

**SPECIAL REPORT OF THE
JOINT LEGISLATIVE
AUDIT AND REVIEW COMMISSION ON**

Cousteau Ocean Center

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



Senate Document No. 13

**COMMONWEALTH OF VIRGINIA
RICHMOND
1986**

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January 6, 1986

Delegate L. Cleaves Manning
Chairman
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Capitol Square
Richmond, VA 23219


Dear Delegate Manning:

I am pleased to transmit to you a copy of the special study "Cousteau Ocean Center." This study examines two primary questions: (1) Has the Norfolk Recreational Facilities Authority (NRFA) taken a reasonable approach to planning, designing, and administering the Cousteau Ocean Center? and (2) Is the Public Procurement Act applicable to the project?

A companion report has been submitted by the Auditor of Public Accounts, which examines all funds appropriated to NRFA and to the Cousteau Society for purposes associated with the planning, design, construction, and administration of the Ocean Center.

We wish to express our appreciation for the cooperation and assistance extended by the Norfolk City Council, NRFA, and The Cousteau Society.

Sincerely,


Ray D. Pethtel
Director

RDP/rbc

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COUSTEAU OCEAN CENTER

At the request of Senator Peter K. Babalas, and under authority of §4-5.07 of the Appropriations Act, the Commission approved a special audit of the Cousteau Ocean Center project. The audit was to cover all funds appropriated to the Norfolk Recreational Facilities Authority (NRFA) and to The Cousteau Society for purposes associated with the planning, design, construction, and administration of the Ocean Center. The audit was to include both financial and program components.

The financial audit was prepared by the Auditor of Public Accounts. The program audit, which was prepared by the JLARC staff, addressed two central questions: (1) Has the NRFA taken a reasonable approach to planning, designing, and administering the Cousteau Ocean Center? and (2) Is the Public Procurement Act applicable to the Cousteau Ocean Center project?

The JLARC staff interviewed officials of the NRFA, The Cousteau Society, and the City of Norfolk. An on-site review was made of project files at the NRFA. Exhibit 1, on the following page, briefly summarizes the role of key participants in the development of the Cousteau Ocean Center.

Since 1980, the General Assembly has appropriated more than one million dollars for the Cousteau Center (Table 1).

Table 1

STATE APPROPRIATIONS FOR THE COUSTEAU OCEAN CENTER

<u>Biennium</u>	<u>Appropriation</u>
1980-82	\$ 125,000
1982-84	577,770
1984-86	<u>564,000</u>
TOTAL	\$1,266,770

Source: Appropriation Acts.

A direct appropriation was made to The Cousteau Society in 1980-82. However, for the period 1982-86, the General Assembly authorized the NRFA to contract with the Society or others for design, construction, and administration services. The Authority was directed to report annually on the progress of the project to the Chairmen of the House Appropriations and Senate Finance Committees. Status reports were submitted in January of 1983, 1984, and 1985.

Exhibit 1

KEY PARTICIPANTS IN DESIGNING AND
BUILDING THE COUSTEAU OCEAN CENTER

<u>Participants</u>	<u>Role</u>
Commonwealth of Virginia	Since 1980, the General Assembly has appropriated \$1,271,000 for designing, constructing, and administering the Ocean Center.
Norfolk City Council	Final approval authority for project design, financing, and construction.
Norfolk Recreational Facilities Authority (NRFA)	Created by the City Council under the Public Recreational Facilities Authorities Act to serve as a conduit for funds to support the design and construction of the Ocean Center.
The Cousteau Society	A non-profit, tax exempt New York corporation that provides support for Cousteau exploration and research activities.
Cousteau Ocean Center, Inc. (COC)	A non-profit, tax exempt Virginia corporation responsible for the initial planning and design of the Center.
Hampton Roads Ocean Center, Inc. (HROC)	A non-profit, tax exempt Virginia corporation responsible for the final design, construction, and operation of the Cousteau Ocean Center. Three board members are selected by the NRFA, three by the Cousteau Society, and one is agreed to by at least five of the first six.
Greater Norfolk Corporation (GNC)	A non-profit, tax exempt Virginia corporation composed of community leaders promoting and supporting the development of the City of Norfolk.

HAS A REASONABLE APPROACH BEEN TAKEN TO PLANNING AND DESIGNING THE PROJECT?

First discussions for an ocean-oriented exhibit center located on Norfolk's waterfront began in 1977-78. A "Man and the Sea" exhibit center was initially planned. Captain Jacques Cousteau and The Cousteau Society were invited to help plan the facility. Coincidentally, the Cousteau Society was searching for an appropriate location to which it could move its expedition base operations and administrative headquarters. Several port cities were being considered, but the Society eventually chose the City of Norfolk. Its world headquarters was moved from New York to Norfolk in 1980, and the development of the Cousteau Ocean Center was begun.

Entertaining and educating visitors about the earth's ocean environment are the primary objectives of the Center. According to the Society, "Through the use of film, sophisticated illusion and elements of the natural world, visitors to the Ocean Center will be allowed the experience of a journey into the undersea realm....The Cousteau Center also has real educational content. It is designed so that the entertaining aspects serve as a vehicle to help visitors learn important concepts."

Community leaders were enthusiastic over the possibility of building an education and entertainment attraction created and supported by the internationally renowned Jacques Cousteau. The project was viewed as part of a major effort to revitalize the Norfolk downtown and waterfront areas.

Planning and design of the Center intensified after the General Assembly's 1982-84 appropriation. An economist was hired to study the feasibility of the project, and a non-profit corporation, Cousteau Ocean Center (COC), was created to begin designing the entertainment exhibits and structure. Mr. Jean-Michel Cousteau was designated as the leader of the "design team." NRFA contracted with COC for design services. Mr. Roland Crump, a show exhibit designer, was hired by COC as the chief designer. A number of other design professionals were awarded contracts to assist Mr. Crump in designing entertainment exhibits and the building structure.

A key issue of the JLARC analysis was whether a reasonable approach to planning and designing the Ocean Center was taken by NRFA and COC. Criteria used for the analysis were:

- Does the proposed project conform with community goals and plans for waterfront development?
- Is the project financially viable?
- Have the purpose, scope, and nature of the project been adequately defined?

Although the path to completing the project has been indirect, the NRFA has generally followed a logical sequence of events in planning and designing the Center. However, from a State point of view, appropriations could have been used more economically if the purpose, scope, and nature of

the project had been more precisely defined. It has taken four years to reach consensus on the project's final composition and financing.

In January 1983, the NRFA reported to the Senate Finance Committee and the House Appropriations Committee that the Ocean Center would open its doors to Virginia residents by spring 1986. Assuming that private fund-raising efforts are successful, it is now expected that the Ocean Center will be open to the public in early 1988.

City officials, local business leaders, and representatives of The Cousteau Society have worked diligently to plan a project that is financially viable but faithful to Jacques Cousteau's concept for the Center. Cities such as Baltimore and Boston have already benefited immensely from waterfront revitalization projects. The Cousteau Ocean Center is expected to have a similar impact on Norfolk's waterfront.

Project Conforms With the Downtown Development Plan

The City of Norfolk has devoted a considerable amount of time and effort to preparing long-range plans and master plans for revitalizing the core business district and waterfront. An important objective of these plans is to increase tourist visitation and visitor spending.

Since the late seventies the City has identified in its plan for waterfront development a site for a major education/recreation attraction. In 1980 this site, known as the Banana Pier, was reserved through Council resolution for the proposed Cousteau Ocean Center. Waterside, the OMNI Hotel, and other commercial attractions and facilities of downtown Norfolk are within close proximity of the site.

The proposed Cousteau Ocean Center conforms with the City's long-term objectives and plans for waterfront development. These plans have provided, in part, a rational basis for requesting capital funds for the design and construction of the Ocean Center.

Studies Conclude that the Project is Economically Viable With Some Limitations

A continuing concern of the NRFA and the City Council has been the economic viability of the Cousteau Ocean Center project. Because the Center is planned as a non-subsidized attraction, the City and the Society have been particularly sensitive to designing and building a financially sound project. NRFA and City officials assert that revenues derived from the Center will probably be sufficient to cover operating and debt service costs. If the revenues fall short of estimates, however, these officials contend that the direct and indirect benefits of the Center still make it a worthwhile public endeavor. Studies prepared for the NRFA show that the project will help generate increases in State and local tax revenues. A less tangible benefit, according to City officials, is the publicity that the City and State will get by having the Cousteau Center and the world headquarters of The Cousteau Society located in the City of Norfolk and in the Commonwealth of Virginia.

A review of the economic feasibility studies prepared by Harrison Price Company indicates that the project is feasible but is considered a "breakeven operation." That is, the Center's projected revenues from such sources as admission fees, food and beverage sales, merchandise sales, and sponsorship funding may be sufficient to cover capital and operating expenses. The Center's financial success hinges on the amount of contributions that can be raised to offset project development and annual operating costs.

Since the first Harrison Price study in 1983, feasibility analyses have reduced the size and cost of the project to be more compatible with the Norfolk market. The first study, in part, led to a costly design concept that could not be supported on its own merits. Subsequent studies have produced more realistic design schemes. However, The Cousteau Society, NRFA, and the City Council have not always concurred on the project's makeup and, as a result, project cost and financing estimates have fluctuated over the years (Table 2). Inclusion of space for the ocean evaluation center (an area devoted to the collection and evaluation of oceanographic information) and The Cousteau Society administrative offices has been a focal point of project cost concerns since 1983. On July 9, 1985, City Council directed NRFA and The Cousteau Society to include this space in the final architectural design of the building.

1983 Harrison Price Company Study. In July 1982, the NRFA contracted with Harrison Price Company to conduct a detailed feasibility study of the project. The study was completed in April 1983. During the course of the study, the economic consultant worked with the design team charged with preparing entertainment exhibits for the Cousteau Center.

The 1983 study projected attendance at 643,000 for 1987, 741,000 for 1988 and 839,000 for subsequent years. These attendance levels indicated a requirement for 60,000 to 70,000 square feet of space for the facility. Ticket prices were estimated to be \$7.95 for adults and \$5.95 for children. It was estimated that a visitor's average length of stay would be 3 hours.

Project development costs were estimated to be \$27.8 million for construction, design, equipment, and pre-opening costs.

The study concluded that the project's financial performance was extremely sensitive to interest rates, level of sponsorship funding, and level of capital contributions. "The project is feasible if \$6.5 million in contributed capital, and annual sponsorship of \$600,000 are secured. The financing scheme results in a debt service ratio of 1.50:1 before allowance for reinvestment, and a slightly better than breakeven operation after debt service and reinvestment."

1983 Charrette. Because the \$28 million dollar concept could not be supported from project revenues, Harrison Price was asked to organize a charrette conference in September 1983 to review the feasibility of the project. Generally speaking, a charrette is a workshop attended by various individuals who are interested in finding an optimal solution to a problem. In the case of the Cousteau project, key project participants were invited to a two-day charrette "to achieve a consensus on how to get a credible Cousteau Ocean Center in Norfolk at an acceptable cost."

The final report concluded that a 60,000 square foot project in the range of \$21.5 million could be supportable. As Table 2 shows, the proposal did

TABLE 2

COUSTEAU OCEAN CENTER:
COST AND FINANCING ESTIMATES
(Millions of Dollars)

	1983 Harrison Price Study	1983 Charrette	June, 1984 City Council Resolution	July, 1985 City Council Resolution
<u>Project Cost Estimates</u>				
Project Development Costs	\$26.0	\$19.0	\$22.0	\$18.5
Pre-Opening Costs	<u>1.8</u>	<u>2.5</u>	<u>2.5</u>	<u>2.0</u>
TOTAL	\$27.8	\$21.5 ¹	\$24.5 ²	\$20.5 ³
<u>Financing Options</u>				
Revenue Bonds	Not Determined	Not Determined	\$20.5	--
General Obligation Bonds	Not Determined	Not Determined	--	\$15.5
Capital Contributions or Grants	\$6.5	\$2.5	<u>4.0</u>	<u>5.0</u>
TOTAL			\$24.5	\$20.5

¹Excludes costs for The Cousteau Society administrative offices and Ocean Evaluation Center.

²The 1983 Charrette proposal was altered to include The Cousteau Society offices and the Ocean Evaluation Center (\$1.5 million), construction interest (\$2.3 million), and the bond discount (\$200,000); the cost of the building foundation was reduced by \$1 million.

³The April 1985 proposal to City Council eliminated The Cousteau Society offices, the Ocean Evaluation Center, and a replica of Calypso. City Council requested that they be included in the project at a cost of \$2.5 million.

Source: Norfolk Recreational Facilities Authority.

not include The Cousteau Society administrative offices and the ocean evaluation center.

Attendance levels were estimated at the previous levels. The average length of stay was reduced to 1.5 hours. Admission prices were reduced to reflect the shortened stay. For the period 1987-88 adult ticket prices were set at \$6.95 and children prices at \$5.95.

The report assumed \$2.5 million in contributed capital and \$150,000 in annual sponsorship income.

1984 City Council Action. A revised version of the charrette proposal was submitted to the City Council on June 26, 1984, for action. City Council tentatively approved a project that cost \$24.5 million and included space for the Society offices and the ocean evaluation center. Pending further study by its municipal bond experts, the Council unofficially supported about \$20.5 in revenue bonds to finance the project. The remaining costs were to be derived from private sources and the State.

The NRFA was encouraged to proceed with finalization of the project and final presentation to City Council.

1985 City Council Action. Because of changing economic and project requirements, Harrison Price Company revised the outcomes of its feasibility study in early 1985. Attendance levels were adjusted substantially downward -- 625,000 in 1988 and 650,000 in subsequent years. One reason given for the lower attendance figures was to be as conservative as possible in estimating future revenues derived from the Center's operations. Admission charges were projected to be about \$6.50 for children and \$7.50 for adults after the first year of operation.

A pared down project was presented to City Council in April 1985. Because of the revised attendance forecasts, project development and pre-opening costs were reduced to \$18.5 million. Once again, the ocean evaluation center and the Society's administrative offices were deleted from the project. The City Council was not in favor of the deletions and directed NRFA and The Cousteau Society to include them in the final design. Project development and pre-opening costs are now estimated to be \$20.5 million. On July 9, 1985, City Council tentatively endorsed a plan for financing the project that included \$15.5 million in general obligation bonds and \$5.0 million in private contributions. The project is contingent on the future success of the fund-raising campaign.

Project Purpose, Scope, and Nature Unclear at Times

Planning and design of the Center has largely mirrored the fluctuations and uncertainties of project financing. Project design has been the primary responsibility of COC, a non-profit corporation with tax exempt status under 501 (c)(3) of the Internal Revenue Code. This relationship was structured in this manner so that the Cousteaus could exert direction over the project. Members of the COC board of directors include Jacques Cousteau, Jean-Michel Cousteau, and Charles Vinick, Vice President for Business Affairs for the Society.

An important objective of the various entities involved in the design process was that they were to work as a team. The varied interests of the economists, show designers, architects, public officials, and the Cousteau Society were to be focused and directed to develop the physical form of the building consistent with Mr. Jacques Cousteau's vision.

Evidence suggests that project control and communication between the various team members has been a problem at times. The architect was hired by COC without a signed contract and without NRFA's review of the terms of the agreement, the initial exhibit and building concepts were judged too costly by the NRFA, officials of the Society have not always agreed with the decisions of the NRFA, and the City Council has not always agreed with the recommendations of the NRFA and the Society. In 1983, the NRFA estimated that the Cousteau Ocean Center would open its doors by spring 1986. It now believes the project will be completed in 1988.

The Concept and Show Design. Broad concepts, goals, and objectives articulating the purpose of the Cousteau Ocean Center were produced at workshops held in March and September 1982. The workshops were attended by the Cousteaus and officials of the NRFA to define the purpose and objectives for the Center. Products of the discussions were to give the designers a general framework for the creation of exhibits. One document stated that "Our proposals for this unique ocean entertainment and educational attraction combine the popular guidance of Jacques Cousteau with exhibit design expertise of the highest caliber. Visitors will experience the thrills of undersea adventures.....without entering the water." Consistent with the entertainment objective of the proposed facility, NRFA contracted with COC in September 1982 for exhibit concept design services. The amount of the contract was for \$225,000. COC in turn contracted with Mr. Roland Crump as chief designer to direct and coordinate the design team. Mr. Crump has designed exhibits for Walt Disney World and Disneyland. Entertainment exhibits were given first design priority because they were the main attraction of the Center.

Mr. Crump's contract called for him to translate the spirit, goals, and philosophy of the Cousteaus and The Cousteau Society into a three dimensional concept of a public educational entertainment pavilion. He was also to use the Harrison Price Company feasibility study findings in developing a master plan for the Center. The first project concept called for visitors to experience the Center's exhibits from a mechanized ride. Mr. Crump was to deliver by January 31, 1983, a master plan, facility plan, and track layout for the major ride. According to NRFA and COC, he fulfilled his obligations under this contract. Most of the materials produced by Mr. Crump and his design team are located in his West Coast offices. We did not request that they be sent to Norfolk for our review.

Among the products of the design team headed by Mr. Crump was an 18-minute film for presentation to the General Assembly in January 1983. The film captured the storyline and system of physical flows within the proposed facility. On December 13, 1982, NRFA authorized a transfer of \$13,135 to help offset film production costs. Total expenditures for the 1983 presentation amounted to \$29,794. The original design team contract with COC did not call for the production of this film. The film was also to be used in raising sponsorship funds.

In a progress report submitted to the House Appropriations and Senate Finance Committees on January 13, 1983, the NRFA wrote that:

During the past six months, the Cousteau design team and Harrison Price Company have worked together with the staffs of the Cousteau Society and the Norfolk Recreational Facilities Authority to produce a spectacular exhibit program concept which is practicable within the market setting.

Eleven months later, a different conclusion was reached about the show exhibit concept. The Executive Director of the NRFA wrote a letter on December 2, 1983, to the City Manager (who is a Commission member of NRFA) expressing his concern over the manner in which the first phase of the design process was carried out. He stated:

Of most immediate concern....is that of NRFA review and control of costs during the next design phase. My concern, as stated on November 21, is that we not have a repeat of last year's events wherein a spectacular show concept was produced at an equally spectacular cost. In my view the best way to preclude such surprises in the future is to have building and exhibit costing experts working parallel to the design people and meeting at regular (2-3 week) intervals during the coming three month design phase.

Selecting the Architect. Without a clear notion of the project's scope and character, COC with the assistance of NRFA staff began screening architects in the fall of 1982. Contract provisions between NRFA and COC for the period September - December 1982 did not call for the selection of an architect. Nevertheless, The Stubbins and Associates Inc., a highly regarded architectural firm from Cambridge, Massachusetts, was selected for the project. The selection process was highly competitive involving a large number of firms.

An agreement between COC and Stubbins and Associates called for the firm to work from February through June, 1983, for an amount not to exceed \$45,000. No contract was signed and the NRFA Board of Commissioners did not officially review or endorse the terms of the agreement. The firm was promised the contract for full architectural drawings if the Ocean Center was to be built.

Stubbins and Associates agreed to work with Mr. Crump and Harrison Price Company in developing building concepts for COC. The firm's intent was to develop alternative concepts in rough, diagrammatic form for discussion, evaluation, and selection. In a December 3, 1982, letter to COC, the Vice President of the Stubbins firm wrote, "The size, scope, complexity, and character of your facility has yet to be realistically defined. Accordingly, it would be extraordinarily difficult to set a defined fee at this stage." About five months later, on July 12, 1983, COC notified the firm to discontinue further architectural development.

....The Cousteau Society Board of Directors has concluded that the Cousteau Ocean Center project is not

.....The Cousteau Society Board of Directors has concluded that the Cousteau Ocean Center project is not viable as proposed. They have requested exploration to find an alternative activity, program or facility which would be more appropriate to the existing Norfolk market.

Thus, it appears we will not resume architectural development of the project as previously conceived. Given that project status, we have appealed to our Commissioners for resolution of HSA's fee.

.....As the project continues, we'll keep you abreast of its progress and look forward to beginning design work again, as soon as the scope and nature of our future program become clear.

Although submitting itemized billings for \$41,484, the firm agreed to accept \$25,264 to cover HSA salaries and direct expenses only. (The remaining portion of the billing was reimbursed at a later date.) The Commissioners of NRFA by a split vote agreed to pay the reduced amount. However, the Commissioners expressed concern over the fact that professional services had been commenced without a contract and prior to their formal review of terms.

COC and The Cousteau Society took strong exception to the remarks of the NRFA Commissioners. Mr. Charles Vinick in a letter dated July 18, 1983, claimed that the Commissioners urged the Society to work with the architects as quickly as possible. He contended that architectural work was discontinued when it became clear that the contract process could not be completed without full legal agreements between the Society and NRFA. He wrote, ".....the inference of impropriety is serious and I think it behooves the Commission to remember the actual sequence of events leading to the initiation of work by the architects, because in no way did The Cousteau Society request that work be initiated without full knowledge and encouragement from members of the Commission."

Charrette Conference. The first building and exhibit schemes were judged by NRFA as too costly. The major ride was viewed as especially costly and deleted from the original concept. As discussed earlier, a two-day charrette was held in September 1983 to define a financially viable project concept.

In February 1984, COC contracted with Stubbins and Associates to again develop an "architectural design concept" for the Cousteau Ocean Center. This time, however, the architect was given specific guidance based on the charrette summary prepared by Harrison Price Company. The firm was requested to include space for The Cousteau Society administrative offices and the ocean evaluation center. COC paid the architectural firm \$50,000 for this phase of the project.

Further refinements were made in the design concepts at a three-day design workshop held in September 1984. The purpose of the workshop was to synthesize the architectural concepts with the exhibits and to discuss site development needs. Several construction management firms were also interviewed.

Ocean Center Design, Financing, and Construction

Hampton Roads Ocean Center (HROC), a Virginia not-for-profit corporation, was created in 1984 to construct and operate the project. In January 1985, NRFA authorized an expenditure of \$198,000 to HROC for further design work. The Stubbins firm and a construction manager were provided \$113,000 to create architectural drawings and design construction schedules.

In April 1985, the NRFA and HROC presented a scaled-down design proposal which excluded the ocean evaluation center, the Cousteau Society headquarters offices, and the Calypso replica. It was the sense of the HROC board that there were not sufficient funds to support these activities.

As noted earlier, the City Council was not in favor of the proposed project deletions. In July 1985, a resolution was passed by the Council giving conditional approval to the Center if the ocean evaluation center, the Society offices, and the Calypso replica were put back into the project. City Council perceived these elements as important. Furthermore, City Council required the Society and The Greater Norfolk Corporation to raise \$5 million locally and nationally for the project. The Council committed itself to authorizing the project in January 1986 if it is reasonably assured of the success of local and national fundraising efforts.

IS THE PUBLIC PROCUREMENT ACT APPLICABLE TO THE COUSTEAU OCEAN CENTER PROJECT?

On January 1, 1983, the Virginia Public Procurement Act became law. The Act spells out a policy calling for public agencies to use full and open competition "to the maximum feasible degree." The Act defines specific procurement policies, establishes procurement methods, and lays out a code of procurement ethics to be followed by all public employees involved with procurement.

The intent of the Public Procurement Act is clear. All qualified potential contractors should have the opportunity to do business with public agencies and should have the right to compete equally with others. Competition provides some assurance that the public agency pays, and the contractor receives, reasonable prices. The chance to win a public contract provides a key incentive for greater efficiency, economy, and effectiveness. When competition is restricted unnecessarily, the public agency loses opportunities, not only to obtain lower prices, but also to increase the productivity and the effectiveness of its programs.

Does the Act Apply to COC?

In a letter dated January 31, 1983, an assistant city attorney informed the Executive Director of the NRFA that the Act encompassed the NRFA and COC contracting activities.

The Auditor of Public Accounts and JLARC staff were not entirely certain if a Virginia not-for-profit corporation receiving State appropriations through a locally-created authority was bound by the provisions of the Act. On November 19, 1985, the Auditor of Public Accounts requested an informal opinion from the Office of the Attorney General on this matter.

On December 2, 1985 the Office of the Attorney General informed the Auditor of Public Accounts by telephone that the Public Procurement Act did not apply to COC.

An informal opinion regarding the status of HROC will be issued at a later date. The Act may apply to HROC because the governing board consists of three members appointed by the City of Norfolk and the building is to be owned by the City.

Selection of Contractors

To assess the adequacy of the contracting process, JLARC and Auditor of Public Accounts staff examined all contracts for design services. The review revealed that most of the contracts awarded by COC since September 1982 have been sole source.

The first contract with the architectural firm Stubbins and Associates was procured under competitive conditions. However, there was no signed, written contract between COC and the firm, and the NRFA Board of Commissioners did not review the terms of the agreement. Two additional contracts were awarded to the firm on a sole source basis. COC awarded a \$50,000 design contract to the firm in February 1984. HROC hired Stubbins for \$68,000 in January 1985.

All of the contracts awarded by COC to members of the design team were awarded on a sole source basis.

There may be legitimate reasons for procuring professional services sole source. However, because of the noncompetitive practices of the COC, there is no assurance that NRFA paid, and the vendors received, a reasonable price.

Even though COC, and perhaps HROC, are not covered by the provisions of the Public Procurement Act, the NRFA Commission should ensure that public funds spent on design and construction of the Cousteau Ocean Center are properly spent. The Commission should require COC and HROC to follow competitive bidding and negotiation practices in awarding future contracts. Furthermore, NRFA, COC, and HROC should document in writing the basis for determining that there is only one source practicably available.

CONCLUSION AND RECOMMENDATIONS

Efforts among Cousteau Center supporters to advance the project in recent years have been unsettled because of misunderstandings over the purpose and financing of the project and the Cousteau Society's inexperience in negotiating with local public bodies. It has taken nearly four years to reach consensus on the Center's composition and financing. The Center is scheduled to be open in the spring of 1988 -- two years beyond the date reported to the General Assembly in 1983.

Difficulties are being overcome, however, with the recent preparation of a series of agreements between the City of Norfolk and The Cousteau Society outlining the responsibilities of both parties in financing, building, and operating the center. City Council will review the status of the project in early 1986 when it receives a report on the success of local and national fund-raising efforts.

It seems that a good-faith effort has been made by the City of Norfolk, The Cousteau Society, and the local business community to advance the project toward completion.

Recommendations

1. If the State is requested to provide additional funding for the Cousteau Ocean Center, the General Assembly should expect (a) HROC to adhere to appropriate competitive bidding and negotiation practices in awarding contracts for professional services and construction, and (b) NRFA, HROC, and the City Council to present to the Senate Finance and the House Appropriations Committees final architectural drawings, construction schedules, and financial plans for the Center.

2. The General Assembly may wish to require non-State agencies requesting funds for capital construction to submit pre-planning studies prior to receiving State appropriations. Such a requirement would be consistent with current State policies governing capital outlay requests submitted by State agencies.

3. According to an informal opinion issued by the Attorney General's Office, Virginia not-for-profit corporations receiving State appropriations are not subject to the Public Procurement Act or Comprehensive Conflict of Interests Act. The General Assembly may wish to require such corporations and other types of non-State agencies receiving State grants for professional services, consulting services, or capital construction to (a) award contracts on an competitive basis, and (b) thoroughly consider potential conflicts of interests in their dealings.



AGENCY RESPONSES

Public agencies involved in a JLARC evaluation effort are given the opportunity to comment on an exposure draft of the report, and appropriate corrections are made.

The following documents are attached as an appendix to this report:

- Response from the Norfolk Recreational Facilities Authority
- Response from The Cousteau Society

NORFOLK RECREATIONAL FACILITIES AUTHORITY

John R. Sears, Jr., Chairman M. Lee Payne, Vice Chairman Thomas D. Blanchard, Jr., Executive Director

December 20, 1985

Joint Legislative Audit and Review Commission

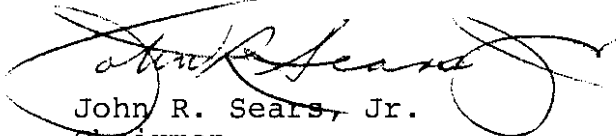
Mr. Chairman, Members of the Commission:

The review of the records of the Norfolk Recreational Facilities Authority (NRFA) over the last several months by the staffs of the Auditor of Public Accounts (APA) and the Joint Legislative Audit and Review Commission (JLARC) has been exhaustive and comprehensive. We wish to commend those staffs, in particular, Mr. Philip Leone and Mrs. Leigh Joyce for their thoroughness and professionalism.

We recognize and welcome the need for accountability in the expenditure of public funds. Accordingly, we have tried to assist your staff in every way possible to achieve a dispassionate review and critique of our actions over the past three years.

We look forward to the opportunity to discuss this matter with you at your earliest convenience.

Sincerely,


John R. Sears, Jr.
Chairman

RESPONSE FROM THE NORFOLK RECREATIONAL FACILITIES AUTHORITY

The JLARC Special Report accurately portrays the Cousteau Ocean Center, its genesis and the progress of its development.

The Cousteau Ocean Center project as a visitor attraction has been and continues to be a major component to the 1990 Plan for Revitalization of Downtown Norfolk. The project, as envisioned, will provide a significant additional travel destination of international proportions to the Commonwealth of Virginia and the southeastern region. Its direct and indirect impacts on state and local tax revenues are enormous and have been documented and made part of the January, 1985 report to the Senate Finance and House Appropriations Committees. Perhaps of more significance, however, will be the value of the Commonwealth of Virginia being identified with such an internationally recognized activity.

The JLARC Report establishes three criteria for dealing with the central issue of whether or not a reasonable approach was taken by NRFA and C.O.C., Inc. in the development of the Cousteau Ocean Center project. To those basic questions we would respond as follows:

- . Does the proposed project conform with community goals and plans for waterfront development?

Clearly it does. The Cousteau project is one of the major features in the 1990 Downtown Development Plan. The implementation of this plan to date is dramatic in its impact on downtown Norfolk and the entire city. Other components of this plan constructed to date and under construction are producing excellent economic results.

- . Is the project financially viable?

Capital financing of the project has been designed so that no continuing operating subsidy is likely to be necessary. Through the use of public

and private capital grants, the project is conservatively projected to be self-sustaining and will pay its operating costs, debt service and replacement reserves.

- . Have the purpose, scope and nature of the project been adequately defined?

Yes, they have been. Refinements in the architectural and exhibit designs are usual in a project of this magnitude and complexity in order to better relate design goals to economic reality. This project has had the benefit of nationally respected leadership in exhibit design, architectural design and financial advice.

A number of comments have been directed toward the issue of NRFA, C.O.C., Inc. and H.R.O.C., Inc. compliance with the Virginia Public Procurement Act, which became effective on January 1, 1983.

In all cases where NRFA directly procured professional services, procurement requirements have been adhered to.

As design activities began in 1982, Cousteau Ocean Center, Inc. (C.O.C., Inc.) was organized as a 501(c)3 corporation, affiliated with The Cousteau Society, Inc., also a 501(c)3 corporation. This was done to separate the financial aspects of the project design activities from those of the day-to-day activities of The Cousteau Society. C.O.C., Inc. was to be the umbrella under which all design activities would take place. Given the nature of the project, the direct involvement of Captain Cousteau, Jean-Michel Cousteau and The Cousteau Society staff is imperative and this mechanism accommodated that requirement.

C.O.C., Inc., then, was treated as a sole source contractor although where feasible, NRFA required C.O.C., Inc. to competitively negotiate with its subcontractors. As the JLARC report points out, architectural services from Stubbins and Associates were procured by a "highly competitive" process "involving a large number of firms".

Roland Crump was originally hired by C.O.C., Inc. in 1982 as the exhibit designer for the project. During the process of his selection, several exhibit designers and design firms were interviewed by NRFA and C.O.C., Inc. staff. The principal criterion for selection was a background of quality design work, the style of which was consistent with the direction of the Cousteau theme. Mr. Crump's qualifications are outstanding and without question.

The process of interviewing a number of designers and asking for fee estimates from some provided a basis for judgment by NRFA and C.O.C., Inc. on an appropriate level of costs for design of the project.

A condition of Mr. Crump's original employment by C.O.C., Inc. was that he would select and hire various artists, draftsmen, etc. on a part time employment basis, as required by the progress of the project.

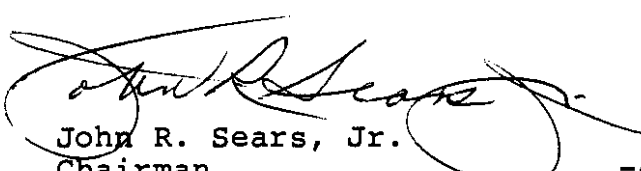
By this process NRFA and C.O.C., Inc. were assured of receiving a desirable quality and level of professional design services for a reasonable price.

The procurement of architectural and design services by C.O.C., Inc. in contracts subsequent to the originals with Crump and Stubbins was clearly required in order to maintain design consistency.

We submit that NRFA, C.O.C., Inc. and H.R.O.C., Inc. have endeavored to adhere to statutory requirements for procurement, accounting and reporting during the development of this project. Any deviation from those requirements have been technical errors of omission and have not been contrary to the spirit of the law. As the JLARC report (p.13) points out, we have made a "good-faith effort"...."to advance the project toward completion".

We believe that the conclusions of the report are reasonable and well founded, and we generally concur with the recommendations albeit with the following observations.

It is clearly the intent of the JLARC staff to urge the General Assembly to promulgate guidelines for the expenditure of Commonwealth funds by non-state agencies. We agree that reasonable guidelines are needed and would be helpful in achieving a better mutual understanding of the respective goals of the state and non-state agencies in developing projects.


John R. Sears, Jr.
Chairman



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The Cousteau Society

December 20th, 1985

Mr. Ray D. Pethtel
Director
Commonwealth of Virginia
Joint Legislative Audit and Review Commission
Suite 1100
General Assembly Building, Capitol Square
Richmond, Virginia 23219

Dear Mr. Pethtel:

Thank you for the opportunity to comment on the exposure draft of the program audit of the Cousteau Ocean Center project.

I believe your staff has done well in understanding a complex 5-year project in the short four months of their audit.

I think it is unfortunate, however, that the written report cites letters/memoranda and selects quotes out of context in a way that strings events together when in fact there was not a direct causal link between many of those events.

Of particular concern in this regard are the statements on pages 8-9 of the report which deal with the feasibility analysis, the hiring of the architectural firm, and the production of a presentation film.

Feasibility Analysis: Over the last 3 years Harrison Price Company provided attendance estimates first of 1,000,000 (in October, 1982), then of 835,000 (in December, 1982) and most recently of 650,000 (in April, 1985). In each case, the design team based its facility scope and size on the estimate available and, of necessity, modified the design when the estimate changed. Had there been one definitive attendance estimate in October, 1982, as required by NRFA's first contract with Harrison Price Company, perhaps there would have been no need for the changes in the facility's size and exhibitry.

Hiring of the Architectural Firm: The Stubbins Associates was hired by COC, Inc. with the expressed approval of the Executive Director of NRFA, the funding agent of COC, Inc. A contract between COC, Inc. and Stubbins was prepared and submitted to NRFA prior to hiring. That contract was sent by the Executive Director of NRFA to the Norfolk City Attorney for review.



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After weeks of waiting for a response by the City Attorney, it was concluded with the Executive Director of NRFA that under the terms of COC, Inc.'s current contract with NRFA, COC, Inc. could and should proceed to hire The Stubbins Associates for professional consultation on the architectural concept.

The wording on page 9 suggests that COC, Inc. acted solely on its own in hiring Stubbins. The record, however, will support the above sequence of events.

Production of Presentation Film: The wording on page 8 suggests that COC, Inc. acted unilaterally in making a film. Please note that the film was produced for COC, Inc. by The Cousteau Society not by the design team. More importantly, being a film producing company, The Cousteau Society believed a film was the best way to convey the Ocean Center concept to the State Legislature, the City Council, numerous City organizations and to prospective donors and sponsors. Again, that idea was approved by the Executive Director of NRFA prior to any initiation of production.

Most importantly, I cannot agree with the wording of the first conclusion on page 13. I believe the record will show that there has never been any misunderstanding about the purpose of the Cousteau Ocean Center. The purpose has always been to create a public attraction that is both entertaining and educational. What has hampered development is lack of consensus on the financing and on how funds should be spent. That indecision necessitated numerous start-ups and shut-downs of the design process and ultimately led to the cessation of all design for 2 years while funds were allocated to the negotiation of legal agreements.

Further, the whole development process has been prolonged more by the inexperience of all parties in creating this kind of a facility and in developing the appropriate legal structures for it, rather than only by the inexperience of The Cousteau Society. As the length of the list on page 2 of the report illustrates, the inclusion in any project of seven different types of legal entities, each with its own constituencies, is no easy task.



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In conclusion, I must add that what I have always found most interesting about this project is not the difficulties. On the contrary, I am struck by the fact that in spite of the difficulties, committed people have pulled together and agreed on the legal framework and the design for a unique facility.

Thank you again for the opportunity to provide my comments.

Sincerely,

A handwritten signature in cursive script that reads "Charles Vinick". The signature is written in black ink and is positioned above the typed name and title.

Charles Vinick
Vice President

TCSCV/jw

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