# Audit Report

OFFICE OF THE INSPECTOR GENERAL

**ALLEGATIONS ON THE HOTEL THAYER RENOVATION PROJECT, U.S. MILITARY ACADEMY, WEST POINT, NEW YORK**

Report No. 95-079 January 20, 1995

Source selection and contractor confidential or proprietary information were deleted from this version of the report.

**Department of Defense**

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Report No. 95-079 January 20, 1994

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Report on Allegations on the Hotel Thayer Renovation Project, U.S. Military Academy, West Point, New York (Project No. 4LF-5020.01)

## Introduction

We are providing this report for your information and use. The audit was performed from March through October 1994 in response to a congressional request. This report is the second of two reports on the Hotel Thayer renovation project. The report discusses allegations of possible manipulation in the process to choose a contractor to renovate and operate Hotel Thayer at the U.S. Military Academy (the Academy), West Point, New York, from 1988 through 1993.

## Audit Results

We did not substantiate the four allegations of possible manipulation in the process to choose a contractor to renovate and operate Hotel Thayer. However, because Army Review Board proceedings were not well documented, we could not make a definitive judgment on the validity of part of one allegation that the investigation by the Army Review Board was flawed.

## Objective

The objective of this congressionally requested audit was to determine the validity of four allegations of possible manipulation in the process to choose a contractor to renovate and operate Hotel Thayer.

## Scope and Methodology

Our review covered four specific allegations submitted to the office of Senator Joseph I. Lieberman in April 1994 by the nonselected offeror on the Hotel Thayer renovation project. We reviewed Hotel Thayer project contracting files located at the Nonappropriated Fund Contracting Office, Army Community and Family Support Center, Office of the Assistant Chief of Staff of the Army (Installation Management), Alexandria, Virginia. The project contracting files contained documentation covering the acquisition process for the Hotel Thayer renovation project dated from March 1989 through December 1993. We also reviewed Hotel Thayer project files and financial data at the Academy. In addition, we reviewed the notes and

working papers of the Army Review Board members who investigated the May 1990 nonselected offeror's protest of the Hotel Thayer contract award. The Army Review Board's investigation covered six allegations, two of which were also included in the four specific allegations submitted by the nonselected offeror in 1994. Our review of the Army Review Board's investigation was limited because sufficient documentation on its proceedings did not exist. We also contacted the nonselected offeror and four other individuals that the offeror stated had information to substantiate the allegations.

This economy and efficiency audit was made from March through October 1994 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD. Our review of allegations on the Hotel Thayer project did not include any specific tests of internal controls. The audit did not rely on the use of computer-processed data. Enclosure 1 lists the organizations visited or contacted during the audit.

## Internal Controls

We did not perform any specific evaluation of internal controls as part of our review of allegations on the Hotel Thayer project because applicable internal controls were evaluated in Inspector General, DoD, Report No. 94-196, "Hotel Thayer, U.S. Military Academy, West Point, New York," September 27, 1994.

## Prior Audits and Other Reviews

Inspector General, DoD, Report No. 94-196 stated that no problems existed with contracting procedures for the selection of a contractor following the reinstatement of the nonselected offeror by the Army Review Board in 1990. However, the request for proposal to renovate and operate Hotel Thayer did not define U.S. Military Academy needs and did not adequately protect the Army Morale, Welfare, and Recreation Fund from potential liabilities. The report also stated that the Academy did not adequately consider less costly renovation alternatives. The report recommended that the Commander, Army Community and Family Support Center, either cancel the request for proposal for the renovation and operation of Hotel Thayer or modify the request for proposal to eliminate or greatly reduce the risk to the Army Morale, Welfare, and Recreation Fund associated with guaranteeing the developer's loan or bond issue. In addition, the report recommended that the Superintendent, U.S. Military Academy, perform in-depth analyses of less costly alternatives for the renovation and operation of the Hotel Thayer. The Army concurred with the finding and the first recommendation, and concurred in principle with the second recommendation. Further, the Army stated that the Morale, Welfare, and Recreation Panel, House Armed Services Committee (presently the House Committee on National Security), had approved a privatization concept for expansion and renovation of Hotel Thayer stipulating that the risk to the Army would not exceed $25 million. The Senate Armed Services Committee provided a similar approval.

## Background

Hotel Thayer, located on the grounds of the Academy at West Point, New York, is owned by the Government and is managed by the Academy as a nonappropriated fund instrumentality. Nonappropriated fund instrumentalities are financially self-supporting entities that act in their own name to provide or assist other DoD organizations to provide morale, welfare, and recreational programs for DoD military personnel and civilians.

In 1987, the Academy determined that Hotel Thayer required extensive renovation and expansion. The Academy decided that a privatization approach, that is, a public/private partnership, was the most feasible way to renovate and expand the hotel. The Academy submitted its plan to the Army Community and Family Support Center. The Army Community and Family Support Center prepared the request for proposal, evaluated offerors' proposals, and conducted contract negotiations. The request for proposal (NAFB-1-89-R-0001, March 1989) required an offeror to finance, design, renovate, construct, operate, and maintain Hotel Thayer.

In January 1990, the contracting officer notified one of the two offerors that the offeror had been eliminated from competition and that the contract award would be made to the other offeror. In May 1990, the nonselected offeror on the Hotel Thayer project submitted a letter of protest to the Commander, Army Community Family and Support Center, protesting the contract award. In his letter, the nonselected offeror raised six specific allegations that he believed circumvented fair competition and resulted in the elimination of his offer from competition.

In June 1990, the Assistant Secretary of the Army (Manpower and Reserve Affairs), appointed an Army Review Board composed of high-ranking Army officials to make findings and recommendations as to the merits and remedies applicable to the protest. The Army Review Board concluded that the Army Community and Family Support Center violated its own regulation in that offerors were not evaluated consistent with the evaluation criteria set forth in the request for proposal and that the offerors were not treated equally and fairly. The Army Review Board also concluded that the objectivity of the contracting officer and the project manager was questionable with regard to the nonselected offeror. With regard to the other five allegations, the Army Review Board concluded that the nonselected offeror's allegations were unsubstantiated.

Based on the Army Review Board's conclusions and recommended corrective action, on September 10, 1990, the Assistant Secretary of the Army (Manpower and Reserve Affairs) upheld one of the six allegations raised by the nonselected offeror and directed that the nonselected offeror be restored to competition and that negotiations be reopened. The Assistant Secretary of the Army also directed that the project manager be removed from the Proposal Evaluation Panel and that the Commander, Army Community and Family Support Center, be designated as the source selection authority.

In July 1992, the two offerors submitted best and final offers, and the Source Selection Evaluation Board reviewed both offers and found deficiencies. The two offerors resubmitted best and final offers, and the Source Selection Evaluation Board reviewed both offers again, recommending on June 4, 1993, that the contract be awarded to the offeror originally selected for award in 1990. Award of the contract has been held in abeyance pending congressional approval.

## Discussion

**Congressional Inquiry.** On February 16, 1994, Senator Joseph I. Lieberman requested a review of the Hotel Thayer project because of a January 28, 1994, letter received from the nonselected offeror alleging possible manipulation in the process to select a contractor. In further correspondence, submitted to the Senator's office on April 26, 1994, the nonselected offeror provided four specific allegations that should be reviewed. The allegations as submitted by the nonselected offeror and the results of our review of those allegations follow.

**Allegation 1.** "The propriety of involvement by persons in privileged positions (i.e., on the Alumni [Association of Graduates] Board and the Board of Visitors to West Point) who were house guests of the Superintendent requesting the project, on a corporation designed to win the contract years in advance of the request for proposal being issued (pre-1989)."

**Audit Results.** We did not substantiate the allegation. This allegation was raised in the May 1990 protest letter and covered by the Army Review Board's investigation. The Army Review Board concluded that an offeror was not preselected, that the Superintendent did not influence evaluators, and that the work by principals of a contract offeror performed for the Alumni Board and the Board of Visitors to the Academy did not constitute an organizational conflict of interest that would preclude their participation in the procurement. Our review of contracting and project files, Army Review Board notes and memorandums, and discussions with individuals that the nonselected offeror stated had information substantiating this allegation did not provide any basis to refute the Army Review Board's conclusion. Because a senior-level DoD official was involved, we referred this allegation to the Office of the Assistant Inspector General for Departmental Inquiries, DoD, for further analysis. Based on the findings of the Army Review Board and our audit documentation, the Office of the Assistant Inspector General for Departmental Inquiries, DoD, concluded that further investigation was not warranted.

**Allegation 2.** "The authority given for the privileged group to hire the Army's own contractor, Ellerbe Beckett, prior to public release of the request for proposal, when others had no chance to gain such an advantage; the apparent release of one contractors design to the privileged group. The starting point here should be the flawed investigation of the Army itself used to cover the Superintendent's involvement, which substantiated the assertions but attempted to dismiss their significance with specious rationales."

**Audit Results.** We did not substantiate the allegation. This allegation was also raised in the nonselected offeror's May 1990 protest letter and was covered by the Army Review Board's investigation. Ellerbe Beckett, a prominent architectural and engineering firm with extensive experience in the hospitality industry, was a subcontractor to KPMG Peat Marwick Main and Company on a market and economic feasibility study prepared for the Academy in June 1988. Ellerbe Beckett conducted an independent appraisal and evaluation of the Hotel Thayer Master Plan based on market research by KPMG Peat Marwick Main and Company. Ellerbe Beckett also estimated the project costs, analyzed the construction code criteria provided by the Academy, and recommended architectural changes to the master plan. Ellerbe Beckett was hired by the selected offeror before the request for proposal was issued for the Hotel Thayer project in March 1989. The Army Review Board's findings on this allegation are as follows.

o Any competitive advantage that the offeror might have received as a result of having Ellerbe Beckett as a subcontractor was neutralized by the fact that the results of the KPMG Peat Marwick Main and Company study, including cost estimates, were made available to all offerors.

o There was no evidence that either KPMG Peat Marwick Main and Company's or Ellerbe Beckett's objectivity was affected in their performance of the Government market study, one of two market reports provided to offerors, which presented two different outlooks.

With regard to the allegation that the nonselected offeror's design was released to the other offeror, the Army Review Board found no evidence of unauthorized release by Government personnel of the offeror's proposal. The Army Review Board stated that, absent specific information by the protestor to support the allegation, the design concept in question was not such a unique idea as to allow the conclusion that the only way the other offeror could have developed it was through obtaining information on the nonselected offeror's proposal. Our review and discussions with individuals suggested by the nonselected offeror did not provide any additional information that would lead to a different conclusion from that reached by the Army Review Board.

Our review did not disclose any evidence that would support the nonselected offeror's allegation that the Army Review Board's review was flawed and was used to cover up the Superintendent's involvement. The Army Review Board interviewed the Superintendent and other Academy personnel and found no evidence to suggest that the Superintendent influenced the selection process. In further support of its position, the Army Review Board cited the fact that the nonselected offeror was given higher evaluation scores initially and only in later discussions did the other offeror improve its position. Our review of contracting and project files, Army Review Board notes and memorandums, discussion with the nonselected offeror, and discussions with individuals that the nonselected offeror stated had information substantiating this allegation did not provide any basis to refute the Army Review Board's conclusion. However, because the proceedings of the Army Review Board were not well documented, we could not reach a definitive conclusion on the adequacy of the Army Review Board's investigation.

**Allegation 3.** "The prima fascia evidence of the five years of 'competition' on a contract that was awarded at first within months when it could be given to the pre-selected winners. The true purpose of the 17 amendments created during these delays and alleged attempts to get rid of the opposition and award to the original alumni team. I can give detailed history of what transpired in these years, from documents and records, when I am interviewed. In particular, the $ * slush fund taken from Hotel proceeds for the exclusive use of the alumni team must receive careful attention and confirmation by interviews at West Point."

**Audit Results.** We did not substantiate the allegation that amendments to the request for proposal were initiated to aid or hinder either contract offeror or that a "slush fund" had been established for the use of the other offeror. Review of the contracting files at the Army Community and Family Support Center showed that a total of 16 amendments, rather than 17 as cited by the nonselected offeror, had been issued to request for proposal NAFBA-1-89-R-0001 between May 1989 and March 1993. At least 8 of the 16 amendments resulted from the May 1990 contract protest or other actions by the nonselected offeror. Only 1 of the 16 amendments was issued at the request of the selected offeror, and that amendment provided an extension of time to submit best and final offers. Because 8 of the 16 amendments to the request for proposal were initiated for the benefit of the nonselected offeror, the allegation that the purpose of the amendments was to get rid of the competition was not substantiated.

Review of Hotel Thayer contracting and project files and Hotel Thayer financial data showed the following regarding the alleged $ * slush fund.

o The June 1988 Market and Economic Feasibility Study for the Hotel Thayer, prepared by KPMG Peat Marwick Main and Company, and made available to all offerors, showed that the Academy would contribute $ * to Hotel Thayer to be used as a working capital fund.

o The potential for a working capital contribution of $ * was negated by amendment 0008, May 29, 1992, to the request for proposal. Amendment 0008 required both offerors to establish, fund, replenish, and maintain a standby operating reserve as part of the Army Morale, Welfare, and Recreation Fund's safety net to cover any projected operating deficits by the hotel.

o Review of Hotel Thayer's financial records showed no evidence that any monies were transferred to either of the offerors.

**Allegation 4.** "The process of governing the $500 million Army Morale, Welfare, and Recreation Fund where bureaucrats last October [1993] apparently never informed the three star generals that there was any alternative to obligating these monies, intended to serve enlisted personnel, for a debt guarantee for the alumni group to finance their

* Contractor proprietary data omitted

proposal. By controlling the information, some low level personnel exercised perhaps improper power to manipulate an enormous amount of money, even though not from the U.S. taxpayer."

**Audit Results.** We did not substantiate the allegation. The nonselected offeror did not provide a source for this allegation; however, an excerpt from the minutes of the October 21, 1993, Army Morale, Welfare, and Recreation Board of Directors meeting showed that the Hotel Thayer project was discussed. This meeting covered several projects, and discussion of the Hotel Thayer project centered around the potential risk to the Army Morale, Welfare, and Recreation Fund because of the proposed loan guarantee. Members of the Army Morale, Welfare, and Recreation Board of Directors were aware of the existence of two offers; however, their main interest was in the loan guarantee issue that had been approved by their predecessor, the Army Community and Family Program Review Committee. No evidence was found that Government personnel had tried to limit information presented to the Army Morale, Welfare, and Recreation Board of Directors to negatively affect a particular offeror.

## Management Comments

We provided a draft of this report to the Army. The Army provided a response that accepted the draft report without comment (Enclosure 2). The report contains no unresolved issues and additional comments are not required.

The courtesies extended to the audit staff are appreciated. If you have any questions on this audit, please contact Mr. Michael A. Joseph, Audit Program Director, at (804) 766-9108 or Mr. James H. Beach, Audit Project Manager, at (804) 766-3293. Copies of this report will be distributed to the organizations listed in Enclosure 3.

David K. Steensma

David K. Steensma
Deputy Assistant Inspector General
for Auditing

Enclosures

This special version of the report has been revised to omit source selection and contractor confidential or proprietary information.

# Organizations Visited or Contacted

## Office of the Secretary of Defense

Office of the Assistant Secretary of Defense (Force Management and Personnel), Washington, DC
Office of the Deputy Under Secretary of Defense (Environmental Security), Arlington, VA

## Department of the Army

Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), Washington, DC
Army Community and Family Support Center, Office of the Assistant Chief of Staff of the Army (Installation Management), Alexandria, VA
U.S. Military Academy, West Point, NY
Hotel Thayer, West Point, NY

## Non-Government Organization

Thayer Gate Development Corporation, West Point, NY

# Department of the Army Comments

DEPARTMENT OF THE ARMY
U.S. ARMY COMMUNITY AND FAMILY SUPPORT CENTER
ALEXANDRIA, VA 22331-05

REPLY TO ATTENTION OF

November 30, 1994

MEMORANDUM THRU ~~ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT~~ 12/6/94
~~DIRECTOR OF THE ARMY STAFF~~ 7 Dec 94
THOMAS W. HUGHES, LTC, ADAS
ASSISTANT SECRETARY OF THE ARMY
(MANPOWER AND RESERVE AFFAIRS) 9 DEC 1994
Sara E. Lister
Deputy Assistant Secretary of the Army
(Manpower and Reserve Affairs)

FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE (AUDITING)

SUBJECT: Inspector General, Department of Defense Draft Report on the Audit of Allegations on the Hotel Thayer Renovation Project, U.S. Military Academy, West Point, New York (Project No. 4LF-5020.01), November 14, 1994--INFORMATION MEMORANDUM

We appreciate your effort, professionalism and attention to detail, and accept the draft audit report without comment.

The final report should be marked "For Official Use Only" since it contains source selection information that is proprietary in nature. This information may not be released to the public or to anyone within the Government not having a legitimate interest or a need to know.

JOHN G. MEYER, JR.
Brigadier General, USA
Commanding

DEC 12 1994

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- Senate Committee on Governmental Affairs
- House Committee on Appropriations
- House Subcommittee on National Security, Committee on Appropriations
- House Committee on National Security
- House Committee on Government Reform and Oversight
- House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight

Senator Joseph I. Lieberman, U.S. Senate