GAO

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

160795

Health, Education and Human Services Division

B-280287

July 10, 1998

The Honorable Christopher S. Bond
Chairman
The Honorable Barbara A. Mikulski
Ranking Minority Member
Subcommittee on VA, HUD,
and Independent Agencies
Committee on Appropriations
United States Senate

The Honorable Jerry Lewis
Chairman
The Honorable Louis Stokes
Ranking Minority Member
Subcommittee on VA, HUD,
and Independent Agencies
Committee on Appropriations
House of Representatives

Subject: VA Construction: Contract Award Delays

The Department of Veterans Affairs' (VA) annual appropriations act for each fiscal year since 1984 has set deadlines for awarding contracts for major construction projects.[1] VA is required to award a construction documents[2] contract by September 30 of the fiscal year in which funds were appropriated for a major construction project, and award a construction contract by September 30 of the following fiscal year. VA's annual appropriations act also requires

[1]A major construction project is a project with an estimated cost of $3 million or more. P.L. 104-262, dated October 9, 1996, changed the definition of major construction project to one estimated to cost $4 million or more, starting in fiscal year 1997.

[2]Construction documents are working drawings and other documents that an agency must have prepared in order to offer a construction contract to bidders.

160795

- VA to report to your Committees and the Comptroller General the projects that did not meet these time limits and

- GAO to review the contracting delays of reportable projects for impoundment implications under the Impoundment Control Act of 1974,[3] to determine whether VA intended to refrain from using funds appropriated for specific construction projects.

VA's fiscal year 1997 appropriation (P.L. 104-204) contained funding for 16 major construction projects that required construction documents contracts by September 30, 1997. In addition, VA's appropriation for fiscal year 1996 (P.L. 104-134) included funding for five projects for which VA was required to award construction contracts by September 30, 1997.

On December 12, 1997, VA reported that, as of September 30, 1997, it had not awarded 10 contracts (for nine major construction projects) with award deadlines of September 30, 1997, or earlier. The delayed awards, which are described individually in the enclosure to this letter, involve:

- construction documents contracts for 3 of the 16 fiscal year 1997 projects;

- construction contracts for 2 fiscal year 1996 projects;

- construction documents contracts for 2 projects and a construction contract for 1 of the 12 fiscal year 1995 projects; and

- a construction documents contract and a construction contract for projects funded in fiscal years 1994 and 1990, respectively.

To meet our responsibility under the Impoundment Control Act of 1974, we reviewed all reportable contract award delays to determine whether they had

---

[3]On the basis of VA's fiscal year 1998 appropriations act (P.L. 105-65 dated October 27, 1997), this report appears to be the last we are required to prepare on contracting delays of reportable projects for impoundment implications. The act does not contain either the requirement that VA report to the Comptroller General projects that did not meet the time limits for obligating funds that were specified in the act or the requirement that we review the contracting delays for impoundment implications.

any impoundment implications. We first assessed whether VA had reported all the project awards it should have reported as delayed by identifying

- projects first funded in fiscal year 1997, with construction documents contracts due by September 30, 1997;

- projects first funded in fiscal year 1996, with construction contracts due by September 30, 1997;

- projects that were delayed as of September 30, 1996, as we reported in June 1997;[4] and

- any projects funded before fiscal year 1996 that meet reporting requirements.

To identify reportable projects, we reviewed several sources: (1) VA's major construction appropriations acts for fiscal years 1996 and 1997; (2) the legislative histories of these acts; (3) VA's budget request for fiscal year 1997; (4) our prior reviews of VA's delayed projects, and (5) VA's list of construction projects ("All Active Major Projects in the Construction Management Information System") as of April 16, 1998.

We discussed criteria for reporting projects as delayed and projects that appeared to be delayed with staff in the Veterans Health Administration's Office of Facilities Management to determine the projects' status and reasons for delays. When VA indicated it had made a contract award after September 30, 1997, we obtained and reviewed award documents. We used this information to determine whether VA had withheld funds from obligation instead of awarding contracts as required by the acts. We conducted this review from April to June 1998 in accordance with generally accepted government auditing standards.

RESULTS OF REVIEW

VA's December 12, 1997, letter to your committees correctly and accurately identified 10 awards, for nine major construction projects, for which VA did not award a construction documents contract or a construction contract by September 30, 1997. Through our review of the VA listing that shows the

---

[4]VA Construction: Contract Award Delays (GAO/HEHS-97-107R, June 16, 1997).

status of all active major projects, we identified six more awards that we believe VA should have reported as delayed. These included

- both a construction documents and a construction contract for the final phase of the clinic addition/renovation in Ann Arbor, Michigan;

- construction contracts for the first and second phases of the medical school relocation/renovation in Mountain Home, Tennessee;

- a construction contract for the third and final phase of the bed tower construction/renovation in Mountain Home, Tennessee; and

- a construction contract for the third and final phase of the ambulatory care addition/renovation in Phoenix, Arizona.

We believe that these six phased construction project award delays should have been reported because they are part of the primary purpose for which the funds were appropriated and each contract award exceeds the dollar threshold for major construction. We believe, however, that none of the contracting delays for the 16 contracts described in the enclosure constitute impoundments of budget authority under the Impoundment Control Act of 1974. In our view, VA has shown no intent to refrain from using the funds appropriated.

More specifically, information VA provided to us indicated that legitimate programmatic considerations caused the contracting delays. VA cited several reasons for delays including (1) changes in project scope, (2) funds appropriated for projects before VA had completed design work, (3) insufficient funds appropriated for the scope that VA planned, and (4) completion of construction of a building(s) required before renovation could begin. VA made 4 of the 10 reported delayed awards after September 30, 1997: design/build[5] contracts for the Baltimore (Perry Point) 80-bed psychiatric building, the Marion (Ind.) psychiatric beds replacement, and the Tampa (Brevard County) outpatient clinic as well as a construction contract for the Tampa (Orlando) satellite outpatient clinic/nursing home. By October 1998, VA expects to award construction documents contracts for the Cleveland (Wade Park) ambulatory care addition, the Leavenworth (Kans.) ambulatory care addition, and the Murfreesboro (Tenn.) psychiatric patient privacy renovation as well as

[5]A design/build contract is a combined construction documents and construction contract.

construction contracts for the Florida National Cemetery and the Waco building 11 renovation.

For the six additional awards that we identified as being late, VA has awarded or plans to award the contracts as follows: construction documents and construction contracts for the final phase of the Ann Arbor clinic addition in June 1998 and February 1999, respectively; construction contracts for the first and second phases of the Mountain Home medical school relocation in May 1998 and September 1998, respectively; a construction contract for the third phase of the Mountain Home bed tower construction/renovation in October 1998; and a construction contract for the final phase of the Phoenix ambulatory care addition in September 1998.

AGENCY COMMENTS AND OUR EVALUATION

Officials of VA's Office of Facilities Management reviewed a draft of this letter in which we suggested that VA should have reported as being delayed seven additional awards associated with four projects. On the basis of a discussion with VA officials and additional documents provided by VA, we revised the letter to say that six delayed contract awards were omitted from VA's report. In the case of the seventh award, VA's construction status report incorrectly showed that the construction documents contract for the final phase of the Phoenix, Arizona, ambulatory care addition and renovation was awarded in November 1997. VA officials provided documentation showing that the construction documents contract was actually awarded by the statutory deadline in September 1995.

VA disagrees with our position that the following six contract awards should have been reported as delayed:

- a construction documents contract and a construction contract for the renovation and final phase of a clinic addition and renovation project in Ann Arbor, Michigan;

- construction contracts for the first and second phases of the construction and renovation of the medical school relocation in Mountain Home, Tennessee;

- a construction contract for the third and final phase of the bed tower construction and demolition of the old bed tower building in Mountain Home, Tennessee; and

- a construction contract for the third and final phase to renovate an ambulatory care clinic as part of an addition and renovation project in Phoenix, Arizona.

VA officials stated that all of the projects in question are later phases of multiphased projects in which a contract award has been made for an earlier phase and that work could not have physically begun on the phases in question until the prior phases had been completed. They said that the reporting requirement as it relates to P.L. 104-204 references the awarding of "a construction documents contract" and "a construction contract" and that the intent of the appropriations language was to ensure that VA was not delaying the start of projects. They further said that in the past, VA and GAO had agreed that if a contract for a significant phase (that is, more than half of the total project cost) has been awarded for the primary purpose of a project, the project is no longer reportable. VA also asserts that this is the first year we have indicated VA should be reporting subsequent phases.

VA officials also said that in the case of the relocation of the medical school, the Congress did not fully fund the federal contribution required to award a construction contract until fiscal year 1997. They further said that the matching funds from the state of Tennessee were not available until February 1998. VA officials therefore believe that VA would not have been required to report the construction project as delayed unless the contract had not been awarded by the end of fiscal year 1998.

We and VA have disagreed in the past on how to apply the reporting requirement in cases in which VA divides a project into phases with separate contracts for each phase. This disagreement arises in part because the appropriations acts provide no detailed guidance. VA's position is that once contracts have been awarded obligating 50 percent of the funds for a project, VA does not have to report delays for subsequent contracts for that project. The appropriations language provides that funds appropriated for each approved project shall be obligated by the awarding of the construction documents and construction contract by specified deadlines. That serves to provide the Congress with information on the status of projects they have authorized and funded and to provide us with information to determine whether an impoundment of funds has occurred.

Our position is (and has been in the past) that contract awards are reportable until contracts have been awarded to accomplish the primary purpose for which the Congress appropriated the funds. By "primary purpose" we mean the reason or reasons for which the Congress appropriated the funds. For

example, if funds were appropriated for the construction of a new building and the renovation of an existing building, we would consider both activities to be the primary purpose(s) for which the funds were appropriated. Contrary to VA's assertion, we made no agreement with VA that it would not have to report as delayed contract awards not made by the statutory time frame, if contract awards have been made for a significant (that is, more than 50 percent of the total project cost) phase of the total project. We make these determinations on a case-by-case basis without applying a percentage, such as 50 percent, as a cutoff point for reporting. We identify projects and contracts that meet the threshold estimated cost for major construction and determine whether VA has awarded contracts associated with the primary purpose of the appropriation.

For example, in reviewing VA's project list, we found that the award of the construction contract for the demolition of old buildings in Lyons, New Jersey, estimated to cost $3,483,000 was delayed. VA officials explained that the funds had been appropriated to construct new buildings that had been completed. All that remains is the final phase involving the demolition of the old buildings. Although the estimated costs of demolition were above the reporting threshold, VA had completed the contract awards for the primary purpose of the appropriation, which was to construct the new buildings, and therefore did not have to report the delay in the award of the demolition contract.

However, in the case of the Ann Arbor, Michigan, project, VA received $147.8 million for a clinic addition, which included constructing three new buildings and renovating an existing building. We found that the award of a construction documents contract for the final phase–renovation of the existing building at an estimated cost of $40.3 million–was delayed. VA officials explained that they had to wait until the new buildings were completed and activities were relocated to the new buildings before this phase could be initiated. Once VA was ready to award the contract, it had to further delay the award because it negotiated a better price with the architectural and engineering contractor. In this case, we disagree with VA that all contract awards had been made for the primary purpose of the appropriation. In our view, renovating an existing building is greater than simply carrying out the final details of a construction project. Once completed, the Ann Arbor project will have three newly constructed buildings and one renovated building for a total of four usable buildings. In this case, VA did not report the delay in awarding the contract for the fourth building. The estimated cost of this phase, $40.3 million, is well in excess of the threshold–$3 million–to qualify as major construction. The fact that this phase could not begin until the new buildings were constructed is a reasonable explanation for the delay, which is why we concluded that VA did not impound the funds. However, given the estimated cost and purpose of this

phase, we believe reporting this project is consistent with the purpose of the reporting requirement.

This is not the first time we have taken the position that VA should report contract awards for subsequent phases. In our 1996[6] and 1997 reports, we stated that VA should have reported as delayed, a construction documents contract for the Waco project. In our 1996 report, VA officials stated they did not report the project as delayed because they considered the renovation (of building 11) the last phase of a larger project at the Waco Medical Center. In responding to a draft of our 1997 report, VA officials agreed that they should have reported the Waco construction documents contract as delayed.

Also, in our 1997 report, we stated that VA should have reported a construction contract for the Palo Alto project as delayed. This contract was for the final phase (site development) of a project for which 90 percent of the funds had been obligated. In addition, in our 1994 report,[7] VA reported to the Congress and us that a construction contract for the Long Beach, California, project, which involved seismic corrections of one building and the renovation of another building, was delayed. VA reported the contract was delayed because it was the last phase of a five-phase effort and the architect/engineer concentrated on earlier, higher priority phases of the project, for which construction contracts had already been awarded.

Moreover, while the lack of sufficient funds may be a reasonable explanation for not awarding contracts within the time limit established by law, it does not obviate VA's requirement to report the contract awards as delayed. VA has reported contract awards as delayed in similar situations in previous years. As shown in our 1993,[8] 1994, and 1995[9] reports, VA reported that the construction documents and construction contracts for other Mountain Home, Tennessee, projects were delayed because they had insufficient funds for the project

---

[6]VA Construction Contract Award Delays (GAO/HEHS-96-188R, Aug. 9, 1996).

[7]VA Health Care: Delays in Awarding Major Construction Contracts (GAO/HEHS-94-170, June 17, 1994).

[8]VA Health Care: Delays in Awarding Major Construction Contracts (GAO/HRD-93-101, May 26, 1993).

[9]VA Construction Contract Award Delays (GAO/HEHS-95-240R, Aug. 25, 1995).

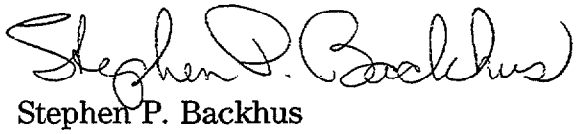
scope. Also, our 1991 report[10] shows that VA reported a construction contract for the Chicago (West Side), Illinois, fire/safety and patient privacy improvements project as delayed because available funds were not sufficient for the proposed scope.

We incorporated other VA comments in this document as appropriate.

- - - - -

We are sending copies of this letter to the Secretary of Veterans Affairs; the Director, Office of Management and Budget; and other interested congressional parties. We will also make copies available to others on request.

Richard J. Wade was Evaluator-in-Charge on this assignment. Please contact me at (202) 512-7101 or Mr. Wade at (404) 679-1872 if you have any questions about this letter. Shelia D. Drake, Assistant Director, and Edda Emmanuelli-Perez, Senior Attorney, also contributed to this letter.



Stephen P. Backhus
Director, Veterans' Affairs and
Military Health Care Issues

Enclosures - 2

---

[10]VA Health Care: Delays in Awarding Major Construction Contracts (GAO/HRD-91-84, May 30, 1991).

MAJOR CONSTRUCTION PROJECTS FOR WHICH VA DID NOT AWARD CONTRACTS AS OF SEPTEMBER 30, 1997

BALTIMORE (PERRY POINT DIVISION), MARYLAND

Type of project: 80-bed psychiatric building

Type of contract: Construction documents

Time limit: September 30, 1997

Award date: February 13, 1998 (design/build)

Reason for delay: The project's scope was changed from renovating 106 beds in two existing buildings to constructing a new 80-bed building.

CLEVELAND (WADE PARK), OHIO

Type of project: Ambulatory care addition and spinal cord injury facility

Type of contract: Construction documents

Time limit: September 30, 1994

Actual award date: May 26, 1998

Reason for delay: The original design development VA prepared was for a project estimated to cost approximately $90.0 million. VA then determined that a project this large could not be supported and substantially reduced the scope of the work. The construction documents contract could not be awarded until the design development was revised based on the reduced project scope.

LEAVENWORTH, KANSAS

Type of project: Ambulatory care addition

Type of contract: Construction documents

Time limit: September 30, 1997

Estimated award date: October 1998

Reason for delay: The project was delayed because VA decided to reduce the scope of the project consistent with the funding level appropriated in fiscal year 1997, instead of continuing with the larger scope originally contemplated.

MARION, INDIANA

Type of project: Replace psychiatric beds

Type of contract: Construction documents

Time limit: September 30, 1997

Award date: October 27, 1997 (design/build)

Reason for delay: This project was delayed because VA had to solicit bids on three occasions. The bids that VA received in response to the first two solicitations exceeded available funding. VA then revised its plans and solicited bids a third time.

MURFREESBORO, TENNESSEE

Type of project: Psychiatric patient privacy

Type of contract: Construction documents

Time limit: September 30, 1997

Estimated award date: August 1998

Reason for delay: This project was delayed because the Congress appropriated funding in fiscal year 1997 before VA had performed any design work.

FLORIDA NATIONAL CEMETERY, FLORIDA

Type of project: Gravesite development

Type of contract: Construction

Time limit: September 30, 1997

Estimated award date: August 1998

Reason for delay: Design of this project was delayed because of changes made during design development. Also, the design architect/engineer failed to provide adequate drawings and details in the initial design development submission package.

TAMPA (ORLANDO), FLORIDA

Type of project: Satellite outpatient clinic/nursing home

Type of contract: Construction

Time limit: September 30, 1996

Award date: February 11, 1998

Reason for delay: The project was delayed because of a change in its scope. Initially VA planned to construct the new 120-bed nursing home care unit within the former Orlando Naval Training Center tower. VA now plans to construct a new freestanding 120-bed nursing home care unit next to the existing bed tower.

WACO, TEXAS

Type of project: Renovate building 11

Type of contract: Construction

Time limit: September 30, 1991

Estimated award date: June 1998

Reason for delay: The project was delayed because of inadequate funding. After the Congress appropriated funding for this project, VA upgraded its patient privacy standards, increasing the project's total estimated cost. VA delayed awarding the construction contract until authorization to reprogram funds was obtained from the Congress.

TAMPA (BREVARD COUNTY), FLORIDA

Type of project: Outpatient clinic

Types of contracts: Construction documents and construction

Time limits: September 30, 1996, and September 30, 1997, respectively

Award date: December 31, 1997 (design/build)

Reason for delay: This project was delayed because of a change in its scope. The Congress appropriated funding in fiscal year 1995 for construction of a new medical center. In fiscal year 1996 the Congress appropriated additional funding and directed that the funding for both years be used to construct an outpatient clinic.

ANN ARBOR, MICHIGAN

Type of project: Clinic addition and renovation

Types of contracts: Construction documents and construction

Time limits: September 30, 1994, and September 30, 1995, respectively

Estimated award dates: June 1998 and February 1999, respectively

Reason for delay: The final phase of this project involves renovating building one. Award of the construction documents and construction contracts for the final phase was delayed pending VA's completion of construction of new buildings under earlier phases, relocating activities housed in building 1 to the new buildings, and then renovating building 1.

MOUNTAIN HOME, TENNESSEE

Type of project: Medical school relocation/renovation

Type of contract: Construction

Time limits: September 30, 1996, and September 30, 1997

Actual and estimated award dates: May 1998 (phase 1) and September 1998 (phase 2)

Reason for delay: Award of construction contracts for phases one and two of this project was delayed until VA received all funds needed to complete the relocation and renovation. This is a joint federal and state project, and the total estimated cost of the project is $47.0 million. The Congress appropriated $15.5 million for the project in fiscal year 1997 and $13.5 million in prior fiscal years. VA received Tennessee's share of the project in February 1998.

MOUNTAIN HOME, TENNESSEE

Type of project: Construction of bed towers

Type of contract: Construction

Time limits: September 30, 1987, and September 30, 1988

Estimated award date: October 1998

Reason for delay: The final phase of this project involves demolishing a building and constructing another building in its place. Award of the construction contract for the final phase was delayed pending VA's completion of construction of other new buildings under earlier phases, relocating activities housed in the old building to the new buildings, and then demolishing the old building.

PHOENIX, ARIZONA

Type of project: Ambulatory care addition and renovation

Type of contract: Construction

Time limit: September 30, 1996

Estimated award date: September 1998

Reason for delay: Award of the construction contract for the renovation phase of this project was delayed pending the start of construction of the ambulatory care facility, which is now being constructed under phase one.

ENCLOSURE II

COMMENTS FROM THE DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

JUN 23 1998

In Reply Refer To:

Mr. Stephen P. Backhus, Director
Veterans' Affairs and Military Health Care Issues
Health, Education, and Human Services Division
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Backhus:

This is in response to your draft report on construction contract delays for fiscal year 1997. This report was discussed at a meeting between VA and GAO staff on June 9, 1998.

The Veterans Health Administration strongly objects to the inclusion of the seven additional contracts on four projects identified by the General Accounting Office (GAO). These projects include:

- the clinic addition/renovation at Ann Arbor, MI;
- the medical school relocation/renovation at Mountain Home, TN;
- the bed tower construction/renovation at Mountain Home, TN; and
- the ambulatory care addition/renovation at Phoenix, AZ.

In the case of the medical school relocation/renovation project at Mountain Home, the Congress did not fully fund the Federal contribution required to award a construction contract until FY 1997. Further, matching funds from the State of Tennessee were not available until February 1998. VA would not have been required to report the construction contract as delayed unless it had not been awarded by the end of this fiscal year (1998). Since the report is for the end of FY 1997, it should not be included.

All of the other projects are later phases of multi-phased projects in which a contract award has been made on an earlier phase. The phases identified in your draft report could not physically have begun until the prior phases were completed. As it relates to the reporting requirement, Public Law 104-204 references the awarding of "a construction documents contract" and "a construction contract." In the past, VA and GAO have agreed to an interpretation that if a significant phase (i.e., more than half of the total project cost) has been awarded for the primary purpose of a project, the project is no longer reportable. The intent of the appropriation language was to assure that VA was not delaying the start of projects. Because most of the larger jobs are phased, later phases have not been considered reportable when a significant portion of a project is awarded.

2.

Mr. Stephen P. Backhus

All of these projects had construction documents awards and/or construction awards on a significant phase prior to September 30, 1997. This is the first year that GAO has indicated that VA should be reporting these subsequent phases.

In summary, all of the additional projects identified for inclusion by GAO should be deleted from this report. Comments of a technical nature have been faxed to your staff.

Thank you for the opportunity to comment on this draft. If you have any questions, please contact Robert Neary at 202.565.5397.

Sincerely,

Thomas L. Garthwaite

for Kenneth W. Kizer, M.D., M.P.H.
Under Secretary for Health

(105770)

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000
or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

http://www.gao.gov

United States
General Accounting Office
Washington, D.C. 20548-0001

Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use $300

Address Correction Requested