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PUBLIC-PRIVATE COMPETITIONS

Access to Records Is Inhibiting Work on Congressional Mandates

Statement of Henry L. Hinton, Jr., Assistant Comptroller General, National Security and International Affairs Division

GAO/T-NSIAD-98-111

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss issues related to the public-private competitions for workloads at two maintenance depots identified for closure during the 1995 base realignment and closure process. First, I will address the problems we are having in obtaining access to Department of Defense (DOD) information that we need regarding these competitions to meet our reporting responsibilities under the 1998 Defense Authorization Act. In relation to those responsibilities, I will also discuss

- the recent competition for C-5 aircraft workload and our assessment of it;
- the adequacy of DOD's support for its determination that competing combined, rather than individual workloads of each maintenance depot is more logical and economical; and
- concerns participants have raised about the upcoming competitions for the workloads at the air logistics centers in Sacramento, California, and San Antonio, Texas.

Before I discuss specifics, I will summarize the key points in my testimony.

Results in Brief

First of all, our lack of access to information within DOD is seriously impairing our ability to carry out our reporting requirements. We completed, with difficulty, our required report to Congress concerning DOD's determination to combine individual workloads at two closing logistics centers into a single solicitation at each location. However, the Air Force has not been responsive to some of our continuing requests for information relative to the Sacramento and San Antonio competitions. If the Department continues to delay and restrict our access to information we need to do our work, we will be unable to provide Congress timely and thorough responses regarding the competitions for the remaining depot maintenance workloads at Sacramento and San Antonio.

To meet our reporting requirements regarding these competitions, we will need to review DOD documents relating to solicitations, competitors' proposals, DOD evaluations of the proposals, and the selection of successful offerors as they become available to Air Force procurement officials. We recognize the sensitivity of this material and are prepared to discuss with the Air Force steps for safeguarding the material and facilitating the selection process, while allowing us to fulfill our statutory responsibility.

In assessing the competition process for the C-5 aircraft workloads, we found that (1) the Air Force provided public and private sources an equal opportunity to compete for the workloads without regard to where the work could be done; (2) the Air Force's procedures for competing the workloads did not appear to deviate materially from applicable laws or the Federal Acquisition Regulation (FAR); and (3) the award resulted in the lowest total cost to the government, based on Air Force assumptions and conditions at the time.

For the remaining workloads at Sacramento and San Antonio, DOD reports and other data do not support the Defense Secretary's determination that using a single contract with combined workloads is more logical and cost-effective than using separate contracts for individual workloads.

Much remains uncertain about the upcoming competitions for the Sacramento and San Antonio depot maintenance workloads. Potential participants have raised several concerns that they believe may affect the conduct of the competitions. One concern is the impact of the statutory limit on the amount of depot maintenance work that can be done by non-DOD personnel. The Air Force has not yet determined the current and projected public-private sector workload mix using criteria provided in the 1998 Defense Authorization Act, but is working on it. Nonetheless, preliminary data indicates there is little opportunity to contract out additional depot maintenance workloads to the private sector. Another concern is the Air Force's proposed change in the overhead savings the Department may factor into the cost evaluations. For the C-5 workload competition, overhead savings were considered for the duration of the performance period. However, for the Sacramento and San Antonio competitions, the Air Force is considering limiting overhead savings to the first year and possibly reducing the savings for the second year.

Background

As a result of a 1995 Defense Base Closure and Realignment Commission decision, Kelly Air Force Base, Texas, is to be realigned and the San Antonio Air Logistics Center, including the Air Force maintenance depot, is to be closed by 2001. Additionally, McClellan Air Force Base, California, and the Sacramento Air Logistics Center, including the Air Force maintenance depot, is to be closed by July 2001. To mitigate the impact of the closures on the local communities and center employees, in 1995 the administration announced its decision to maintain certain employment levels at these locations. Privatization-in-place was one initiative for retaining these employment goals.

Since that decision, Congress and the administration have debated the process and procedures for deciding where and by whom the workloads at the closing depots should be performed.[1] Central to this debate are concerns about the excess facility capacity at the Air Force's three remaining maintenance depots and the legislative requirement—10 U.S.C. 2469—that for workloads exceeding $3 million in value, a public-private competition must be held before the workloads can be moved from a public depot to a private sector company. Because of congressional concerns raised in 1996, the Air Force revised its privatization-in-place plans to provide for competitions between the public and private sectors as a means to decide where the depot maintenance workloads would be performed. The first competition was for the C-5 aircraft depot maintenance workload, which the Air Force awarded to the Warner Robins depot in Georgia on September 4, 1997. During 1997, Congress continued to oversee DOD's strategy for allocating workloads currently performed at the closing depots. The 1998 Defense Authorization Act required that we and DOD analyze various issues related to the competitions at the closing depots and report to Congress concerning several areas.

First, within 60 days of its enactment, the Defense Authorization Act requires us to review the C-5 aircraft workload competition and subsequent award to the Warner Robins Air Logistics Center and report to Congress on whether (1) the procedures used provided an equal opportunity for offerors without regard to performance location; (2) procedures are in compliance with applicable law and the FAR; and (3) award results in the lowest total cost to DOD.

Second, the act provides that a solicitation may be issued for a single contract for the performance of multiple depot-level maintenance or repair workloads. However, the Secretary of Defense must first (1) determine in writing that the individual workloads cannot as logically and economically be performed without combination by sources that are potentially qualified to submit an offer and to be awarded a contract to perform those individual workloads and (2) submit a report to Congress setting forth the reasons for the determination. Further, the Air Force cannot issue a solicitation for combined workloads until at least 60 days after the Secretary submits the required report.

[1]The workloads at these activities involve the KC-135, ground communication equipment, and hydraulics and other commodities at the Sacramento depot, and the F100, TF39, and T56 engines and fuel accessories at the San Antonio Depot.

Third, the authorization act also provides special procedures for the public-private competitions for the San Antonio and Sacramento workloads. For example, total estimated direct and indirect cost and savings to DOD must be considered in any evaluation. Further, no offeror may be given preferential consideration for, or be limited to, performing the workload at a particular location. As previously stated, the act also requires that we review the solicitations and the competitions to determine if DOD has complied with the act and applicable law. We must provide a status report on the Sacramento and San Antonio competitions within 45 days after the Air Force issues the solicitations, and our evaluations of the completed competitions are due 45 days after the award for each workload.

Finally, the act requires that DOD report on the procedures established for the Sacramento and San Antonio competitions and on the Department's planned allocation of workloads performed at the closing depots as of July 1, 1995. DOD issued these reports on February 3, 1998. The Air Force cannot issue final solicitations until at least 30 days after these reports are submitted and all other requirements of the act are completed.

Access to Records Problems

We have had problems in gaining access to information required to respond to reporting requirements under the 1998 National Defense Authorization Act. Our lack of access to information is seriously impairing our ability to carry out our reporting responsibilities under this act.

We experienced this problem in doing our work for our recent report to Congress concerning DOD's determination to combine individual workloads at the two closing logistics centers into a single solicitation. We originally requested access to and copies of contractor-prepared studies involving depot workloads at the Sacramento Air Logistics Center on December 18, 1997. The Air Force denied our request, citing concerns regarding the release of proprietary and competition-sensitive data.

It was not until January 14, 1998, and only after we had sent a formal demand letter to the Secretary of Defense on January 8, 1998, that the Air Force agreed to allow us to review the studies. Even then, however, the Air Force limited our review to reading the documents in Air Force offices and required that without further permission, no notes, copies, or other materials could leave those premises.

The limited access provided came so late that we were unable to review the documents adequately and still meet our statutorily mandated reporting deadline of January 20. As of this date, we have been provided only heavily redacted pages from two studies. These pages do not contain the information we need. Further, the Air Force did not provide us even limited access to the final phase of the studies, which were dated December 15, 1997.

Although we were able, with difficulty, to complete our report, we simply cannot fulfill our responsibilities adequately and in a timely manner unless we receive full cooperation of the Department. To meet our remaining statutory requirements, we have requested several documents and other information related to the upcoming competitions for the closing depots' workloads. Air Force officials said they would not provide this information until the competitions are completed. However, we will need to review solicitation, proposal, evaluation, and selection documents as they become available. For example, we will need such things as the acquisition and source selection plans, the proposals from each of the competing entities, and documents relating to the evaluation of the proposals and to the selection decision. Appendix I to this statement contains our letter to the Senate Armed Services Committee detailing our access problems.

Our basic authority to access records is contained in 31 U.S.C. 716. This statute gives us a very broad right of access to agency records, including the procurement records that we are requiring here, for the purpose of conducting audits and evaluations. Moreover, the procurement integrity provision in 41 U.S.C. 423 that prohibits the disclosure of competition-sensitive information before the award of a government contract specifies at subsection (h) that it does not authorize withholding information from Congress or the Comptroller General.

We have told the Air Force that we appreciate the sensitivity of agency procurement records and have established procedures for safeguarding them. As required by 31 U.S.C. 716(e)(1), we maintain the same level of confidentiality for a record as the head of the agency from which it is obtained. Further, our managers and employees, like all federal officers and employees, are precluded by 18 U.S.C. 1905 from disclosing proprietary or business-confidential information to the extent not authorized by law.

Finally, we do not presume to have a role in the selection of the successful offeror. We recognize the need for Air Force officials to make their

selection with minimal interference. Thus, we are prepared to discuss with the Air Force steps for safeguarding the information and facilitating the Air Force's selection process while allowing us to meet statutory reporting responsibilities.

Processes for C-5 Aircraft Competition Appear Reasonable

In response to congressional concerns regarding the appropriateness of its plans to privatize-in-place the Sacramento and San Antonio maintenance depot workloads, the Air Force revised its strategy to allow the public depots to participate in public-private competitions for the workloads. In the 1998 Defense Authorization Act, Congress required us to review and report on the procedures and results of these competitions. The C-5 aircraft workload was the first such competition. We issued our required report evaluating the C-5 competition and award on January 20, 1998.[2]

After assessing the issues required under the act relating to the C-5 aircraft competition, we concluded that (1) the Air Force provided public and private offerors an equal opportunity to compete without regard to where work would be performed, (2) the procedures did not appear to deviate materially from applicable laws or the FAR; and (3) the award resulted in the lowest total cost to the government, based on Air Force assumptions and conditions at the time of award.

Nonetheless, public and private offerors raised issues during and after the award regarding the fairness of the competition. First, the private sector participants noted that public and private depot competitions awarded on a fixed-price basis are inequitable because the government often pays from public funds for any cost overruns it incurs. Private sector participants also questioned the public depot's ability to accurately control costs for the C-5 workload. In our view, the procedures used in the C-5 competition reasonably addressed the issue of public sector cost accountability.

Further, private sector participants viewed the $153-million overhead cost savings credit given to Warner Robins as unrealistically high and argued that the selection did not account for, or put a dollar value on, certain identified risks or weaknesses in the respective proposals. We found that the Air Force followed its evaluation scheme in making its overhead savings adjustment to the Warner Robins proposal and that the Air Force's treatment of risk and weaknesses represented a reasonable exercise of its discretion under the solicitation.

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

Although the public sector source was selected to perform the C-5 workload, it questioned some aspects of the competition. Warner Robins officials stated that they were not allowed to include private sector firms as part of their proposal. Additionally, the officials questioned the Air Force requirement to use a depreciation method that resulted in a higher charge than the depreciation method private sector participants were permitted to use. Finally, they questioned a $20-million downward adjustment to its overhead cost, contending that it was erroneous and might limit the Air Force's ability to accurately measure the depot's cost performance.

While the issues raised by the Warner Robins depot did not have an impact on the award decision, the $20-million adjustment, if finalized, may cause the depot problems meeting its cost objectives in performing the contract. The Air Force maintains that the adjustment was necessary based on its interpretation of the Warner Robins proposal. Depot officials disagree. At this time, the Air Force has not made a final determination as to how to resolve this dispute.

DOD's Determination to Combine Workloads Not Adequately Supported

DOD decided to issue a single solicitation combining multi-aircraft and commodity workloads at the Sacramento depot and a single solicitation for multi-engine workloads at the San Antonio depot. Under the 1998 Defense Authorization Act, DOD issued the required determinations that the workloads at these two depots "cannot as logically and economically be performed without combination by sources that are potentially qualified to submit an offer and to be awarded a contract to perform those individual workloads." As required, we reviewed the DOD reports and supporting data and issued our report to Congress on January 20, 1998.[3] We found that the accompanying DOD reports and supporting data do not provide adequate information supporting the determinations.

First, the Air Force provided no analysis of the logic and economies associated with having the workload performed individually by potentially qualified offerors. Consequently, there was no support for the Department's determination that the individual workloads cannot as logically and economically be performed without combination. Air Force officials stated that they were uncertain as to how they would do an analysis of performing the workloads on an individual basis. However, Air Force studies indicate that the information to make such an analysis is

[3]Public-Private Competitions: DOD's Determination to Combine Depot Workloads Is Not Adequately Supported (GAO/NSIAD-98-76, Jan. 20, 1998).

available. For example, in 1996 the Air Force performed six individual analyses of depot-level workloads performed by the Sacramento depot to identify industry capabilities and capacity. The workloads were hydraulics, software electrical accessories, flight instruments, A-10 aircraft, and KC-135 aircraft. As a part of the analyses, the Air Force identified sufficient numbers of qualified contractors interested in various segments of the Sacramento workload to support a conclusion that it could rely on the private sector to handle these workloads.

Second, the reports and available supporting data did not adequately support DOD's determination. For example, DOD's determination relating to the Sacramento Air Logistics Center states that all competitors indicated throughout their workload studies that consolidating workloads offered the most logical and economical performance possibilities. This statement was based on studies performed by the offerors as part of the competition process.[4] However, one offeror's study states that the present competition format is not in the best interest of the government and recommends that the workload be separated into two competitive packages.

On February 24, 1998, the Air Force provided additional information in support of the Department's December 19, 1997, determination. This information included two documents: (1) a report containing the rationale for combining the San Antonio engine workloads into a single solicitation and (2) a white paper containing the rationale for combining the Sacramento aircraft and commodity workloads. These two papers supported the testimony provided by DOD before the Military Readiness Subcommittee of the House National Security Committee on February 25, 1998.

During our February 24, 1998, testimony before the same subcommittee, we were asked to review the additional support provided by the Air Force. We are in the process of making that review. In this regard, we have several preliminary observations. First, the information contained within the two papers does provide supporting data for the logic and the economies of combining the workloads in the solicitations if the workloads are all to be performed at one location. While we are encouraged to see that the Air Force has provided a substantial amount of information supporting this position, we would have expected to see more analysis relating to the consideration of other feasible alternatives. Other alternatives that appear to be logical and potentially cost-effective were

[4]Prior to the planned competition, the Air Force engaged three offerors to identify work processes at Sacramento and determine how those processes could be performed more efficiently.

not considered or were considered only in a general manner. For example: (1) solicitations with alternate offer schedules permitting the competitors to offer on any combination of workloads, from one to all, were not considered; (2) transferring some of the workloads to another public depot outside the competition process, an option that was discussed in at least one offeror's study report, was not considered; and (3) dividing the Sacramento workload into two, rather than five separate work packages, as was done for the San Antonio acquisition strategy, was given only general consideration.

Second, the papers stated that managing multiple source selections would lengthen the competition process and increase costs. However, the paper did not discuss the option of having program management teams at two different locations and different source selection teams managing each of the individual competitions. Using the two-package scenario previously mentioned, may be a logical and cost-effective alternative. Also, the papers stated that some of the workloads are too small and sporadic to attract interested offerors unless this undesirable workload is combined with more attractive work. The option of transferring these workloads outside the competition process was not considered, although their inclusion in the work package may increase the cost of other competition workloads.

Third, regarding cost issues, the Air Force analysis projected an increased cost from issuing separate solicitations of $55.3 million to $130.7 million at Sacramento and $92.4 million to $259.6 million at San Antonio. However, all recurring cost elements were not considered. For example, the analysis did not consider the additional layer of cost associated with subcontracting under the combined work package scenario. Since these costs could be significant and could exceed the projected savings estimated by the Air Force from using combined workloads, it is important that they be considered. Additionally, the Air Force analysis assumed that the cost of operations would be the same for each option, while the possibility of increased competition could reduce the costs for unbundled workloads.

Lastly, Air Force Audit Agency officials informed us that they performed a management advisory service review of the papers. They stated that given the 2-day time frame available they did "a cursory review" of the source documents and a general assessment of the logic of the two alternatives discussed in the Air Force papers. This review assessed the logic of the two alternatives reviewed in each case, but did not include an audit of the underlying data nor a consideration of other feasible alternatives.

Concerns Raised Regarding the Sacramento and San Antonio Competitions

As part of our mandated review of the solicitations and awards for the Sacramento and San Antonio engine workloads, we reviewed DOD reports to Congress in connection with the workloads, draft requests for proposals, and other competition-related information. Further, we discussed competition issues with potential public and private sector participants. These participants raised several concerns that they believe may affect the competitions. Much remains uncertain about these competitions, and we have not had the opportunity to evaluate these issues, but I will present them to the Subcommittee.

Ability to Privatize Sacramento and San Antonio Workloads Limited by the 1998 Act

The 1998 Defense Authorization Act modifies 10 U.S.C. 2466 to allow the services to use up to 50 percent of their depot maintenance and repair funds for private sector work. However, the act also

- provides for a new section (2460) in title 10 to establish a statutory definition of depot-level maintenance and repair work, including work done under interim and contractor logistic support arrangements and other contract depot maintenance work and
- requires under 10 U.S.C. 2466, that DOD report to Congress on its public and private sector workload allocations and that we review and evaluate DOD's report. These changes, which will affect the assessment of public and private sector mix, are in effect for the fiscal year 1998 workload comparison, and DOD must submit its report to Congress for that period by February 1, 1999.

Determining the current and future public-private sector mix using the revised criteria is essential before awards are made for the Sacramento and San Antonio workloads. Preliminary data indicates that using the revised criteria, about 47 to 49 percent of the Air Force's depot maintenance workload is currently performed by the private sector. However, the Air Force is still in the process of analyzing workload data to determine how much additional workload can be contracted out without exceeding the 50 percent statutory ceiling.

Air Force Draft Proposal to Reduce Overhead Cost Savings on Existing Depot Workload

In December 1996, we reported that consolidating the Sacramento and San Antonio depot maintenance workloads with existing workloads in remaining Air Force depots could produce savings of as much as $182 million annually.[5] Our estimate was based on a workload

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

redistribution plan that would relocate 78 percent of the available depot maintenance work to Air Force depots. We recommended that DOD consider the savings potential achievable on existing workloads by transferring workload from closing depots to the remaining depots, thereby reducing overhead rates through more efficient use of the depots. The Air Force revised its planned acquisition strategy for privatizing the workloads in place and adopted competitive procedures that included incorporation of an overhead savings factor in the evaluation.

During the recent C-5 workload competition evaluation, the Air Force included a $153-million overhead savings estimate for the impact that the added C-5 workload would have on reducing the cost of DOD workload already performed at the military depot's facilities. The overhead savings adjustment, which represented estimated savings over the 7-year contract performance period, was a material factor in the decision to award the C-5 workload to Warner Robins. The private sector offerors questioned the military depot's ability to achieve these savings.

In response to private sector concerns, the Air Force is considering limiting the credit given for overhead savings in the Sacramento and San Antonio competitions. For example, in the draft Sacramento depot workload solicitation, the Air Force states that "the first year savings, if reasonable, will be allowed. The second year savings, if supportable, will be allowed but discounted for risk. For three years and beyond, the savings, may be allowed if clearly appropriate, but will be considered under the best-value analysis."

Other Potential Solicitation Issues

Questions have been raised about the structure of the draft solicitations. One concerns the proposed use of best-value evaluation criteria. The draft solicitations contain selection criteria that differ from those used in the recent competition for the C-5 workload. They provide that a contract will be awarded to the public or private offeror whose proposal conforms to the solicitation and is judged to represent the best value to the government under the evaluation criteria. The evaluation scheme provides that the selection will be based on an integrated assessment of the cost and technical factors, including risk assessments. Thus, the selection may not be based on lowest total evaluated cost. For the C-5 solicitation, the public offeror would receive the workload if its offer conformed with the solicitation requirements and represented the lowest total evaluated cost. The questions concern the propriety of a selection between a public or private source on a basis other than cost. Other questions concern

whether multiple workloads should be packaged in a single solicitation and whether the inclusion of multiple workloads could prevent some otherwise qualified sources from competing.

As noted, the solicitations are still in draft form. As required by the 1998 act, we will evaluate the solicitations once issued, in the context of the views of the relevant parties to determine whether they are in compliance with applicable laws and regulations.

Mr. Chairman, we are working diligently to meet the Committee's mandates and to safeguard sensitive Air Force information that is necessary to accomplish this work. We are prepared to discuss with the Air Force the steps that can be taken to safeguard the material and facilitate the source selection process while allowing us to carry out our statutory responsibility. However, we simply will be unable to meet our mandated reporting requirements unless we are provided timely access to this information.

This concludes my prepared remarks. I will be happy to answer your questions at this time.

DOD Letters on Access to Records Regarding Public-Private Competitions

GAO

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

National Security and
International Affairs Division

February 19, 1998

Mr. Les Brownlee
Staff Director
Committee on Armed Services
United States Senate

Dear Les:

As requested, I am updating you on our problems in gaining access to information required to respond to reporting requirements under the National Defense Authorization Act for Fiscal Year 1998, (P.L. 105-85). The act requires us to report on various issues associated with the allocation of depot workloads currently performed at the closing air logistics centers at Sacramento, California and San Antonio, Texas. Enclosure I discusses these reporting requirements.

Our lack of access to information with the Department of Defense (DOD) is seriously impairing our ability to carry out our reporting responsibilities. We experienced this problem in doing our work for our recent report to the Congress concerning DOD's determination to combine individual workloads at the two closing logistics centers into a single solicitation.[1] The problems we experienced are set forth in my January 26, 1998, letter to the Chairmen and Ranking Minority Members of the House National Security Committee and Senate Armed Services Committee (see enclosure II). Specifically, our concerns are twofold. First, the Air Force did not provide us timely or sufficient access to the October 15, 1997, contractor studies of the Sacramento workload that were cited in DOD's report to Congress as support for its determination. Thus we could not adequately determine whether the studies supported the Department's report. Second, the Air Force did not allow us access to the contractor's final studies of the Sacramento workload, which were dated December 15, 1997. We were able, with difficulty, to complete our report. However, if the Department continues to delay and restrict our access to required information, we will not be able to provide Congress with timely and thorough responses in the future.

To meet our remaining statutory requirements, we have requested several documents and other information related to the upcoming competitions for the closing depots' workloads. Air Force officials said they would not provide this information until the competitions for the depots' workloads are completed.

[1] Public-Private Competitions: DOD's Determination to Combine Depot Workloads Is Not Adequately Supported (GAO/NSIAD-98-76, Jan. 20, 1998).

Specifically, they have not provided (1) copies of the December 15, 1997, contractor studies of the Sacramento workloads, (2) comments from prospective offerors and Air Force responses regarding draft requests for proposals for the Sacramento and San Antonio competitions, (3) Air Force analysis of the economic advantage of workload combinations conducted subsequent to the submission of DOD's workload combination determinations and Air Force Audit Agency comments on this analysis, and (4) the supporting rationale for the decision to limit overhead savings for 18 to 24 months, or any other period less than the base period of the contracts.

To meet our statutory reporting responsibilities, we will also need to review solicitation, proposal, and evaluation documents which contain procurement sensitive information, as they become available to Air Force procurement officials. For example, we will need:

- the acquisition and source selection plans;
- the complete proposals from each of the competing entities, which should also include the Cost Comparability Handbook worksheet and supporting schedules;
- the documents relating to the evaluation of the proposals submitted, including the supporting documentation for cost comparability provided for by the Air Force Procedures for Depot Level Public-Private Competitions, the Cost Comparability Handbook, the 1998 Defense Authorization Act, or any other source, as well as documents relating to the evaluation of the non-cost elements of the proposals; and
- the documents relating to the source selection decision, including the source selection authority's decision.

We recognize the sensitivity of this material and the need for Air Force officials to perform their source selection duties with minimal interference. We are prepared to discuss with the Air Force steps that can be taken to safeguard the material and facilitate the source selection process while allowing us to carry out our statutory responsibility. Since this issue arose and as we have worked to resolve it, we have kept your staff informed and will continue to do so. If you have questions about these issues, please contact me at (202) 512-4300.

Sincerely yours,

Henry L. Hinton, Jr.
Assistant Comptroller General

Enclosures

SUMMARY OF OUR DEPOT REPORTING REQUIREMENTS CONTAINED IN THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998

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

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

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

Within 90 days of DOD's annual report to Congress, we must review the report and submit our views to Congress on whether DOD has complied with the 50-percent limitation.

II. Reports Concerning Public-Private Competitions for the Depot Maintenance Workloads at the Closing San Antonio and Sacramento Depots (section 359)

The act adds section 2469a to title 10 of the United States Code which provides for special public-private competition for workloads at these two closing depots. It also requires us to issue reports in four areas.

First, the Secretary of Defense is required to submit a determination to Congress if DOD finds it necessary to consolidate workloads into a single solicitation. We must report our views on the DOD determination within 30 days.

Second, we are required to review all DOD solicitations for the workloads at the San Antonio and Sacramento centers and report to Congress within 45 days of the solicitations' issuance regarding whether the solicitations provide "substantially equal" opportunity to compete without regard to performance location and is otherwise in compliance with applicable law and regulation.

Third, we must review all DOD awards for the workloads at the two closing Air Logistics Centers and report to Congress within 45 days of the contract award on 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 workload.

Fourth, within 60 days of its enactment, the 1998 Defense Authorization Act requires us to review the C-5 aircraft workload competition and subsequent award to the Warner Robins Air Logistics Center and report to Congress on whether (1) the procedures used provided an equal opportunity for offerors to compete without regard to performance location, (2) are in compliance with applicable law and the Federal Acquisition Regulation, and (3) whether the award results in the lowest total cost to DOD.

III. Report on Navy's Practice of Using Temporary Duty Assignments for Ship Maintenance and Repair (section 366)

The act requires us to report by May 1, 1998, on the Navy's use of temporary duty workers to perform ship maintenance and repair at homeports not having shipyards.

GAO

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

National Security and
International Affairs Division

January 26, 1998

The Honorable Strom Thurmond
Chairman
The Honorable Carl Levin
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Floyd Spence
Chairman
The Honorable Ronald Dellums
Ranking Minority Member
Committee on National Security
House of Representatives

This letter is to make you aware that our lack of access to information in the possession of the Department of Defense (DOD) is seriously impairing our ability carry out our reporting responsibilities under the National Defense Authorization Act for Fiscal Year 1998, P.L. 105-85. The act requires our Office to report on various issues associated with the allocation of depot workloads currently performed at the closing Sacramento and San Antonio Air Logistics Centers. We are required to review the solicitations and the competitions for performance of the workloads in order to determine if DOD has complied with requirements imposed by the act and other applicable law. If the Department continues to delay and restrict our access to the records we require, we will not be able to provide Congress with timely and thorough reviews.

One of our first statutorily mandated reviews involved the Secretary of Defense's required report to Congress concerning the combination of individual workloads at either of the two closing air logistics centers in a solicitation for a single contract. The statute requires that we review each such report and submit our views to Congress not later than 30 days after the Secretary's report is submitted. The report was submitted by the Department on December 19, 1997, and our review of the Department's report was, as required, submitted to Congress on January 20, 1998.

Although we issued our review on January 20, we were unable to evaluate two contractor studies mentioned in DOD's December 19 report because the Department did not give us timely or sufficient access to them. On December 17 we orally requested access to and copies of the studies. The Air Force denied our requests, citing concerns regarding the release of proprietary and competition-sensitive data. By letter dated December 29, 1997, to the Under Secretary of Defense, Acquisition and Technology, we again requested access to the studies and described the safeguards that would apply to the information contained in them. We were orally advised that we would be granted access to the studies, but access was then denied. A copy of this letter is enclosed.

On January 8, 1998, we sent a request for the studies to the Secretary of Defense pursuant to 31 U.S.C. 716, citing our statutory right of access to the studies. The Air Force did not agree to let us see the studies until January 14. Even then, the Air Force limited our review to reading the documents in Air Force offices and required that without further permission no notes, copies or other materials could leave those premises. This limited access came too late for us to adequately determine in our mandated review whether the studies supported the Department's report. A copy of this letter is also enclosed.

Our statutory right of access to agency records, set forth at 31 U.S.C. 716(a), extends to any "information ... about the duties, powers, activities, organization, and financial transactions of" an agency. This includes agency procurement records such as the requested studies. Moreover, the procurement integrity provision in 41 U.S.C. 423, which prohibits disclosing and obtaining contractor bid or proposal information or source selection information before the award of a federal agency procurement contract, specifies at subsection (h) that it does not authorize withholding information from Congress or the Comptroller General.

As we have advised the Air Force, we appreciate the sensitivity of agency procurement records and have established procedures for safeguarding such records. Our access statute, at 31 U.S.C. 716(e)(1), requires us to maintain the same level of confidentiality for a record as is required of the head of the agency from which it is obtained. Further, our officers and employees, like all federal officers and employees, are precluded by 18 U.S.C. 1905 from disclosing proprietary or business confidential information to the extent not authorized by law.

We will continue to need to review procurement sensitive records in order to carry out our statutory reporting responsibilities related to the solicitations and competitions for workloads at the closing of Sacramento and San Antonio Air Logistics Centers. Our success in fulfilling these responsibilities is dependent upon timely and full access to the records we need. Since this issue arose and as we have worked to resolve it, we have kept your committee staff informed and we will continue to do so. If you have any questions, please contact me at (202) 512-4300.

Henry L. Hinton, Jr.
Assistant Comptroller General

Enclosures

GAO

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

National Security and
International Affairs Division

December 29, 1997

The Honorable Jacques Gansler
Under Secretary of Defense
Acquisition and Technology

Dear Mr. Gansler:

This is to follow up on my December 23, 1997 discussion with your office regarding access to certain documents pertaining to workloads at the closing Sacramento and San Antonio Air Logistics Centers. As requested, the purpose of this letter is to describe certain records we need to carry out our reporting responsibilities under section 359 of the National Defense Authorization Act for Fiscal Year 1998.

As you know, the 1998 Authorization Act added a new section 2469a to title 10, United States Code which, among other things, requires the Secretary of Defense to report to Congress when he determines that individual workloads at the two closing logistics centers cannot be as logically and economically performed without combination by sources that are potentially qualified to submit an offer and receive an award to perform those individual workloads. The same statute requires that we review each such report and submit our views not later than 30 days after the Secretary's report is submitted. The Secretary submitted the required report on December 19, 1997.

On Wednesday December 17, 1997 we requested and were denied access to and copies of three studies performed under contract by the Boeing Aircraft Company, AAI, and the Air Force's Ogden Air Logistic Center. The studies contain information and contractor assessments relating to the workloads at the two closing centers. This information was referenced in the Secretary's report. Air Force officials, in denying our oral request, cited concerns regarding the release of proprietary and competition sensitive data.

GAO's statutory right of access to agency records, set forth in 31 U.S.C. 716 (a), extends to any "information . . . about the duties, powers, activities, organization, and financial transactions of" an agency. This includes agency procurement records such as the reports we are requesting. Moreover, the procurement integrity provision in 41 U.S.C. 423, which proscribes disclosing and obtaining contractor bid or proposal information or source selection

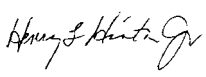
information before the award of a Federal agency procurement contract, specifies at subsection (h) that it does not authorize withholding information from Congress or the Comptroller General.

We appreciate the sensitivity of the information in the reports, and we will safeguard it in accordance with the legal and policy restrictions that apply to our disclosure of records obtained pursuant to our statutory authority. In this regard, our access statute, at 31 U.S.C. 716(e)(1), requires us to maintain the same level of confidentiality for a record as is required of the head of the agency from which it is obtained. Under GAO regulations pertaining to public requests for records, it is GAO policy not to provide records that originated in another agency to the public. Instead, we refer those who request such records to the originating agency. See 4 C.F.R. 81.5.

Further, GAO officers and employees, like all federal officers and employees, are precluded by 18 U.S.C. 1905 from disclosing proprietary or business confidential information to the extent not authorized by law. Although this does not preclude disclosure to the Congress, our Office's policy is to respect proprietary or business confidential information and to protect the competitive positions of companies in a manner consistent with our reporting responsibilities. We plan therefore to exclude such information from our reports or transmit it separately with an appropriate legend alerting the report recipient to the sensitivity of the contents. For information that may otherwise be procurement sensitive, we will alert any congressional recipient of this sensitivity in advance of any reporting.

We trust that the above information addresses your concerns about our rights of access and obligations to protect the information we are requesting. Since we have a January 18, 1998 reporting requirement, we would appreciate your help in expediting this request. If possible, I would like your response by close of business December 31, 1997. If you have any questions or need further information please contact me on (202) 512-4300, David Warren on (202) 512-4184, or Jim Wiggins on (202) 512-4530.

Sincerely yours,



Henry L. Hinton, Jr.
Assistant Comptroller General

Comptroller General
of the United States

Washington, D.C. 20548

B-278952

January 8, 1998

The Honorable William S. Cohen
Secretary of Defense

Dear Mr. Cohen:

Pursuant to 31 U.S.C. § 716(b) (1994), we request access to two studies the Department of Defense used in its December 19, 1997 report on depot workloads at the closing Sacramento and San Antonio Air Logistics Centers. Three studies were prepared for DOD under contracts with the Boeing Aircraft Company, AAI, and the Air Force's Ogden Air Logistic Center. Each of the studies is entitled SMALC Depot Workload Study Contract Report and contains information and contractor assessments relating to depot workloads at the closing air logistics centers. We have been provided the study prepared by the Ogden Air Logistics Center, and are now seeking the other two.

GAO requires access to the two studies in order to carry out our responsibilities under section 359 of the National Defense Authorization Act for Fiscal Year 1998, P.L. 105-85. As you know, the 1998 Authorization Act added a new section 2469a to title 10, United States Code, which, among other things, requires the Secretary of Defense to report to Congress when he determines that individual workloads at the two closing logistics centers cannot be as logically and economically performed without combination by sources that are potentially qualified to submit an offer and receive an award to perform those individual workloads. The same statute requires that we review each such report and submit our views to Congress not later than 30 days after the Secretary's report is submitted. The required report was submitted on December 19, 1997.

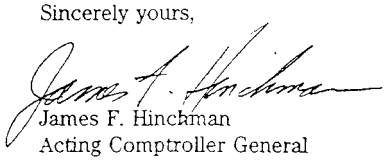
In order to carry out our review of the December 19 report, we informally requested access to and copies of the studies, which were referenced in the report. Air Force officials denied our requests for the studies, citing concerns regarding the release of proprietary and competition-sensitive data. By letter dated December 29, to the Under Secretary of Defense, Acquisition and Technology, we again requested access to the studies and described the safeguards that would apply to the information contained in them. In response we were orally advised that we would be provided access to the two studies. However, that access has not been provided.

We have a right of access to agency procurement records such as the studies we are requesting under 31 U.S.C. § 716(a). Moreover, the procurement integrity provision in 41 U.S.C. § 423, which proscribes disclosing and obtaining contractor bid or proposal information or source selection information before the award of a federal agency procurement contract, specifies at subsection (h) that it does not authorize withholding information from Congress or the Comptroller General.

We appreciate the sensitivity of the information in the reports, and we will safeguard it in accordance with the legal and policy restrictions that apply to our disclosure of records obtained pursuant to our statutory authority. In this regard, our access statute, at 31 U.S.C. § 716(e)(1), requires us to maintain the same level of confidentiality for a record as is required of the head of the agency from which it is obtained.

Pursuant to 31 U.S.C. § 716(b), you are required to respond to this request within 20 days. If full access to the requested information is not granted, you are required to furnish a description of any information withheld and to state your reasons for withholding the information.

Sincerely yours,



James F. Hinchman
Acting Comptroller General
of the United States

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