "fair market value." In addition, the proposals are to be the subject of two risk assessments: proposal and performance. A proposal risk assessment is to measure the risk that is associated with an offeror's proposed approach to accomplishing the solicitation requirements relating to each of the three transition area factors and each of the five operations area factors. A performance risk assessment is to assess, based on an offeror's present and past performance, the probability of the offeror successfully accomplishing the proposed effort.

Finally, the solicitation provides that in the SSA's best value assessment, the criteria for transition and operations areas, and cost criteria are to be equally important, while the general considerations are to be "considered substantially less important than Cost, Transition, or Operations." According to the RFP, this assessment is also to include "as appropriate" items listed in the solicitation as "Other Considerations." This category essentially reiterates five of the six requirements for the competition listed in the 1998 Authorization Act.[16]

The proposals were first evaluated by specialized teams, which reported to a source selection evaluation board (SSEB), which in turn, reported its conclusions to a source selection advisory council (SSAC). The SSAC then advised the SSA, who made the final selection decision on the merits of the proposals.

[15] "Dollarized impact," as we understand it, is the assignment of an estimated dollar value to the assessment of the benefit or detriment to the Air Force that would result from aspects of an offeror's proposal in calculating the offeror's total evaluated cost.

[16] The one requirement not listed in section M-903 of the RFP is the one that the cost standards used to determine the depreciation of facilities and equipment provide, to the maximum extent practicable, identical treatment to public and private offerors. This requirement is addressed in the RFP at paragraph 6.1.5.6 of section L and paragraph 1.2b(6) of section M-901.

Evaluation of Proposals

Two offerors submitted proposals in response to the solicitation. Ogden ALC, the public depot chosen by the Air Force to submit the public sector offer, proposed (1) to perform the commodities work and the A-10 aircraft work at its facilities in Utah and (2) to have the KC-135 aircraft work performed by the Boeing Aerospace Corporation (Boeing) at the Boeing Aerospace Support Center located at the closing San Antonio ALC at Kelly Air Force Base. Boeing, a partner to Ogden in the public sector offer, proposes to use the San Antonio facilities that have been transferred by the Air Force to the Greater Kelly Development Corp. (GKDC) and leased by GKDC to Boeing. The private sector offeror, Lockheed, proposed to perform all of the work at the closing Sacramento ALC at McClellan Air Force Base, where the workloads are currently being performed by government employees. The Sacramento ALC facilities are to be transferred by the Air Force to Sacramento County. Under the Lockheed proposal, the facilities would be leased by the county to Lockheed. Lockheed's major subcontractors are AAI Aerospace Corporation (AAI) for the hydraulics workload and GEC-Marconi Avionics Incorporated (GEC-Marconi) for the instruments/electronics and the electrical accessories.

The proposals were initially evaluated to determine whether they were to be included in the competitive range in accordance with FAR 15.306(c) and considered for award.[17] On June 23, 1998, the Air Force determined both proposals to be within the competitive range.

Accordingly, discussions were held with the offerors consisting of written evaluation notices raising concerns about each of the proposals and face-to-face and telephone exchanges about the concerns. As a result, each offeror submitted proposal revisions. The Air Force requested final proposal revisions on August 26, which were the subject of the Air Force's final cost adjustments and evaluation. Based on the results of the evaluations and cost adjustments, the advice of the SSAC, and the SSA's own analysis in the context of the RFP evaluation criteria, the SSA decided that the Ogden ALC proposal met all of the RFP requirements and represented the best value to the government over the life of the requirement. The SSA's conclusion was based upon Ogden ALC's "slight advantage" in the operations area and its lower "most probable total

[17]FAR 15.306(c) provides that the contracting officer shall determine which proposals are in the competitive range for the purpose of conducting discussions.

evaluated cost" of performance. Consequently, the SSA selected Ogden ALC to perform the Sacramento workloads.

Technical Evaluation

As noted previously, the solicitation evaluation criteria provided that the offerors' management approaches were to be evaluated in the transition and operations areas. Under transition, three factors were to be evaluated: (1) integrated master plan, (2) personnel plan, and (3) integrated master schedule. Operations included five factors: (1) KC-135 aircraft, (2) hydraulics, (3) instruments/electronics, (4) electrical accessories, and (5) A-10 aircraft. Under each of the factors, the proposal risk was assessed.

Transition

The first factor under transition, integrated management plan, was to assess the management, transition activities, and logistics plans and activities of the offerors. Under this factor, the SSA noted that both offerors had been assigned a green, or acceptable, rating, with low risk by the SSAC. The SSA stated that Lockheed's approach, which was to perform all of the work at the Sacramento ALC facilities, had less potential for disruption to the ongoing operations than the Ogden ALC plan, which involved the transition of the KC-135 aircraft work to the Boeing facility at the San Antonio ALC. The A-10 aircraft and the commodities work was to be done at the Ogden ALC facilities in Utah. While recognizing that the Ogden ALC approach was sound and would minimize disruption to workload production, the SSA nevertheless concluded that the Lockheed plan, which would maintain the existing, experienced government workforce in place at Sacramento "was a benefit." Since the SSA concluded that neither offeror had significant strengths or weaknesses under this factor, she did not propose to make a "dollarization" adjustment.

Under the personnel plan factor, an offeror was to provide a plan that detailed the staffing necessary to perform the workloads and a plan to acquire, train, and maintain the staff. The SSA concurred with the SSAC's green rating for both proposals and the assignment of a low risk rating to the Lockheed proposal and a moderate risk rating to the Ogden ALC proposal. The SSA noted that Lockheed would use the trained and experienced workforce at the Sacramento ALC. The SSA believed that there was risk that some of the current workforce would not wish to leave government service but concluded that a significant portion would want to continue working at the Sacramento location. On the other hand, the SSA had concerns about the Ogden ALC's ability to hire 328 people from the Sacramento workforce to work on the commodities at Ogden. In this

regard, the SSA noted that Boeing intended to hire its workforce for the KC-135 aircraft from San Antonio, Texas, and Wichita, Kansas, where it currently maintains a facility. The SSA found "real differences" between the proposals under this factor, concluding that the weakness in the Ogden ALC proposal regarding the availability of the experienced workforce resulted in a moderate risk rating. Consequently, the SSA concluded that the risk should be offset by an upward "dollarization" cost adjustment[18] in the determination of Ogden ALC's most probable total evaluated cost.

Under the integrated master schedule factor, an offeror was to submit a comprehensive transition time line based on the integrated master plan that identified all tasks and major event milestones required to transition all of the workloads. Both offerors were given green, or acceptable, ratings with a low risk by the SSAC. The SSA had a concern with the Ogden ALC approach, which would transfer the workload to two locations: Ogden, Utah, for the commodities and the A-10 aircraft and San Antonio, Texas, for the KC-135 aircraft, which would involve completely a new workforce for the KC-135. This concern did not raise to the level of a weakness because the SSA had confidence in Ogden ALC's risk mitigation strategy of using intense integrated product team oversight. Overall, the SSA considered both offerors to be equal under this factor and saw no need for a "dollarization" adjustment.

Operations

Under the KC-135 factor, an offeror must submit a contractor work specification that will become the contract statement of work, define all of the work requirements, and identify work flow and processes to reflect the offeror's specific approach to accomplishing the work. Other information to be provided includes (1) a work activity flow plan for one complete aircraft to show the sequence of movement through the required processes and (2) "waterfall" plans, which are to describe the work flow activity using the number of aircraft represented by the best estimated quantity and, in the alternative, the maximum order quantity. In addition, any process improvements to current practices of performing the work are to be explained under this factor.[19]

[18]As discussed later, the cost evaluators developed proposed "dollarization" cost adjustment figures under the appropriate factors, which were provided to the SSA.

[19]The submission of similar information was required under each of the operations factors; however, "waterfall" plans only were required for the aircraft workloads.

For the KC-135 aircraft, the SSAC rated both proposals as blue (exceptional) and assigned Ogden ALC a low risk rating and Lockheed a low/moderate rating. In adopting the ratings, the SSA noted that both proposals contained strengths concerning the reduction of the flowdays needed for the programmed aircraft depot maintenance. She nevertheless concluded that the Ogden ALC proposal was the strongest under this factor.[20] According to the SSA, this advantage was grounded in Ogden ALC's proposal to exceed the RFP flowday requirement of 175 days by contractually committing to a reduction to 150 days by fiscal year 2002 and to 140 days by fiscal year 2003. In addition, the SSA was impressed by Ogden ALC's proposal to use in-line jacking to accomplish "over and above" structural work concurrently with the planned programmed work and its plan to use a continuous fluid sampling analysis to ensure early recognition of defects. The SSA, however, did note a weakness in Ogden ALC's approach concerning its plan to use fewer labor hours than considered readily achievable by the evaluation team. The SSA concluded that this risk could be mitigated by normal monitoring and was not significant enough for a moderate risk rating.

The SSA recognized that Lockheed also had proposed to reduce the required flowdays (to 165 in fiscal year 2002 and to 155 by fiscal year 2004), but Lockheed's approach, which involved using two shifts, had some risk because Lockheed had not documented the availability of the workforce for the extra shift or the way the proposed productivity increases would be achieved. Another element contributing to Lockheed's low/moderate risk rating was the SSA's concern about the plan to use field team employees to meet the proposed productivity increases and flowday reductions. The SSA decided that Ogden ALC's superior flowday reduction could not be "dollarized" because the KC-135 was not an aircraft that generated revenue for the Air Force. However, the SSA recognized that this was a significant benefit and concluded that Ogden ALC offered an approach to the KC-135 aircraft work that had greater strengths and was more advantageous than Lockheed's approach.

Under the hydraulics factor, the SSA concurred with the SSAC's rating of each proposal as green and low risk. The SSA concluded both proposals were essentially equal and proposed no "dollarization."

[20]Boeing was to perform this work under the Ogden ALC proposal.

Under the factor for instruments/electronics, the SSA agreed with the SSAC's ratings of both proposals as green and low risk. Again, the SSA concluded that both offerors were essentially equal and proposed no "dollarization."

Under the electrical accessories factor, the SSAC rated both proposals as green; Lockheed was given a low risk rating, while Odgen ALC was rated as a moderate risk. This rating was caused by a process improvement concerning the pretesting of oil-cooled generators and a change in the painting sequence of the repair process. According to the SSA, the new test process could create production bottlenecks due to test equipment constraints with the potential of increased flowdays and the new paint process could increase flowtime. Thus, the SSA concluded that to offset this moderate risk, an upward "dollarization" adjustment to the evaluated cost of the Ogden ALC proposal would be added. This adjustment would reduce, in the SSA's view, the risk rating to low.

Under the A-10 aircraft factor, the SSA concurred with the SSAC's ratings of both proposals as blue and low risk. The SSA concluded that both had equal strengths and proposed no "dollarization."

Risk and General Considerations

Under the performance risk analysis for the transition, operations, and cost areas, the SSA determined that each represented a low risk and that there was not a discriminator among them. Further, under the general consideration category, the SSA concluded that both offerors meet all solicitation and responsibility requirements and had acceptable small business plans.

The SSA agreed with the SSAC's analysis of fair market value of the assets of the closing McClellan Air Force Base that were to be transferred to Sacramento County and then leased to Lockheed to perform the workloads. According to the SSA, Lockheed would lease the facilities at a composite rate of $0.33 per square foot a month, the local market rate for similar industrial facilities. Further, the SSA concluded that the Air Force would transfer the facilities to the County at fair market value. Finally, the SSA agreed that the SSAC's $25,038,804 adjustment to Lockheed's cost proposal for depreciation of the government furnished equipment (GFE) reflected the fair market value of the equipment.

The SSA also evaluated Boeing's lease of the closing San Antonio ALC facility in connection with its performance of the KC-135 aircraft work

under the Ogden ALC proposal and concluded there was no basis to make any further adjustment (other than that already made for GFE) to either proposal for fair market value. In this regard, the SSA concluded that the lease between GKDC and Boeing was an "arms length" transaction, not contingent on the competition, made at a fair market price.

Cost Evaluation

As noted previously, the cost evaluation consisted of (1) an assessment of the realism and reasonableness of the cost proposals; (2) a determination of the "total alternative cost" of each proposal, calculated through adjustments required by the CCH and RFP; and (3) a determination of the total evaluated cost of each proposal, calculated by taking the total alternative cost and adjusting it to reflect the "dollarization" of significant discriminators among the proposals. In determining the total evaluated cost, the evaluators used ranges based on different estimates for overhead savings and risk "dollarization." The results for each of these analyses conducted by the cost evaluators are summarized below.[21]

Realism and Reasonableness Evaluation

The cost team evaluators initially reviewed each offeror's cost proposal to determine its completeness, realism, and reasonableness. The evaluators ultimately were satisfied that each cost proposal met these standards. In accordance with the Depot Competition Procedures, the Defense Contract Audit Agency (DCAA) audited the Ogden ALC cost proposal and reviewed the public offeror's disclosure statement[22] and accounting and estimating systems. The disclosure statement was found to be adequate and the proposal was determined to be realistic. [23]

[21]The calculation of the various cost adjustments and ranges for overhead savings and "dollarization" was made by the cost team and approved by the SSAC. As discussed later, the SSA adopted the adjustments and chose from the ranges for overhead savings and "dollarization" for use in the selection.

[22]The Depot Competition Procedures require that a public offeror provide a disclosure statement of its cost accounting practices in accordance with the requirements of the Cost Accounting Standards Board.

[23]As stated in the Air Force's February 1998 Competition Cost Procedures, a public offeror is considered to have a funding advantage over the private-sector offeror under the fixed price portions of the requirement in that cost overruns may be paid for by the government through the working capital fund. Thus, in "dollarizing" the risks inherent in the Ogden ALC proposal, the evaluators proposed an upward adjustment of $37,373,690 to represent the risk of cost overruns. This seems to have been in lieu of adjustments to the Ogden ALC cost proposal during the initial evaluation. It is different from the other "dollarization" adjustments as it relates to the method of developing the cost estimates rather than a quantification of a technical performance risk. The body of the report contains a further discussion of this adjustment.

DCAA also reviewed Ogden ALC's accounting and estimating systems and found in a report dated December 22, 1997, that the accounting system was inadequate, in part, for assuring that all workload costs are properly recorded and that the estimating system was also inadequate, in part, because it relied on accounting system data. Nevertheless, we were informed by the DCAA auditors who performed the review that these inadequacies did not affect the validity of the Ogden ALC cost proposal.

Determination of Total Alternative Cost

The cost evaluators determined each offeror's total alternative cost by first calculating the offeror's "customer cost"–in essence, its proposed price for performing the requirement, and then making upward and downward adjustments to this figure in accordance with the RFP and the CCH. Ogden ALC's customer cost was calculated to be $1,097,615,652. Lockheed's customer cost was $1,256,721,586.

Using the customer cost for each offeror as a base, the evaluators made the comparability adjustments called for in the CCH and the RFP. Two sets of adjustments were made. The first set, required by form number 1 of the CCH,[24] encompassed adjustments to the public sector offer and the second set, required by form number 2 of the CCH, governed adjustments applicable to the public and private sector proposals.

The CCH form number 1 adjustments made to the Ogden ALC proposal included upward and downward changes in a number of categories.[25] The most significant were upward adjustments for base operating support, unfunded civilian retirement, and retiree health benefits. The upward and downward adjustments resulted in an adjusted cost of $1,153,415,260 to the proposal. The adjusted cost was lower than Lockheed's customer cost of $1,256,721,586.

[24]Since Ogden ALC proposed to have a private firm, Boeing, perform the KC-135 aircraft work, the portion of the Ogden ALC cost proposal that represented the work Boeing was to perform was not subject to the form number 1 adjustments. The Boeing portion was, however, subject to the form number 2 adjustments applicable to private offerors.

[25]Upward adjustments were made for state unemployment payments, unfunded civilian retirement, depreciation for military construction program facilities, casualty insurance, other recurring costs consisting of impact aid, retiree health benefits, and base operating support. A downward adjustment was made for military nondepot costs (time military members of depot staff spend on nondepot military duties). For each form number 1 category, the public offeror submitted a proposed adjustment in its offer, which was subject to evaluation and adjustment by the SSAC and the SSA.

Some CCH form number 2 adjustments were made to both proposals. Upward adjustments were made to both types for GFM for both the commodities and the KC-135 aircraft, contract administration, reduction-in-force (RIF) costs; costs associated with the transition of government personnel (i.e., costs of retaining current work force at McClellan that will be subject to a RIF and not be rehired by the new source after the workload is transitioned pending their separation); and costs of performing the work in process during the transition that each offeror elected not to perform. Most of these adjustments were similar in size for both proposals. The largest difference was in the RIF cost adjustment, resulting in increases to Ogden ALC's and Lockheed's costs. Examples of downward adjustments were those made for the payment of federal income tax on profits to the Lockheed and Ogden ALC proposals.[26]

Form number 2 also provided for a downward adjustment for a public or private offeror that proposed and supported overhead savings to other government work resulting from the increased work from the competition sharing the costs of fixed assets.[27] While no such savings were proposed by Lockheed, the evaluators determined that a downward adjustment of between $70,357,189 and $24,665,837 could be applied to the Ogden ALC proposal to represent the savings applicable to other workloads at the Ogden ALC facility during the performance period.[28]

The net result of the form number 2 comparability analysis for the Lockheed proposal was an upward adjustment of $630,058,494. The form number 2 upward adjustments to the Ogden ALC proposal included the high and low ranges for overhead savings.

This final cost adjustment resulted in a total alternative cost for Lockheed of $1,886,780,080 and a range of between $1,694,862,974 and $1,740,554,326 for Ogden ALC. No single adjustment accounts for the cost difference at

[26]Since this adjustment was for private offerors, it only was applied to the Boeing portion of the Ogden ALC proposal.

[27]The solicitation provided that an offeror's proposed overhead savings for its workloads performed outside of the competition would be allowed for the first year if determined to be reasonable, while second year savings, if supportable, would also be allowed, but discounted for risk. The solicitation explains that proposed savings for 3 years and beyond "may be allowed if clearly appropriate, but in any event will be considered under the best value analysis."

[28]The range set by the evaluators represented a considerable reduction of Ogden ALC's proposed overhead savings of $294.5 million. A detailed discussion of this adjustment is contained in the body of the report.

this point, and at the highest range for Ogden ALC, its alternative cost was more than $140,000,000 lower than Lockheed's.

Determination of Total Evaluated Cost

To arrive at the total evaluated cost of each proposal, the evaluators took the total alternative cost and applied "dollarization" adjustments.

The initial aspect of the Ogden ALC proposal that was considered to be suitable for quantification was the transition risk as it related to both the KC-135 aircraft and the commodities.[29] The first concern was Ogden ALC's proposal to have the workforce at the closing Sacramento depot perform most of the work in process on the KC-135 aircraft before the workload was transitioned to the Boeing facility at San Antonio. While the adjustment for this work in form number 2 assumed normal workforce efficiency (80 percent), the evaluators, based on the experience of previous transitions from closing depots, concluded that it was likely that the closing depot would experience declining efficiency. Consequently, the evaluators calculated the impact of a lower efficiency rate (45 percent) on the work to be completed at Sacramento. This rate resulted in a quantification of the risk of performing the remaining KC-135 work at Sacramento. Next, the evaluators added another adjustment that represented the risk that Boeing would not achieve its proposed 90-percent efficiency rate as it began the KC-135 aircraft work at its new facility.

The evaluators were similarly concerned about the transition risks in the Ogden ALC proposal for commodities workload. The evaluators calculated the Sacramento efficiency rate for the completion of commodities work in process to be 65 percent.[30] Further, the evaluators reduced the efficiency rate proposed for the new commodity work to be performed by the combined workforces at Sacramento and Ogden.[31] The total recommendation for "dollarized" transition risk for all the affected workloads (KC-135 aircraft and commodities) under the Ogden ALC proposal was $20,732,000.

[29]There does not appear to have been "dollarization" calculations for transition risk associated with the A-10 aircraft for either offeror.

[30]The evaluators assumed that since the commodities transition would be to another public depot the efficiency would not decline as drastically as was the assumption for the KC-135 aircraft work.

[31]As we understand it, during the transition Ogden ALC will assume responsibility for the commodity work at Sacramento, which will be gradually transitioned to the Ogden ALC facility.

The evaluators were also concerned about transition risk in connection with the Lockheed proposal. Their concerns centered around the efficiency of the Sacramento workforce in accomplishing the work in process for both the KC-135 aircraft and commodity workloads. In both cases the evaluators assumed a Sacramento efficiency rate of 65 percent (higher than the rates of Ogden ALC and its partner Boeing, as Lockheed proposed to perform the work at the closing Sacramento facility using much of the current workforce). Further, for both workloads, the evaluators did not think that Lockheed could achieve its proposed efficiency rates at the start of full performance. The calculations resulted in a proposed total "dollarization" of $16,068,000 for the Lockheed proposal.

The evaluators concluded that the risks inherent in two aspects of Ogden ALC's proposed performance of the commodities workload after transition should be "dollarized." The first risk involved Ogden ALC's process improvements and whether those improvements (particularly those in the electrical accessories area) would result in a reduction of workhours. The evaluators were skeptical that the reduction could be achieved, and they consequently calculated a proposed upward "dollarization" adjustment of $17,380,738 to represent the risk that the predicted reduction would not occur.

The second risk related to the nature of the public depots' funding under the working capital fund and the possibility that the government will have to shoulder the additional cost if Ogden ALC cannot perform at its proposed labor rates. The evaluators requested DCAA to conduct a rate-risk analysis on the Ogden ALC cost proposal, comparing the proposed rates to Ogden ALC's current and past labor rates. DCAA calculated what it believed to be more realistic rates and concluded that its rates would result in a $37,373,690 increase in Ogden ALC's cost. The evaluators concluded that a "dollarized" risk range representing the high and low historical rates analyzed by DCAA should be established for this factor.[32]

As the result of these evaluations, the SSAC presented the SSA with a recommended total evaluated cost range for each offeror. The recommendation consisted of a high range, including the lowest overhead savings, if any, combined with the highest upward "dollarization"

[32]As discussed earlier, this proposed "dollarization" adjustment was different from the others as it was based on the Ogden ALC cost proposal rather than the offeror's proposed technical performance.

adjustments, and a low range consisting of the highest overhead savings, if any, and the lowest upward "dollarization" adjustments.[33] The high range was $1,819,717,982, and the low range was $1,707,243,712 for Ogden ALC. The high range for Lockheed was $1,902,848,080, while the low range was $1,886,780,080. Ogden ALC's high range is below Lockheed's low range by over $65,000,000.

The SSA reviewed the recommended total evaluated ranges and concluded that the high range estimate for Lockheed of $1,902,848,080, including the recommended $16,068,000 "dollarization" for transition risk represented Lockheed's most probable cost. The SSA concluded that the most probable cost for Ogden ALC was $1,794,488,861, about $25,000,000 below the SSAC's high range. The SSA's estimate for Ogden ALC included $46,217,730 for overhead savings (about midway between the SSAC high and low ranges), the total amounts recommended by the SSAC for transition risk ($20,732,000) and for performance risk related to commodity workload process improvements ($17,380,738) and the DCAA recommendation of $37,373,690, for overall cost risk for the workloads to be performed at the public depot. A summary of the cost adjustments adopted by the SSA is shown in table III.1.

Table III.1: Cost Adjustments Adopted by the SSA

	Ogden ALC	Lockheed
Total Customer Cost	$1,097,615,652	$1,256,721,586
Cost Adjustments		
Form 1 Adjustments	55,799,608	0
Overhead Savings	(46,217,730)	0
Form 2 Adjustments	611,804,903	630,058,494
Total Alternative Cost	**1,719,002,433**	**1,886,780,080**
Total "Dollarized" Adjustments[a]	**75,486,428**	**16,068,000**
Most Probable Total Evaluated Cost	**$1,794,488,861**	**$1,902,848,080**

[a]This includes the $37,373,690 adjustment to Ogden ALC's cost proposal to represent the risk of overruns.

[33]There were no recommended downward "dollarization" adjustments.

Award

Based on the evaluation results, the SSA concluded that the offerors were "essentially equal" in performance risk and general considerations. The SSA noted that Lockheed had a slight advantage in transition, while Ogden ALC had a slight advantage in operations. The SSA selected Ogden ALC for award, as the competitor representing the best value to the government based upon the public offeror's operations advantage combined with its lower most probable total evaluated cost.

GAO Analysis

As discussed previously, several statutes govern the solicitation and award process for public-private competitions for the depot workloads of the closing Sacramento and San Antonio ALCs. In particular, 10 U.S.C. 2469a sets forth the elements that must be considered in selecting the public or private source to perform the workloads. Further, because the Air Force used the competitive acquisition system, the standards in chapter 137 of title 10 of the United States Code and the FAR apply to the extent they are consistent with 10 U.S.C. 2469a and the other applicable provisions relating to the outsourcing of depot workloads and to conversions of DOD functions to private-sector performance. See (Newport News Shipbuilding and Dry Dock Co.,) cited above.

In addition to reviewing the evaluation and selection records, we spoke to relevant Air Force officials and to the public-sector offeror. While the public offeror won the competition, it still had some concerns that primarily centered around its preliminary understanding of the treatment of its proposed overhead savings and some of its proposed cost adjustments.

Reviewing the Sacramento competition in this context, we found no basis to conclude that the procedures used in selecting the successful offeror deviated in any material respect from the section 2469a requirements or other applicable laws or relevant provisions of the FAR. The Air Force issued a competitive solicitation in accordance with FAR part 15, which provided for the participation of a public sector depot. We found no basis to conclude that the selection did not provide for a substantially equal opportunity for public and private offerors to compete without regard to performance location or that appropriate consideration was not given to noncost factors in the selection. Overall, the evaluation process appeared to be reasonable, fair, and consistent with the evaluation scheme in the solicitation, the Depot Competition Procedures, and the CCH. While not affecting the legal sufficiency of the selection, we nevertheless identified

several issues related to the estimates supporting the cost evaluation. These issues are discussed in the body of the report.

Performance Location

Subsection (g) of 10 U.S.C. 2469a provides that our report on the competitive procedures is to include our view as to whether the procedures "provided substantially equal opportunity for public and private offerors to compete for the contract without regard to the location at which the workload is to be performed." In addition, 10 U.S.C. 2469a(d), which lists the requirements for the selection process, provides that a public or private competitor must be permitted to perform at the location of its choosing and a competitor is not to be given preferential treatment for, or be limited to, performing the workload in place or at any other single location.

As stated in our prior review of the solicitation for the Sacramento workloads, we found no provisions in the solicitation that designated a particular location at which performance was required or preferred or that evidenced a bias toward any particular performance location.[34] Similarly, in our review of the selection process, we found nothing to indicate that a particular performance location was required or that there was a bias toward a particular location in the evaluation of the proposals or the selection of Ogden ALC.

In the selection, the SSA expressed concern about the risks inherent in the Ogden ALC plan for transitioning the workloads from the Sacramento facility to the San Antonio and Ogden performance locations. The SSA concluded that Lockheed's proposal to perform at the closing Sacramento facility gave that firm a slight advantage in the transition area. As we understand the 10 U.S.C 2469a provisions concerning performance location, they are to prevent the Air Force from creating an advantage for a particular location for reasons that are not reasonably related to performance or cost.[35] We believe that the SSA's concerns in the evaluation, which centered on Ogden ALC's ability to convince more than 300 experienced Sacramento workers to relocate to Ogden, Utah, were

[34]Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation, cited above. In this review, we also concluded that the solicitation's improper workload combination did not favor an offeror proposing to perform at the Sacramento facility.

[35]The statement of managers accompanying the 1998 DOD Authorization Act provides that the Air Force "would be expected to consider real differences between bidders in cost or capability to perform the work based on factors that would include the proposed location or locations of the workloads." (Conf. Rept. No.105-340 on H.R. 1119, at 717 (1997)).

based upon legitimate performance considerations related to Ogden ALC's transition plan and did not reflect bias towards performance at Sacramento.

Consideration of Noncost Factors

In accordance with 10 U.S.C. 2469a(g), our review of the selection process is to include our view as to whether "appropriate consideration was given to factors other than cost in the selection of the source for performance of the workload." We found no basis to conclude that the Air Force did not give "appropriate consideration to noncost factors in the selection process."[36]

As discussed in our review of the Sacramento solicitation,[37] the selection was to be based upon "the best value to the Government." This selection scheme integrated a relative assessment of such noncost factors as transition, operations, and risk along with a extensive evaluation of the proposed costs. Under this evaluation method, the entity selected might, or might not, be the competitor whose proposal was determined to represent the lowest total evaluated cost.

The selection of Ogden ALC was based on the SSA's assessment that the public offeror's slight advantage in the operations area (a noncost consideration) combined with its lower evaluated cost resulted in the best value to the government. The evaluation and selection record shows an intensive assessment of the noncost elements of each of the proposals. For example, the SSA considered Lockheed's plan to recruit and maintain the existing workforce in-place at the Sacramento facility to be a benefit; on the other hand, she concluded that Odgen ALC's plans for relocating the workloads to San Antonio and Ogden were risky. The record also shows

[36]We consider noncost factors in this competition to include all of the elements that were evaluated under the transition and operation factors as well as such more general considerations as past performance. Cost factors include all of the elements under the solicitation's cost criterion. The Air Force "dollarized", or assigned an estimated dollar value to the benefit or detriment believed to be inherent in particular aspects of the offerors' technical or management approaches under the transition and operations factors. As we understand the provision in 10 U.S.C. 2469a(g) regarding the evaluation of noncost factors, it was to ensure that the Air Force placed the proper emphasis on matters such as an offeror's management approach to the transition of the workloads and its technical capability to perform. We do not think the "dollarization" of some of the results under these factors changes the nature of this portion of the evaluation, which was to measure technical and management aspects of a proposal, rather than cost. On the other hand, we believe the "dollarization" of the risk determined by the SSA to be inherent in Ogden ALC's labor rates in its cost proposal was, in fact, the evaluation of a cost factor.

[37]Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation, cited above.

that the SSA considered and favorably noted Boeing's (Ogden ALC's partner) technical approach for performing the KC-135 aircraft work but expressed concern about the feasibility of Ogden ALC's plans to implement process improvements in performing the electrical accessories work.

While the offeror selected did represent the lowest evaluated cost to the government, as the examples show, the SSA and the other evaluators considered the relative merits of the technical and management approaches of the offerors. Thus, the record provides no basis for us to conclude that factors other than cost were not given appropriate consideration as required by 10 U.S.C. 2469a.

Compliance With Other Applicable Provisions of 10 U.S.C. 2469a

In addition to addressing the section 2469a provisions, including performance location and consideration given to factors other than cost, we reviewed the Sacramento competition to determine whether it otherwise complied with the requirements of section 2469a. As noted previously, 10 U.S.C. 2469a sets forth six requirements that must be satisfied in the Sacramento solicitation and selection process.[38]

Reviewing the evaluation and selection records in the context of the 10 U.S.C. 2469a requirements, we found that the six requirements were addressed during the evaluation and selection process in a manner that was consistent with the solicitation evaluation provisions.[39] Thus, we found no basis to conclude that the Sacramento selection process deviated in any material respect from the requirements of 10 U.S.C. 2469a.

Compliance With Other Applicable Provisions of Law

As stated earlier, the provisions of 10 U.S.C. 2461 requiring a notice to Congress of the savings to be achieved from a conversion of a DOD function to private-sector performance, and the requirement in 10 U.S.C. 2462 that DOD is to contract with the private sector if a private firm can provide the supply or service needed at a lower cost, apply generally to conversions of DOD functions such as these workloads. Whether the Air Force must comply with either statute in a particular competition depends

[38]As discussed earlier, in our prior review of the solicitation in Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation, cited above, we concluded that all of the 10 U.S.C. 2469a requirements were specifically acknowledged in the solicitation.

[39]An agency has the discretion to adopt any particular evaluation approach, as long as the approach is fair, reasonable, and consistent with the solicitation evaluation criteria. See Universal Shipping Co., Inc., B-223905.2, April 20, 1987, 87-1 CPD 424.

upon whether a public or private offeror is selected. In this case, the Air Force selected the proposal of the public-sector offeror, Ogden ALC, which represented the lowest total evaluated cost for the performance of the workloads. As we understand it, while the public offeror will use a private firm to perform the KC-135 aircraft portion of the requirement, Ogden ALC retains the overall responsibility for the performance of all of the workloads.

Section 2469a, which provides specific authority for the Sacramento competition, authorizes a public entity to use a private-sector firm as a participant in its proposal. In view of this special authority, and considering that the Ogden ALC proposal represented the overall lowest evaluated cost, we do not believe that either 10 U.S.C. 2461 or 2462 requires that portions of the proposal representing work to be performed by the public offeror or by its private partner be the subject of separate analyses. We, thus, conclude that, in this case, the selection of the low-cost public offeror was consistent with 10 U.S.C. 2462 and did not trigger the notice requirements of 10 U.S.C. 2461.[40]

Other Matters

While we found no basis to conclude that the evaluation and selection process deviated in any material respect from the provisions of 10 U.S.C. 2469a and other applicable provisions of law, we identified several issues related to the estimates used in the cost evaluation. These issues are discussed in the body of the report.

[40]Similarly, we believe that the requirement to certify the government estimate in section 8014 of the 1998 Appropriations Act is not triggered, as the award is one to the public-sector at the lowest evaluated cost. Further, we do not think that the evaluation and selection was inconsistent with section 8039 of the act regarding the use of "comparable estimates" for public and private offers.

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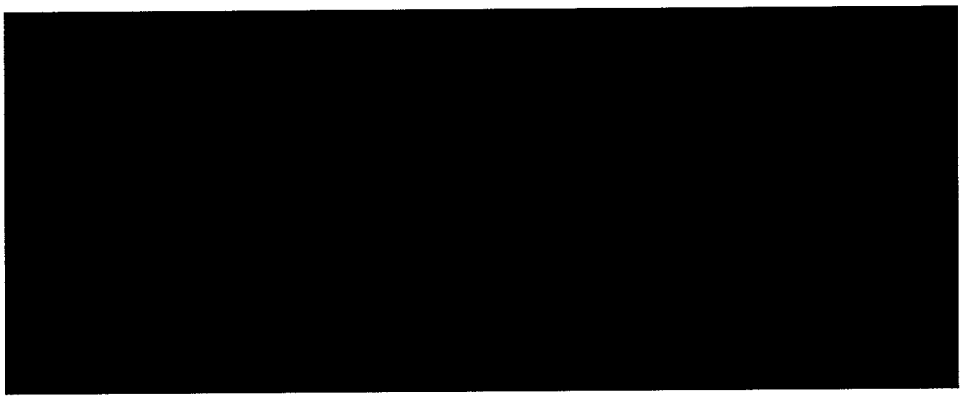

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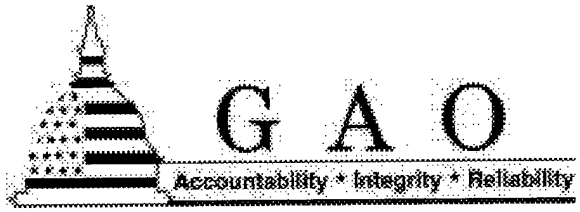
Report to Congressional Committees

May 1999

WORLD BANK

Status of Grievance Process Reform



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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-282152

May 13, 1999

The Honorable Mitch McConnell
Chairman
The Honorable Patrick Leahy
Ranking Minority Member
Subcommittee on Foreign Operations
Committee on Appropriations
United States Senate

The Honorable Sonny Callahan
Chairman
The Honorable Nancy Pelosi
Ranking Minority Member
Subcommittee on Foreign Operations, Export Financing
and Related Programs
House of Representatives

In June 1998, in response to concerns about the fairness of its employee grievance process and as part of a broader effort to reform its human resource policies, the World Bank appointed an internal Grievance Process Review Committee.[1] The Review Committee was charged with examining the Bank's grievance system and recommending changes to make the system more fair and credible. The Committee undertook a broad examination of the Bank's existing system and possible alternatives.

In response to a requirement in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999,[2] this report analyzes (1) the Review Committee's principal findings and recommendations and steps the Bank plans to take to implement these recommendations and (2) key issues that Bank management will face as it moves to implement these recommendations.

As an agency of the U.S. government, we have no authority to directly review World Bank operations. However, through the Department of the

[1]This report uses the terms "World Bank" and "Bank" to refer to the World Bank Group of institutions. The World Bank Group is made up of the original "World Bank"—the International Bank for Reconstruction and Development—as well as the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the International Center for Settlement of Investment Disputes. These institutions share a single grievance system.

[2]Pub. L. No. 105-277, 112 Stat. 2681-167 (Oct. 21, 1998).

Treasury and the U.S. member of the Bank's Board of Executive Directors, we obtained access to Bank staff and documents sufficient to complete our report.

Results in Brief

The Review Committee found that the Bank's grievance system over emphasized formal, adversarial approaches to dispute resolution; lacked sufficient independence from management influence; did not adequately protect grievants' rights or hold managers accountable for complying with Bank rules regarding appropriate treatment of subordinates; and was not readily accessible to employees located away from the Bank's Washington, D.C., headquarters. The Review Committee also concluded that individuals charged with implementing certain responsibilities within the system lacked necessary expertise.

The Review Committee prepared a plan of action, accepted by management in February 1999 and endorsed by the Board of Executive Directors' Personnel Committee, that is designed to improve the system's effectiveness and credibility. Based on our review of the plan and other alternatives considered by the Committee, we note that the measures recommended by the Committee refine and enhance but do not fundamentally alter the Bank's grievance system. Among other things, the plan includes steps to (1) strengthen the system's provisions for informal dispute resolution, (2) hire additional staff with skill in relevant areas like discrimination and employment law, (3) increase the system's independence, (4) strengthen procedural safeguards for grievants, (5) hold managers accountable for complying with Bank rules regarding appropriate treatment of subordinates, and (6) expand access for field-based employees. The Review Committee also recommended creating a Conflict Resolution Network composed of Bank units with relevant responsibilities to provide a focal point for sustaining the Bank's commitment to insuring that the new system functions as intended. The Network will report to the Office of the Bank's President. The Committee decided against recommending more far-reaching changes, such as providing for independent arbitration of grievances, at this time.

The Review Committee identified a number of significant procedural and operational issues for others to address as implementation proceeds. The Bank must develop guidelines and regulations in several areas, train its staff to properly carry out their new responsibilities, and create a meaningful system for monitoring the system's performance and recommending additional refinements as necessary. As the Bank has just

begun implementing the Committee's recommendations, it is too early to assess their actual impact on the manner in which employee grievances are addressed. As the reforms are implemented, the performance of the Office of the President in supporting the new system's independence and authority will be a key factor in determining success in creating a fairer and more credible system. As a member of the Executive Directors' Personnel Committee, the U.S. Executive Director will have an opportunity to exercise direct oversight as the system comes into operation. We therefore recommend that the Secretary of the Treasury instruct the U.S. Executive Director to work with other members of the Personnel Committee to actively monitor the new system's introduction, assess its performance, and introduce refinements as necessary.

Background

The Bank's grievance system is used to seek resolution of a wide variety of grievances, including complaints about compensation, performance evaluation, separation from employment, and supervisory harassment.

As of early 1998, the Bank's system for addressing employee grievances included

- counseling and informal dispute resolution through an ombudsman, racial and gender equity advisers, the Bank's Human Resources Vice Presidential Unit, and the Bank Staff Association;
- investigation of alleged misconduct (including improper management action toward subordinates) by an Office of Professional Ethics;
- administrative review, by higher-level managers, of allegedly unfair or improper management actions toward subordinates;
- referral of disputes unresolved by administrative review to quasijudicial proceedings before an internal Appeals Committee;[3] and

[3]The Appeals Committee is composed of three groups of Bank staff. The first group is chosen by management in consultation with the Staff Association. The second is chosen by management alone, and the third by the Staff Association alone. Individual grievances are reviewed by three-member panels that include one representative from each group, with members of the first group serving as panel chairs.

- referral of disputes unresolved by the Appeals Committee for final disposition by an Administrative Tribunal made up of jurists from Bank member countries.[4]

Under U.S. law, the Bank is immune from suits arising out of its internal operations, including employment relationships, unless the Bank decides to waive this immunity.[5] The Bank acknowledges that, because this is the case, it bears a heightened obligation to ensure that its grievance process is fair and commands confidence among the staff.

Aspects of the Bank's system for addressing employee grievances have been revised and augmented on a number of occasions. However, prior to 1998, the system as a whole had never been assessed. As part of a larger effort to reform its human resource policies, Bank management decided in early 1998 to conduct a broad review of the Bank's grievance system. The Bank subsequently set up an internal Grievance Process Review Committee and charged it with reviewing the existing system and recommending changes to make it fairer and more credible. Senior Bank managers said that their decision to initiate this effort was prompted by an awareness that many employees did not trust the system to fairly address their grievances. Our conversations with grievants, as well as Bank staff surveys and other information we examined in conducting this study, confirmed that many employees lacked confidence in the existing system's basic fairness.

The Review Committee examined the operations of the Bank's existing system and a wide range of possible actions. Among other things, the members of the Committee

- obtained detailed commentary on the Bank's system and possible alternatives from a noted U.S. jurist with over 40 years of experience in civil litigation;

[4]The Administrative Tribunal—the final stage in the Bank's grievance process—is composed of seven individuals, no two of whom may be nationals of the same country, who perform their duties on behalf of the Bank while also continuing in other positions. Tribunal members are appointed by the Bank's Board of Executive Directors from a list of candidates submitted by the President of the Bank. According to the international agreement that established the Tribunal, candidates for membership must be "persons of high moral character and must posses the qualifications required for appointment to high judicial office or be jurisconsuls of recognized competence."

[5]See 22 U.S.C. sections 288-288d. See also Articles of Agreement of the International Bank for Reconstruction and Development, Article VII; and Mendaro v. World Bank, 717 F. 2d 610 (D.C. Cir. 1983), holding that the Bank has not waived its immunity with respect to employment disputes.

- commissioned a study of the grievance systems of several other international organizations;
- reviewed books and articles presenting current thought on best practices in formal and informal workplace dispute resolution, including descriptions of public and private sector systems recognized for employing effective procedures;
- obtained employee input through focus groups and a variety of other channels, some of which were confidential;
- solicited input from the Personnel Committee of the Bank's Board of Executive Directors, which includes the U.S. Executive Director;[6] and
- submitted a draft of their report for review by a panel of three recognized experts on workplace dispute resolution—two from the United States and one from Denmark.

In conducting its work, the Review Committee found no single model that could be easily adapted to meet the Bank's needs. Private companies and public institutions in the United States and other countries employ diverse approaches to workplace dispute resolution, and the national legal systems of Bank member countries differ in many key respects. For example, the rights and obligations inherent in the employer-employee relationship are defined differently in different countries, and legal systems employ different standards and approaches to guaranteeing that disputes are resolved in a fair and unbiased fashion. The Review Committee sought to draw from diverse sources to create a system that would function well in the Bank's unique multicultural environment.

In January 1999, the Committee posted a revised version of its report on the Bank's internal web site, invited Bank staff to offer comments, and obtained an endorsement of its recommendations from the Board of Executive Directors' Personnel Committee. In February, the Review Committee reported that management had accepted its report without significant modification and that implementation had begun.

[6]The U.S. Executive Director chaired the committee through the first 10 months of 1998 and continues to serve as a member.

Reported Shortcomings, Bank's Plan of Action, and Our Evaluation

The World Bank's Grievance Process Review Committee concluded that the Bank's grievance system had a number of serious shortcomings and developed a number of recommendations designed to improve the system's fairness and credibility. The measures proposed by the Committee refine and enhance, but do not fundamentally alter, the Bank's system. Based on our discussions with individuals both inside and outside the Bank and our review of current literature on best practices in workplace dispute resolution, we believe that these measures may improve the system's performance, but it is to early to assess their actual impact.

Shortcomings in the System

Identified shortcomings in the Bank's grievance process included[7]

- overemphasis on formal, adversarial procedures as opposed to informal approaches to resolving disputes, such as mediation;
- lack of expertise and/or independence from management influence in Bank units with relevant responsibilities;
- lack of procedural safeguards to ensure that the Appeals Committee and other elements of the system proceed in a fair and equitable manner;
- relative ineffectiveness in addressing complaints of bias and harassment;
- limitations on redress for staff who are found to have been treated unfairly;
- lack of effective measures for holding managers accountable for their actions toward subordinates; and
- insufficient access for the approximately 2,600 employees who are located outside of the Bank's Washington, D.C., headquarters.[8]

The Committee noted that employees often saw the system as neither fair nor credible and that this lack of confidence often deterred employees from attempting to use the system to resolve problems. Members of the Review Committee, as well the Bank's Vice President for Human Resources, commented that restoring employee confidence in the system—and hence their willingness to use it—should be the reform effort's ultimate objective.

[7]Grievants, members of Bank units with relevant responsibilities, and others with whom we spoke confirmed that these were the grievance system's predominant shortcomings.

[8]Approximately 8,300 employees work at Bank headquarters.

Action Plan

The Review Committee prepared a plan of action to address the major shortcomings that it identified. Among other things, the Committee recommended steps to increase the system's capacity for informal dispute resolution (for example, mediation), enhance its independence, and strengthen procedural safeguards for grievants. The Committee's overall objective was to encourage settlement of most disputes through relatively informal, and hence more expeditious means, while also increasing staff confidence in the more formal procedures applied to settle disputes that cannot be otherwise resolved.

Strengthening Capacity for Informal Dispute Resolution

The Review Committee concluded that the Bank's system overemphasized formal approaches to dispute settlement while providing too little support for informal means of resolving workplace conflict. Experts in the field noted that grievance processes that are oriented toward formal dispute resolution force parties even to relatively simple disputes to invest substantial time and effort in complex adversarial proceedings. The Review Committee observed that, at the Bank, this orientation had discouraged many employees from attempting to seek redress and delayed resolution for those who had chosen to proceed.[9] In particular, the Committee found that administrative review—the process wherein employees can formally challenge adverse supervisory decisions by asking that they be reviewed by higher-level management within the same line of supervision—had proven ineffective.

In response to this finding, the Committee recommended eliminating administrative review while strengthening the system's provisions for informal dispute resolution. Among other things, the Committee recommended expanding the ombudsman office from one to three staff members. In addition, the Committee recommended that the Bank introduce professionally facilitated mediation as a means of settling workplace disputes. The new mediation service would be managed by an individual with substantial experience in workplace dispute resolution and would provide access to a culturally diverse roster of external and internal mediators who would work to settle disputes in a confidential manner. The Committee intended these measures to bolster employees' willingness to raise concerns, increase the number of disputes that are settled in an informal (and consequently less costly and more timely) manner, and, as a

[9]One case that we reviewed, for example, took more than 2-1/2 years to move from presentation for administrative review to a decision by the Administrative Tribunal. The Tribunal handed down its ruling more than 2 years after the grievant had been separated from service with the Bank.

corollary, focus the Bank's more formal mechanisms on comparatively difficult cases. Their actual impact—that is, their utility in reducing workplace conflict—will depend upon a variety of factors, including the expertise and functional independence of the people placed in the new positions.

Increasing Independence and Expertise in the System

The Review Committee raised a number of concerns related to the independence and relevant expertise held by units with significant responsibilities in the grievance system, including the Appeals Committee and the ombudsman.

The Appeals Committee is the Bank's primary vehicle for providing grievants with a formal "day in court." According to the Review Committee, the Appeals Committee has historically processed about 30 cases per year, on average. The Appeals Committee is composed of regular Bank employees—not legal professionals—who serve as panel members in addition to their other duties. According to Bank employees we interviewed, these individuals are frequently pressed for time. In addition, panel members must concern themselves with their own career prospects in the Bank. Some employees expressed concern that, as this is the case, panel members may not be entirely immune from worry about how their decisions on controversial grievances will be regarded by senior Bank management.

The Review Committee also noted that the ombudsman—traditionally a single-person operation—has generally lacked special expertise for dealing with the full range of problems that come to that office's attention, especially harassment and discrimination. In addition, the Review Committee noted that placement of the Office of Professional Ethics and the Bank's advisors on racial and gender equity under the authority of the Vice President for Human Resources had reduced employee confidence in these offices' independence from management influence.[10]

In response to concern about the Appeals Committee, the Review Committee recommended enhancing this body's professionalism by creating a new staff position—Executive Secretary to the Appeals Committee. This position would be filled by an expert in labor and employment law. He or she would serve as a nonvoting member of panels

[10]In April 1998, the Office of Professional Ethics was removed from the operational control of the Vice President for Human Resources.

hearing individual grievances, tasked with ensuring that procedural safeguards are in place and observed, and with ensuring consistency and continuity in panel deliberations and decision-making. The person occupying this position would report to the Office of the President.

It is unclear what value the new position will add to the process. The Appeals Committee already employs a legal professional who performs virtually all of the functions that are contemplated for the new position. The Review Committee made no specific recommendation for endowing the new position with a higher degree of authority or influence than the current incumbent already exercises over panel proceedings.

The Review Committee also recommended that the Bank augment the ombudsman staff with two individuals holding expertise in specific areas of concern and replace administrative review with a professionally managed mediation service. Other Review Committee recommendations that were intended to address this concern included staffing the Office of Professional Ethics with trained investigators and having relevant elements of the system, including the Office of Professional Ethics and the Bank's gender and racial equity advisers, report directly to the Office of the President.

Strengthening Procedural Safeguards

The Review Committee, as well as grievants and outside experts, identified a number of shortcomings in the procedures that the Office of Professional Ethics, the Appeals Committee, and the Administrative Tribunal employed. These sources said that these shortcomings reduced employee confidence that these elements of the system will conduct themselves in a fair and impartial manner. The Review Committee offered suggestions on how these procedural safeguards could be strengthened.

The Office of Professional Ethics. The Review Committee noted that many employees lacked confidence in the ability of the Office of Professional Ethics to conduct investigations in a manner that treats both accused parties and accusers fairly. In response, the Review Committee recommended that the Office establish clear rules and procedures to protect the rights of all parties and ensure that investigations are conducted fairly.

The Appeals Committee. The Review Committee agreed with other Bank employees and outside experts who observed that the Appeals Committee, though originally developed as a vehicle for informal peer review, is now expected to conduct proceedings that are essentially adversarial in

character. The Review Committee concluded that while the procedures followed by Appeals Committee panels may once have been adequate, they could no longer be regarded as providing sufficient procedural safeguards for the parties to disputes, especially grievants. Among other specific shortcomings cited by employees and noted by the Review Committee, panel chairs retained complete discretion with regard to calling and cross-examining witnesses, and witnesses did not testify under oath. The Review Committee confirmed the views of several grievants with whom we spoke who stated that, as a result, panel deliberations often proceeded on the basis of incomplete or biased information. The Review Committee also noted that grievants often experienced substantial delays in moving forward. Bank attorneys commonly filed detailed challenges to the Appeals Committee's jurisdiction, and there was no deadline by which senior management was required to reply to panel recommendations.

In addition, the Staff Association, as well as grievants, pointed out that employees bringing complaints before Appeals Committee panels often felt overwhelmed by the enormity of the Bank as an opponent. These sources noted that this feeling may be exacerbated by rules that permit grievants to be accompanied by only one person—an adviser supplied by the Staff Association or the Appeals Committee, or an attorney—as they participate in panel hearings. Finally, some grievants objected to the fact that final authority to act on panel findings and recommendations lay with management—most often the Vice President for Human Resources.

The Review Committee did not recommend making Appeals Committee decisions binding on management. However, it did recommend a number of procedural improvements, including

- providing grievants with a formal role, along with management and the Appeals Committee itself, in determining the witnesses that will be called;
- explicitly recognizing the right of the parties to cross-examine witnesses;
- requiring witnesses to make a declaration of truthfulness before offering testimony;

- reducing delays by limiting the Bank's right to challenge the Appeals Committee's jurisdiction[11] and by requiring that Bank management act on recommended remedies within 60 days.[12]

The impact of these recommendations on Appeals Committee deliberations will depend to a large extent upon the manner in which they are adapted into the rules governing Appeals Committee operations, as well as the manner in which they are applied in practice. For example, as already noted, existing Appeals Committee rules vest the panel with the authority to decide which of the witnesses requested by the parties will be heard—and the scope of each witness' testimony. Beyond submitting lists of desired witnesses, the rules do not provide the parties to the case with a role in deciding who is permitted to testify, or the topics on which these witnesses will speak. However, the rules do establish standards for panel decisions on such matters. They state that the panel may "reasonably" limit the number of witnesses that appear and the scope of their testimony "when it is satisfied that sufficient evidence has been heard to disclose fully and fairly the facts related to the appeal." It remains to be seen whether the wording that is developed to replace this provision will substantially strengthen this standard, and whether, in practice, the revised language will provide grievants with a stronger hand in resolving questions on witness selection and testimony.

The Administrative Tribunal. The Committee noted employee concern that the Administrative Tribunal's procedures did not provide its members with a full understanding of the matters at issue. Some employees and outside reviewers were particularly troubled that the Tribunal usually arrived at decisions without benefit of oral hearings.

The Tribunal is not an appeals court, as we understand the term in the United States. That is, it does not review the manner in which the Appeals Committee has handled the cases that are forwarded for Tribunal action, nor does it remand cases for rehearing before the Appeals Committee. Rather, it conducts its own independent review of the facts and arrives at

[11]The Bank would continue to be allowed such challenges when the maximum time permitted employees for seeking redress after experiencing allegedly unfair or improper management actions had passed.

[12]To be more precise, the Review Committee recommended that Appeals Committee recommendations become binding if management did not respond within 60 days.

its own decisions on the merits of each case. Unlike Appeals Committee recommendations, Tribunal decisions are binding on the Bank.

The Tribunal meets infrequently, for short periods of time. Although it has the right to hear oral testimony, it seldom does. According to its staff, the Tribunal has held oral hearings on two occasions since its founding in 1980. The Tribunal has nearly always based its rulings on written submissions from the parties. These written submissions include an initial application by the grievant, followed in succession by (a) management's answer to the application, (b) the grievant's reply to the answer, (c) management's rejoinder to the answer, and (d) additional written statements, if deemed necessary by the Tribunal.

In response to concern about the adequacy of the record employed by the Tribunal, the Committee recommended making transcripts of Appeals Committee hearings available whenever cases advance to the Tribunal.[13] The Committee also recommended that the Tribunal consider the merits of holding oral hearings more frequently.

Improving the System's Capacity for Addressing Bias and Harassment

The Bank's staff rules and related materials state that bias and harassment—including sexual harassment—are contrary to Bank policy.[14] Nonetheless, the Review Committee noted that confidence in the system was particularly low among female employees and employees of African origin. For example, recent surveys found that only 1 in 10 female employees experiencing unwelcome sexual attention sought help from the resources the Bank had established for handling such problems and that fewer than 40 percent of employees regarded the Bank as serious about dealing with nationality discrimination.

The Review Committee proposed several measures that may help to improve the Bank's capacity for addressing bias and harassment allegations. These include the expansion of the ombudsman office to include staff with appropriate skills and creation of a mediation service.

[13]In other cases, the Appeals Committee would continue its present practice of not creating full transcripts. Hearings would be taped in order to provide for creation of transcripts if required.

[14]In a 1994 policy statement, the Bank defined harassment, whether by peers or superiors, as "speech or conduct which unreasonably interferes with work or creates an intimidating, hostile or offensive work environment, whether on the basis of race, religion, color, gender, sexual orientation, national origin or other like factors."

The Review Committee noted one particular provision that has limited access to the more formal portions of the Bank's system for many staff experiencing bias or harassment. The rules and regulations governing the Appeals Committee specify that, to seek redress through the Committee, staff members must challenge specific adverse managerial decisions. These may include allegedly unfair decisions on such matters as performance evaluation, compensation, promotion, or separation from employment. However, staff experiencing bias or harassment may be unable to point to a specific adverse decision as a basis for seeking redress. Experts in this area note that workers alleging bias or harassment often base their complaints on more general allegations that their superiors have maintained a hostile work environment.

In response to this shortcoming, the Review Committee recommended that grievants be permitted direct access to the Appeals Committee without first going through any other process. We note that the Appeals Committee's rules will also have to be changed to permit it to accept jurisdiction over cases where no specific adverse management decision has been cited.

Expanding the Committee's jurisdiction to include broadly based allegations of harassment, without reference to specific adverse decisions, raises questions regarding the criteria that the Committee should apply in arriving at its decisions. In this connection, the Review Committee noted that the Bank is engaged in developing an improved, more comprehensive harassment policy and code of conduct. This effort may provide the Appeals Committee with an adequate basis for fairly addressing grievances of this type, provided that it includes clear criteria for assessing managers' actions.

Expanding Redress for Successful Grievants

Grievants and other concerned Bank staff noted certain limitations in the remedies that have been provided for grievants obtaining favorable judgments from the Appeals Committee or the Administrative Tribunal.

First, the Appeals Committee has the authority to award successful grievants reasonable attorneys' fees, but it has seldom done so. In more complex cases, grievants may incur substantial attorneys' fees in obtaining a favorable ruling. Grievants argue that they should be reimbursed for these expenditures when the Bank is found to have been at fault. In response, the Review Committee recommended that the Appeals Committee make greater use of its authority to recommend award of reasonable attorneys' fees to successful grievants. The actual impact of

this recommendation will depend not only on the Appeals Committee's willingness to recommend such awards in appropriate cases but also on Bank management's willingness to actually make such awards.

Second, terminated grievants have seldom been reinstated, even when found to have been unfairly treated. Since 1990, for example, the Bank has reinstated five individuals in response to Appeals Committee recommendations, while no one has been reinstated based on a favorable ruling by the Administrative Tribunal. The Review Committee's report noted that reinstatement has rarely been provided, even when the Tribunal has found management guilty of "gross malfeasance."

In lieu of reinstatement, Bank management has frequently opted to provide successful grievants with monetary compensation. When recommending reinstatement, the Tribunal is specifically required also to fix an amount of monetary compensation, up to 3 years net pay, that the Bank may decide to award instead.[15] The Bank has opted for compensation in each of the seven cases since 1990 in which the Tribunal recommended reinstatement. During this same period, Bank management also elected to provide monetary settlements in two cases in which the Appeals Committee had recommended that reinstatement be considered.

Concerned parties contend that the low likelihood of reinstatement as a remedy for unfair separation from employment is unacceptable, given the special circumstances attendant to employment in the World Bank. They point out that foreign nationals employed at the Bank's Washington, D.C., headquarters remain in the United States only by virtue of their status as Bank employees. Unless they find employment with another international organization, such as the United Nations, they must leave the United States within 60 days.

The Review Committee noted the desirability of reinstatement being provided when justified but did not make any recommendations on this matter, given that "decisions on reinstatement ultimately rest with the [Bank] management." It remains to be seen whether the Review Committee's endorsement of the more frequent use of reinstatement as a remedial measure will have a substantial impact on future Bank actions.

[15]The Tribunal may order the payment of higher amounts of compensation in "exceptional cases" where it believes such amounts are justified.

We note that final authority for deciding whether to reinstate an employee rests with the President of the Bank.

Holding Managers Accountable

The Review Committee reflected a concern expressed by many Bank employees when it observed that the system has not effectively held managers accountable for complying with the Bank's rules regarding appropriate treatment of subordinates. Many employees view the Bank's willingness to take action against managers who repeatedly violate the Bank's commitment to fair treatment of employees as a key indicator of its sincerity in pursuing effective reforms.

Several of the measures already discussed may help to address this problem. These include (1) clarifying the Bank's standards and expectations regarding harassment, (2) strengthening the Office of Professional Ethics' investigative procedures and personnel, and (3) expanding the Appeals Committee's purview to include grievances that are not based on specific adverse managerial decisions.

The Review Committee also recommended that the Bank reinforce accountability by reporting Appeals Committee decisions that clearly indicate mismanagement to offending parties' superiors, sanctioning managers who are found to have committed "serious or repeated" violations of staff rules, and advising Appeals Committee witnesses that knowingly making false statements would result in disciplinary action.

Finally, the Review Committee recommended that the Office of Professional Ethics, the ombudsman staff, and the Bank's racial and gender equity advisers cooperate to develop a system for monitoring and reporting cases of harassment and discrimination. While potentially worthwhile, this recommendation may be particularly difficult to put into effect. If effectively implemented, the system envisioned by the Review Committee increases the likelihood that management-staff disputes will be addressed in forums—like the ombudsman's office—whose continued effectiveness depends on maintenance of confidentiality. Outside experts noted that this simultaneous commitment to greater accountability and greater confidentiality presents those charged with implementing the new system with a major challenge—preserving an appropriate balance between the two commitments.

Ensuring Access for Field Staff

The Review Committee noted that employees working outside of Bank headquarters have made relatively little use of the grievance system—at least partially because of the difficulties that they have faced in accessing

the various elements of the system, which have been located almost entirely within the Bank's Washington, D.C., headquarters. The Review Committee made a number of recommendations for improving field staff access. These included

- providing access to the Office of Professional Ethics and the ombudsman office through secure, toll-free telephone lines;
- tasking the ombudsman staff with working to develop a network of local ombudsmen to serve field offices—possibly in cooperation with other international organizations;
- requiring that the manager of the proposed mediation service ensure that mediation is available to field offices; and
- equipping the Appeals Committee to conduct videoconferences with field offices.

We note that providing most field offices with effective access will be quite challenging, given the fact that Bank employees are dispersed among more than 90 sites around the world.

Key Implementation Issues

The Review Committee left management with a number of key issues that must be more fully addressed as implementation proceeds.

Outstanding Procedural Matters

As already noted, a number of procedural matters must be addressed before certain of the Review Committee's recommendations can be fully implemented. Among other things, these matters include (1) completion of procedures to govern Office of Professional Ethics investigations and policies clarifying the Bank's expectations regarding harassment and (2) clarification of the Appeals Committee's jurisdiction, the role of its proposed additional legal staff member, and rules governing the selection of witnesses and the scope of their testimony.

Developing an Appropriate Training Program

The Review Committee recognized that appropriate, effective training for Bank employees, especially managers, is critical to the success of the reform initiative. In addition to informing employees about the new system, the Committee envisioned a training program that would provide Bank staff with improved ethics, conflict resolution, and communications skills, as well as increased sensitivity to cultural differences. Experts agree

that effective training in these areas can reduce workplace conflict and facilitate early resolution of such disputes as may still arise.

To begin work in this area, the Review Committee recommended that a new unit be created within the Office of Professional Ethics charged specifically with promoting "corporate values and ethical behavior" among the staff. (The Office previously concentrated almost exclusively on conducting investigations.) The new head of the Office has already made some efforts in this direction, such as examining the Bank's existing training portfolio to identify elements that can be expanded and/or strengthened. However, substantial work remains to be done to create the multifaceted, coordinated training program that the Review Committee envisioned.

The Review Committee noted that one important topic in this training program should be how to prepare and communicate meaningful performance evaluations. The President of the Bank highlighted the performance evaluation system as a critical area of concern. He noted that Bank managers have not, in practice, been required to provide candid and timely performance feedback to employees. The Bank's Human Resources Vice Presidential Unit is currently engaged in introducing an improved performance appraisal system.

Monitoring and Refining the System

The Review Committee noted that in the past none of the units in the system collected meaningful information on its own performance. Representatives of the Appeals Committee, for example, reported that their unit had not instituted effective means for obtaining structured feedback from grievants and managers about their experiences before the Committee. In addition, because the Bank's system was not really an integrated structure but a set of uncoordinated mechanisms created at different times for different purposes, such data as had been collected could not be used for systemwide analyses. Because the system developed in this manner, the Review Committee observed that the Bank also lacked an effective institutional focal point for examining relevant information and taking such actions as may be indicated, including recommending refinements in the system.

The Review Committee concluded that the Bank should develop systemwide performance measures that can be used as a basis for monitoring the new system's performance. Staff satisfaction would be the chief measure, along with accessibility and the cost and time required for

settling disputes. Substantial effort remains to be invested in operationalizing these concepts, designing data-gathering instruments, and creating databases so that meaningful information on the system's performance (including the performance of each unit within it) can be effectively gathered, accessed, and analyzed.

In order to provide a focal point for a sustained commitment to improving the system, the Review Committee proposed creating a conflict resolution network comprised of all of the offices holding responsibility in this area. In addition to approving all proposed rules and procedures for the new system's constituent elements, the network would be charged with monitoring the system's performance, identifying emerging issues, and recommending additional refinements as necessary. The Review Committee recommended that the network continue to explore the introduction of other dispute settlement options, such as arbitration by external dispute resolution professionals, into the Bank's system.[16] The network would have an implementation coordinator who would oversee creation of the new system and a rotating chair that would report to the Office of the President on at least a quarterly basis. The Review Committee also proposed that the network share with the employees information on major trends and developments. However, the manner in which this network will actually operate remains to be determined.

The Review Committee recommended that key actors in the new system—including the head of the Office of Professional Ethics and the Appeals Committee, the ombudsmen, and the chair of the conflict resolution network—report directly to the Office of the President. These recommendations highlighted the important role that this office should play in ensuring that the reformed system operates in a fair and independent manner, that managers are held accountable for their actions toward subordinates, and that refinements in the system are introduced as experience is gained through actual operations.

To further ensure a sustained commitment to improving the system, the Committee also recommended that annual reviews be conducted during

[16]Providing access to external arbitration is one of many options that are available for augmenting the independence and impartiality of the system. The Review Committee considered including arbitration among its recommendations. However, the Committee decided against making such a recommendation at this time, given that (a) substantial effort will already be required to implement the Committee's other recommendations and (b) the real need for arbitration as a supplement to the new system can only be judged after the new system has been in operation for some time.

each of the next 3 years, with provisions for taking employee views into account, as well as commentary from outside experts and the Board of Executive Directors' Personnel Committee. Substantial effort remains to be invested in planning and carrying out these reviews in a manner that ensures that they provide a meaningful basis for continued improvement in the system.

Evaluating the Administrative Tribunal

The Administrative Tribunal was not created by management but by an agreement among the Bank's member countries. Thus, Bank management cannot mandate changes in Tribunal operations on its own initiative. Major changes can only be made by agreement among the member countries. The Committee recommended that the Tribunal itself reassess its own procedures, taking input from Bank management and staff into account. Whether the Tribunal follows this recommendation remains to be seen, as does the nature of the conclusions that such an assessment might reach.

Conclusions

The Bank has acknowledged serious procedural and operational shortcomings in its grievance system and has prepared an action plan to address these shortcomings.

As implementation has just begun, the extent to which the action plan will increase the fairness and credibility of the grievance system cannot be assessed at this time. A number of open issues remain to be addressed, including several procedural matters, development of an appropriate training program, and creation of an effective monitoring system. Sustained management commitment and support will be needed to resolve these issues. As the revised system comes on line the performance of the Office of the President in supporting the system's independence and authority will be a key factor in determining its success. As a member of the Executive Directors' Personnel Committee, the United States Executive Director will have an opportunity to exercise direct oversight as the new system comes into operation.

Recommendation

To help ensure that the Bank achieves its ultimate goal of restoring employee confidence in the grievance system, we recommend that the Secretary of the Treasury instruct the U.S. Executive Director to work with other members of the Executive Directors' Personnel Committee to actively monitor Bank efforts to implement the new system developed by

the Review Committee, assess its performance, and introduce additional refinements as needed.

One critical element in helping to ensure the success of the reforms adopted by the Bank is the collection of meaningful data on whether these reforms have made the system more fair and credible. These measurement criteria have yet to be developed. To help assure that the Bank's goals are achieved, we recommend that the Secretary of the Treasury instruct the U.S. Executive Director to work with other members of the Personnel Committee to ensure that the Bank develops indicators that will provide an adequate basis for judging the reforms' actual impact.

Scope and Methodology

To understand the Bank's grievance system, we reviewed the rules and regulations governing its operation and interviewed employees from all Bank units with substantial responsibilities in this area. These units included the Appeals Committee, the Administrative Tribunal, the Office of Professional Ethics, the vice-presidencies for Human Resources and Legal Affairs, the Senior Advisers for Racial and Gender Equity, and the ombudsman. We examined the Review Committee's written conclusions regarding the system's strengths and weaknesses, discussed these matters with staff from relevant Bank units, reviewed a number of grievance case histories, and interviewed grievants and their attorneys. We also reviewed the results of employee focus groups held to inform the Review Committee's deliberations, as well as several reports that were prepared by outside experts at the Review Committee's request.

To provide a firm basis for reviewing (a) proposed improvements and (b) measures for ensuring that these proposals are successfully implemented, we interviewed experts on workplace dispute resolution and reviewed written commentary on effective formal and informal workplace dispute resolution from a number of expert sources. These included the American Arbitration Association, the Society of Professionals in Dispute Resolution, and the American Bar Association. To further inform our review, we read written reports on the grievance systems employed by other international organizations and by private and public sector organizations in the United States, including U.S. provisions for adjudicating disputes of this type before federal and state courts.

We examined the Review Committee's draft recommendations and discussed them with members of the Committee, including the co-chairmen and the head of the Staff Association; the President of the

Bank; heads of relevant Bank units; grievants; and outside experts, including those engaged by the Review Committee.

We did our work in Washington, D.C., between October 1998 and February 1999 in accordance with generally accepted government auditing standards.

Agency Comments and Our Response

The Department of the Treasury and the President of the World Bank provided written comments on a draft of this report. These comments are reprinted in appendixes I and II.

The Department of the Treasury stated that the report presents a fair and accurate assessment of the Bank's grievance process and the Review Committee's proposals. Treasury affirmed the commitment of Department staff and the U.S. Executive Director to monitoring Bank implementation of the recommended reforms to ensure that they have their intended effect. The President of the World Bank noted his personal commitment to ensuring that the recommended reforms result in a highly effective system for addressing employee grievances.

The President of the World Bank commented that, in his view, the report did not clearly convey a number of points that he considered important. Specifically, he stated that the report did not

- recognize that the Bank's grievance system reform effort—part of a broader effort at reforming the Bank's human resource policies and practices—began well in advance of GAO's review;
- capture the unique challenge of creating an effective system in an international organization composed of 181 member countries with widely varying dispute resolution practices;
- acknowledge the magnitude of the changes being made in the system, especially the substantial shift in emphasis toward settling disputes through informal, nonadversarial means; or
- mention that the experts consulted by the Bank viewed the system developed by the Review Committee as a "state of the art" model.

Our draft specifically stated that the Bank appointed a Grievance Process Review Committee in June of 1998, whereas our examination of the Review Committee's findings and recommendations did not begin until October 1998. The draft also acknowledged that the Bank's decision to examine its grievance process grew out of a broader, ongoing effort to reform the

Bank's human resource policies. The draft's background section discussed the difficulties inherent in developing an approach to resolving workplace disputes that would function effectively in a multicultural environment such as the Bank's. It also stated that the Bank's reform plan included a wide variety of measures that were intended to strengthen the system in each area where shortcomings were identified. We began the discussion of these measures in our draft report with a description of the Review Committee's recommendations for substantially strengthening the Bank's capacity for informal dispute resolution.

Our draft also recognized that the Review Committee sought, through various means, to ensure that its final report to management would be in line with current professional thinking on best practices in workplace dispute resolution. In discussions with Bank staff and with GAO, the experts consulted by the Bank commented that the Review Committee had taken current best practices thinking into account in developing its recommendations, and that the Committee's action plan provided the Bank with a sound basis for developing a fairer and more credible system. However, these experts also noted that no plan, however constituted, could be relied upon as certain to be satisfactory and that because this is the case, it is important that the Bank develop systems for effectively monitoring and refining the system as implementation proceeds.

We are providing copies of this report to the Honorable Robert E. Rubin, Secretary of the Treasury, and to Mr. James D. Wolfensohn, President of the World Bank. Copies will be made available to other interested parties upon request.

Please contact me on (202) 512-4128 if you or your staff have any questions concerning this report. The major contributors to this report were Michael McAtee, Stephen Lord, and Mark Dowling.

Harold J. Johnson, Associate Director
International Relations and Trade Issues

Comments From the Department of the Treasury

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 15, 1999

Mr. Harold J. Johnson
Associate Director
International Relations and Trade Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Johnson:

Thank you for the opportunity to review the General Accounting Office's (GAO) report entitled "World Bank: Status of Grievance Process Reform." The U.S. Treasury Department believes that the Bank's internal grievance process should be credible, transparent and equitable. In view of employee concerns with the existing system, we are pleased that the Bank established the Grievance Process Review Committee to undertake a broad review of its grievance system, and that the Committee conducted its work in a timely manner.

We believe that the GAO report presents a fair and accurate assessment of the current grievance process and the Review Committee's proposals. The changes recommended by the Committee, and now under implementation, should help improve the Bank's grievance system. However, full implementation will be essential. This will require new guidelines, procedures, additional training, performance measures, and, ultimately, internal cultural changes within the Bank. Bank Management recognizes this challenge and is developing monitoring mechanisms, including an annual review by the Executive Board's Personnel Committee. The U.S. Executive Director will continue to vigorously exercise oversight responsibility over this process.

Reform of the World Bank's grievance process is a high priority for the U.S. Treasury Department, and we will vigilantly monitor the ongoing implementation of the revised system.

Sincerely,

William E. Schuerch

William E. Schuerch
Deputy Assistant Secretary
International Development, Debt &
Environment Policy

Comments From the World Bank

The World Bank
Washington, D.C. 20433
U.S.A.

JAMES D. WOLFENSOHN
President

April 13, 1999

Mr. Harold J. Johnson
Associate Director
International Relations and Trade Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Johnson:

At the outset, I would like to express my appreciation of the broad endorsement by the United States General Accounting Office ("GAO") of the grievance system reforms adopted by the World Bank Group. These reforms have been carefully crafted over many months with the help of Judge Shirley Hufstedler who worked closely with the Grievance Review Committee. They have been reviewed and strongly supported by three recognized authorities in the field of conflict resolution: Mary Rowe, Head Ombudsman at the Massachusetts Institute of Technology, Sloan School of Management; Hans Gammeltoft, Ombudsman of the Danish Parliament; and Phyllis Segal, Chair, Federal Labor Relations Authority. We are now in the process of implementing the reforms, and I can assure of my personal commitment to administering a conflict resolution system in the World Bank Group that ranks among the most effective and progressive systems of its kind.

However, I very much regret that the GAO report fails to convey a number of important points. First, there is no recognition of the fact that the World Bank Group initiated reform of its grievance system long before the GAO began its review. The grievance system was evaluated and the Grievance Review Committee was formed as part of an extensive effort by senior management to revitalize and improve the human resources strategy of the institution. This effort has been underway for about two years, and is now in the implementation stage.

Second, the GAO report does not acknowledge the magnitude of the changes being made in the World Bank Group's grievance process. The institution made a clear departure from traditional adversarial approach to dispute resolution, and has adopted a more comprehensive, conciliatory, and integrated system. Staff are now being provided with a wide range of informal and non-adversarial means to resolve conflicts, as well as formal dispute resolution channels with significantly strengthened procedural safeguards. Specific measures are being taken to increase access to the conflict resolution system by staff located outside of Washington in over 90 World Bank Group offices world wide.

Substantial resources are being invested to build capacity within the system to deal with sexual harassment and discrimination in an effective manner.

Third, the GAO report fails to capture the unique challenges of formulating a conflict resolution system in a large inter-governmental organization composed of 181 member countries. Because conflict resolution methods vary widely from country to country, the World Bank Group adopted a system which builds on the best practices of its member countries and takes into account the institution's multicultural needs.

Finally, the GAO report does not mention that experts in the conflict resolution field, including Judge Huftstedler, have recognized that the new system adopted by the World Bank Group is a state-of-the-art model.

Thank you for providing me with an opportunity to comment on your findings. I appreciate the time and effort invested by the GAO and its dedicated staff to the completion of this report.

With best wishes

Sincerely,

James D. Wolfensohn

cc: Mr. Shengman Zhang
Mr. Daoud L. Khairallah

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