



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

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PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

B-207486

SEPTEMBER 10, 1982

The Honorable John Tower
Chairman, Committee on Armed Services
United States Senate



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Dear Mr. Chairman:

Subject: Sale of Industrial Assets Owned by the
Department of Defense (GAO/PLRD-82-114)

In your April 13, 1982, letter, you asked us to review the General Services Administration's (GSA's) recent sales of industrial assets, which formerly belonged to the Department of Defense (DOD). You cited the concern of small forging companies that such sales were negotiated rather than competitively bid and that the sales prices may have been below market value. You asked us to review applicable regulations and policies, describe the scope of the Government's annual sales of industrial assets, assure that legal requirements were met on recent sales, assess GSA's ability to accurately determine fair market value, assess the effects of such sales on the industries involved, and provide recommendations.

On May 26, 1982, we met with your Office and provided information responding to the specific matters contained in your request. This letter summarizes the information provided at that meeting.

In developing this information, we reviewed applicable laws and GSA and DOD regulations. We discussed disposal policies and procedures with appropriate GSA and DOD representatives. We also reviewed property disposal records and files maintained by GSA's Federal Property Resources Service, the organization with primary responsibility for disposal of facilities. We did not visit any of the five facilities which GSA sold in 1981 and 1982 or discuss the disposal with any of the companies that purchased the facilities. Since the sale of Air Force plant 47 to the Aluminum Company of America (ALCOA) and the sale of Air Force plant 63 to the Wyman-Gordon Company (both in 1982) accounted for over 85 percent of the total 1981 and 1982 GSA sales proceeds, we concentrated our detailed analysis on these transactions.

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REGULATIONS AND POLICIES

Disposal of real property by GSA is governed by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.). Section 205(c) of the act authorizes the Administrator of General Services to prescribe

"regulations as he deems necessary to effectuate his functions under this Act; and the head of each executive agency shall cause to be issued such orders and directives as such head deems necessary to carry out such regulations."

Regulations issued by GSA under this authority are codified in part 101-47 of the Federal Property Management Regulations. These regulations are published in title 41 of the Code of Federal Regulations (41 CFR 101-47).

Federal Property Management Regulation, subpart 101-47.3, deals specifically with the disposal of surplus real property. It expresses as general policies that (1) GSA would normally be the disposal agency for real property and related personal property (101-47.302-3), (2) the disposal agency shall, in all cases, obtain an appraisal of the fair market value of property available for disposal (101-47.303-4(a)), and (3) negotiated sales are permitted only in certain situations. The situation usually cited by GSA, and the one cited for the sales of plants 47 and 63, quotes the authority contained in the Federal Property and Administrative Services Act of 1949. It says that negotiated sales may occur when

"the character or condition of the property or unusual circumstances make it impractical to advertise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation." [101-47.304-9(a)(3)].

One of the principal DOD regulations pertaining to the disposal of industrial facilities is DOD Directive 4275.5, dated October 6, 1980. It states that DOD is to "minimize government ownership of facilities" when consistent with the ability of these facilities to economically support DOD production requirements. The directive says this policy will be accomplished through "an orderly phase-down of current government ownership and the use of methods to encourage greater investment by private industry in facilities supporting defense programs." A DOD industrial facility manager said that this has been a DOD policy since enactment of Public Law 93-155 in 1973. Section 809 of that law created the Defense Industrial Reserve Act and contained

a declaration of congressional purpose and policy which said (in section 2) that "to the maximum extent practicable, reliance will be placed upon private industry for support of defense production."

SCOPE OF SALES TO
THE PRIVATE SECTOR

Since 1961 GSA has sold 113 Government-owned, contractor-operated facilities. Of this total, 108 facilities have been sold by negotiation. Three facilities were sold in 1981 and two in 1982. All were sold by negotiation. Information on the 1981 and 1982 sales is summarized below.

<u>Sale date</u>	<u>Facility description</u>	<u>Purchaser</u>	<u>Sale price</u>
Mar. 4, 1981	Air Force plant No. 50 Halethorpe, Md.	Kaiser Aluminum	\$6,500,000
Mar. 13, 1981	Machinery and equipment at the EX-CELL-O Corp. Lima, Ohio	EX-CELL-O Corp.	195,000
Oct. 30, 1981	Machinery and equipment at the Arcturus Manu- facturing Corp. Oxnard, Calif.	Arcturus	558,000
Feb. 26, 1982	Air Force plant No. 47 Cleveland, Ohio	ALCOA	13,300,000
June 3, 1982	Air Force plant No. 63 North Graffon, Mass.	Wyman- Gordon	<u>34,450,000</u>
Total			<u>\$55,003,000</u>

COMPLIANCE WITH LEGAL REQUIREMENTS

Before a military service can report to GSA that it has real property excess to its needs and thus available for disposal, it must submit a report to the House and Senate Committees on Armed Services. Title 10, section 2662(a) of the United States Code specifies that the secretary of a military department must wait "until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction" has been submitted when it involves a "report of excess real property owned by the United States to a disposal agency" with an estimated value of more than \$100,000. In compliance with this requirement, the Air Force submitted report 211 on Air Force plant 63 and report 333 on Air Force plant 47.

Similarly, GSA is required to report to congressional committees any negotiated sales of real property. Section 203(e)(6) of the Federal Property and Administrative Services Act (40 U.S.C. 484) requires that GSA submit "an explanatory statement of the circumstances of each disposal by negotiation" of any real property with a fair market value in excess of \$1,000 to "appropriate committees of the Congress." GSA submitted explanatory statements to the Senate Committee on Governmental Affairs and the House Committee on Government Operations on January 19, 1982, for the sale of Air Force plant 47 and on March 18, 1982, for the sale of Air Force plant 63.

GSA sold these properties by negotiated sale, citing the authority contained in section 203(e)(3)(G) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484). This authority is cited in the Code of Federal Regulations 101-47.304-9(a)(4) as noted on page 2. GSA claimed that negotiated sale was necessary in order to comply with restrictions placed on the sales by the Air Force. According to the Air Force's reports to the House and Senate Committees on Armed Services on the sale of plants 47 and 63, these restrictions were "a sale to the current operator" with the conditions "(a) that the existing capability for defense production is preserved for 10 years from the date of transfer of title, and (b) the utilization of the property by the purchaser will not jeopardize the capability of the facility to meet military production during that period." These facilities are presently being used to produce items for such military weapons systems as the F-15 aircraft, the TRIDENT missile, and the BLACKHAWK helicopter.

These statements are similar to those contained in GSA's reports to the Senate Committee on Governmental Affairs and the House Committee on Government Operations, except that the restrictions on availability of the production capability in the GSA reports were for 5 years. GSA made this change based on later information from the Air Force.

Section 207 of the Federal Property and Administrative Services Act of 1949, as amended, states that any sale of industrial facilities with a cost of \$1 million or more to private interests requires notice to the Attorney General so that he may provide advice on whether the proposed sale "would tend to create or maintain a situation inconsistent with the antitrust laws" (40 U.S.C. 488). GSA provided this notice for Air Force plant 47 on January 25, 1982, and for Air Force plant 63 on December 2, 1981. The Assistant Attorney General of the Antitrust Division advised GSA that these sales did not appear to be disposals "which would tend to create or maintain a situation inconsistent with the antitrust laws of the United States."

DETERMINATION OF FAIR MARKET VALUE

When selling real property by negotiation, GSA is required to obtain fair market value. GSA estimates fair market value by performing a market analysis of the property to be sold. In doing this for the sale of Air Force plants 47 and 63, GSA used the services of an independent contract appraiser. The appraiser used Air Force and contractor property records and made an item-by-item appraisal based on the estimated condition and useful life of the property. This detailed information was included in his report to GSA. GSA used this as advisory information and established a fair market value for each property. For Air Force plant 47, the fair market value was \$13.3 million. For Air Force plant 63, it was \$34.45 million. GSA sold the plants for these prices.

EFFECTS ON INDUSTRIES

Other companies in the metal working industry have claimed that these sales have given ALCOA and Wyman-Gordon an unfair advantage because only they were permitted to bid on the facilities, and the facilities were sold at prices that were too low.

As noted above, these facilities were sold by negotiation to ALCOA and Wyman-Gordon in compliance with the conditions of sale established by the Air Force. One of the conditions was sale of the properties only to the current operators. A DOD representative said this was to avoid disruption of production at these facilities because they were being used to support important military weapons systems. We did not attempt to evaluate the validity of the claim that a sale to parties other than the operating companies would disrupt the production contracts. But it seems reasonable that such sales could entail some disruption of production if the facilities were no longer available for use by the contractor.

We were told that the heavy presses at plants 47 and 63 were unusual in relation to the metal working capability of other companies within the industry. To the extent these facilities are unique within the industry, it appears they could provide a production advantage not available to other companies.

As noted earlier, estimated fair market value was determined by GSA based on a market analysis and an appraisal of the fair market value of the facilities by a professional contract appraiser. The facilities were sold at the estimated fair market value. However, if we assume that the prices paid by any contractor would be equal to the fair market value of the facilities, it seems likely that the startup costs for the facilities to any other purchaser would have been greater than for the operating purchaser. To this extent the operating purchaser had an economic advantage.

COMMENTS ON GSA'S
ADMINISTRATION OF SALES

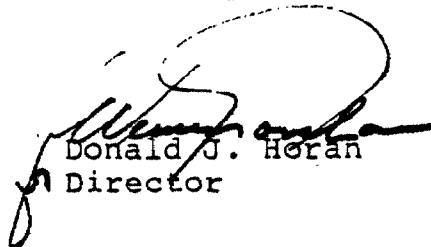
The sales of industrial facilities to ALCOA and Wyman-Gordon appear to have been properly administered by GSA and in accordance with applicable laws and regulations. In view of the facts that these contractors had ongoing defense contracts on which the facilities in question were being used and the Air Force determined that the performance of these contracts could not be disrupted by the sale of the facilities to other contractors, GSA was not in a position to make the sales through competitive bidding. Further, considering that GSA obtained an independent appraiser's estimates of the fair market values of the facilities before negotiating the sales prices with ALCOA and Wyman-Gordon, we have no basis to criticize GSA's procedures for establishing the sales prices.

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As instructed by your Office, we did not obtain written agency comments on this report, but we did discuss its contents with Defense and GSA representatives.

As agreed with your Office, we are sending copies of this report to the Chairmen, Senate Committee on Governmental Affairs and House Committees on Government Operations and on Armed Services; the Secretaries of Defense and the Air Force; and the Administrator of General Services. We will also make copies available to others who have expressed an interest in this matter.

Sincerely yours,



Donald J. Heran
Director