



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

18237

115338

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-203364

MAY 27, 1981

The Honorable Tom Beville
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
House of Representatives



115338

Dear Mr. Chairman:

Subject: Information on the Upper Mississippi
River Basin Commission's Master Plan
Contracting Procedures (CED-81-106)

This report responds to your request of February 3, 1981, concerning contracts awarded by the Upper Mississippi River Basin Commission. The contracts involve preparing a comprehensive master plan for the management of the Upper Mississippi River System called for by Public Law 95-502, approved October 21, 1978 (92 Stat. 1693). We agreed to provide information on the following questions:

- Were any of the contracts awarded to groups or individuals who have a conflict of interest?
- Were the groups and individuals who were awarded contracts qualified to perform the work?
- Have the funds been expended in a manner consistent with the provisions of Public Law 95-502?

To obtain the requested information, we reviewed 10 selected contracts totaling about \$1.7 million, or about 30 percent of the \$5.6 million obligated for the master plan studies. We selected contracts for review primarily on the basis of criticisms voiced by various interest groups. Proposals, contracting procedures, bidder lists, awardees' qualifications, and correspondence files were reviewed. We also examined the organizational structure of the Upper Mississippi River Basin Commission, as well as its plan of study; task descriptions; resolutions; and the preliminary master plan. We interviewed Commission personnel key to the award of the contracts as well as navigation, railroad, and environmental proponents who criticized some of the awards. Time limits prevented us from thoroughly analyzing any contract or even making a cursory examination of all of the approximately 100 contracts awarded.

(085621)

Several contracts offered an opportunity for conflict of interest, or more properly the potential for bias, to influence the objectivity of the end products. However, in each instance, the opportunity has largely been removed through the resignation of the researcher, termination of the contract by the Commission, or the Commission's restructuring of the contract terms. The organizations and individuals who were awarded contracts appeared to have the basic qualifications and experience to perform the assigned tasks. Funds have been expended in a manner generally consistent with the provisions of Public Law 95-502; however, not all requirements of the legislation will be realized. Our findings, which were discussed in your office on April 29, 1981, are presented in greater detail below.

BACKGROUND

Public Law 95-502, enacted October 21, 1978, directs the Upper Mississippi River Basin Commission to prepare a comprehensive master plan for the management of the Upper Mississippi River System in cooperation with appropriate Federal, State, and local officials. The Commission published a preliminary plan on January 1, 1981. Public hearings were to be held on the preliminary plan; however, these hearings will not be held because the preliminary plan is mainly a progress report in that few substantive studies had been completed. Public hearings are to be held on the final master plan, which is to be submitted to the Congress not later than January 1, 1982.

The structure for developing the master plan is contained in a plan of study adopted by the Commission on August 15, 1979. Major contracts supporting the plan of study were not awarded until May 1980.

Most study contracts are in the form of a memorandum of agreement rather than a competitive contract. These agreements generally result from a sole-source process and direct a Federal or State agency or agencies to conduct specific studies and tasks. The end product, in most cases, is a final report summarizing the work conducted along with supporting data. Competitive contracts are reserved for the private sector, generally when no Federal or State agency is willing or able to conduct required studies and tasks.

Approximately \$5.6 million had been obligated for 62 agreements and 17 competitive contracts by March 17, 1981. Competitive contracts amounted to approximately \$1.2 million, or 21 percent of the total obligation. An additional obligation of about \$2.6 million has been incurred for membership participation and staff support.

IS THERE EVIDENCE OF CONFLICT OF
INTEREST IN THE CONTRACT AWARDS?

Several contracts offered an opportunity for conflict of interest, or more properly the potential for bias, which could have influenced the objectivity of the end products. However, in each instance, the opportunity has largely been removed through resignation of the researcher, termination of the contract by the Commission, or the Commission's restructuring of contract terms.

Our examination of the Commission's contract files and documents provided little or no evidence regarding known or potential conflicts of interest. Consequently, we sought out critics of the Commission-awarded study contracts to better understand their concerns. Most of the critics were proponents of navigation, railroad, or environment interests. The critics believed four individuals or organizations involved in the master plan activities had conflicts of interest. 」

One individual with an alleged conflict of interest was the study coordinator of a \$2.3 million proposal to study the direct effect of boat traffic and channel maintenance and operation activities on selected environmental parameters. He had given testimony for the plaintiffs in the 1979 Locks and Dam 26 trial. 1/ In testimony, he stated that the use of the Mississippi and Illinois Rivers by barges contributes to environmental damage and if the traffic is increased, there will be an increase in damage. The study coordinator had overall management responsibility for a \$538,002 agreement awarded on May 20, 1980. He was

1/Locks and Dam 26 is a project located on the Mississippi River near Alton, Illinois. The Army Corps of Engineers proposed replacing the locks because capacity constraints have caused barge traffic delays and the present locks are obsolescent. In 1974 a group of midwestern railroads and three environmental groups sought and received an injunction in the U.S. District Court, District of Columbia, delaying the construction of the replacement until authorized by the Congress and the defects in the environmental impact statement have been cured. In October 1978 Public Law 95-502 was passed which authorized the replacement of Locks and Dam 26 and the preparation of a master plan for the Upper Mississippi River System. The parties to the 1974 case again filed a suit, seeking another injunction, which, among other things, challenged the adequacy of the project's environmental impact statement. The trial, which began in U.S. district court in September 1979, resulted in a denial of the petition for injunctive relief.

to have the same responsibility for studies continuing in fiscal years 1981 and 1982. Also, in 1982, he was to analyze research results and prepare a final report of the 3-year study. For various reasons, this individual resigned his position on November 19, 1980.

It is possible that the completed study could have reflected the preconceived views of the coordinator, if he had performed the duties proposed. Since he resigned early in the project and the final report will be prepared under a separate contract, we believe that this earlier potential for conflict or bias has been removed.

Another researcher, who participated in the 1979 Locks and Dam 26 trial, had management responsibility for agreements funded at about \$100,000 in fiscal year 1980 and about \$185,000 in fiscal year 1981 to determine the effects of navigation on selected physical and chemical features.

In giving his opinion on the environmental impact statement for Locks and Dam 26, he said that the claim that impacts associated with constructing the lock would be minor and insignificant is totally without support. Before the award of the fiscal year 1981 agreement, he expressed the belief that time limits will not permit the collecting and analyzing of meaningful biological data. He added that the researchers will have to project and hypothesize on the basis of preliminary data what the impacts of biological elements will probably be on the river system's ecology.

The reporting requirements under the fiscal year 1980 agreement were very general and may have provided an opportunity for bias to influence the researcher's report. However, under the fiscal year 1981 agreement, reporting requirements are more specific and the final report of channel sediments displacement from vessel passage is to be quantitative and statistical. Therefore, because the report is to be quantitative and statistical, it appears that any opportunity for conflict or bias will be lessened.

Several environmental advocacy groups, two of which were parties to the 1979 Locks and Dam 26 trial, were awarded a \$50,000 contract in fiscal year 1980 for public participation. The award was based on an unsolicited proposal, after Commission efforts to obtain competing proposals resulted in two non-responsive bids. Tasks assigned in the contract included: (1) stimulating interest in the master plan with environmental and related groups, (2) identifying system objectives that the master plan should address, (3) reporting to environmental groups on the Commission's plans and progress, (4) analyzing the master plan products, and (5) reviewing and commenting on the preliminary and the final master plan. The groups' final report is basically an extensive

listing of system objectives, management requirements, environmental concerns, alternate approaches, and mitigation and enhancement measures.

The environmental groups' contract was terminated in 1980. Copies of the groups' final report have been given to each commissioner and work team. The Commission may conduct a follow-up review to determine if any of the report content will be used in the master plan.

Because the contract was terminated, we believe that it will have little influence on the master plan. Further, the groups did not and will not evaluate master plan products, the preliminary master plan, or the final master plan as a contract activity.

Finally, some critics believe that an environmental advocate should have been barred from acting as a public participant on a Commission work team. His critics label him as an activist who has held a leadership role in a pro-environmental organization and alleged that he has accepted funding from a railroad association.

Public participants offer advice to work teams. This individual serves on two 12-member work teams and provides technical advice on recreation relating to their various assigned tasks. The work team does not have approval authority. Its functions include executing work tasks, recommending amendments to work tasks, and monitoring the work. For these reasons, we see little or no basis for conflict.

WERE THE GROUPS AND INDIVIDUALS WHO WERE AWARDED
CONTRACTS QUALIFIED TO PERFORM THE WORK?

The organizations and individuals who were awarded the contracts and agreements which we reviewed appeared to have the basic qualifications and experience to perform the assigned tasks. However, many had not previously managed or participated in studies containing the scope or complexity of the master plan studies.

The Commission decided that when an area of required research had been defined, the membership would first be polled to determine if any Federal or State agency wanted to undertake the work. If none responded, the research would be let for competitive bidding by private firms and individuals. If two or more Federal and State agencies wanted to do the work, they would prepare competing proposals.

Most of the agreements for studies to support the master plan have been awarded to Federal and State agencies, as well as universities and colleges. To date, this method of award has been non-competitive. We found for the agreements examined that the principal researchers had conducted similar studies previously, often

for Federal agencies such as the Army Corps of Engineers and the Department of the Interior's Fish and Wildlife Service. Much of their previous work had been done with grant funding, and awards were generally less than \$50,000 compared with more than \$100,000 for some of the master plan agreements.

Competitive proposals are solicited from a list of prospective bidders which was developed by Commission members. Commission staff told us that other firms and individuals can be added to the list upon application and proof of capability. The cognizant master plan work team (1) selected firms and individuals to be solicited and (2) evaluated the proposals by a predetermined weighting scheme. We reviewed eight competitive contract awards and found that the number of prospective bidders to whom requests for proposals were mailed ranged from 5 to 83. The number of bidders submitting bids on contracts ranged from 3 to 13.

Because the Commission's contracting procedures gave preference to Federal and State agencies, some master plan studies may not have been awarded to the most qualified source. Competitive contracting would ordinarily result in awards to more qualified sources because the Commission could choose the best of several proposals.

HAVE THE FUNDS BEEN EXPENDED IN A
MANNER CONSISTENT WITH THE
PROVISIONS OF PUBLIC LAW 95-502?

Based on a cursory review of financial documents, contracts, agreements, and task descriptions, it appears that funds have been expended in a manner generally consistent with the provisions of Public Law 95-502. According to Commission records, about \$8.2 million of the \$8.4 million appropriated for the master plan had been obligated as of March 17, 1981. However, not all requirements of the legislation will be realized. In addition, not all the tasks contained in the Commission's study plan will be completed because only \$8.4 million of the \$12 million authorized by the legislation has been appropriated and limited time remains to complete the master plan.

Funds obligated for tasks and studies support 14 master plan elements, which are consistent with the legislation. The master plan elements are:

- Summary Resource Description.
- Enhancement/Mitigation Handbook.
- Systemic Environment Impacts of Increased Navigation and Operation and Maintenance.
- Recreational, Cultural, and Wilderness Impacts.

- Immediate Environmental Impacts of a Second Lock and Associated Mitigation.
- Long-term Resource Monitoring Program.
- Navigational Carrying Capacity.
- Economic Need for a Second Lock and Benefits and Costs to the Nation.
- Impacts on Railroads and National Transportation Policy.
- Dredged Material Disposal Study.
- Computer Feasibility Study.
- System Objectives.
- Institutional Arrangements and Management Plan.
- Public Participation.

In our opinion, the Commission's allocation of funds to the various objectives of the legislation appears reasonable. For example, the two largest allocations, excluding staff support, respond to major concerns of Public Law 95-502. These master plan elements are the "Economic Need of a Second Lock and Benefits and Costs to the Nation" and "Systemic Environment Impacts of Increased Navigation and Operation and Maintenance," each funded at about \$1.4 million.

According to the Commission's January 1981 preliminary master plan, two requirements will not be realized. Public Law 95-502 states:

"The Commission shall undertake a program of studies, including a demonstration program to evaluate the benefits and costs of disposing of dredge spoil material in contained areas located out of the floodplain."

"Studies conducted * * * shall include * * *. The development by the Commission of a computerized analytical inventory and system analysis for the Upper Mississippi River System to facilitate evaluation of the comparative environmental effects of alternative management proposals."

The Commission has determined that due to time and money constraints a dredge spoil material disposal demonstration program will not be conducted. For the same reasons, instead of developing a computerized inventory system, the Commission will develop

a description and comparison of three different management information systems (including two geobased data systems). The description of each system will include information on the nature and use of the system, estimated costs for development, operation and maintenance, and a comparison of advantages and disadvantages of each of these data systems.

- - - -

At your request, we did not take the time to obtain written agency comments. The matters covered in the report were discussed with the Chairman designate, Upper Mississippi River Basin Commission, and the Master Plan Study Manager, and we made minor changes in accordance with their comments.

As arranged with your office, we are sending copies of this report to the Upper Mississippi River Basin Commission. Copies will also be made available to other interested parties who request them.

Sincerely yours,

A handwritten signature in cursive script that reads "Henry Eschwege". The signature is written in dark ink and is positioned above the typed name and title.

Henry Eschwege
Director