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Mr. Cambos

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

PLRD/FAM-6

B-202459 May 21, 1981

The Honorable James J. Howard
Chairman, Committee on Public Works
and Transportation
House of Representatives

Dear Mr. Chairman:

In response to your February 20, 1981, request, we are providing the enclosed comments on ~~the~~ proposed legislation ~~(H.R. 1938)~~ referred to as ~~the~~ Public Buildings Act Amendments of 1981. The legislation would change the way the General Services Administration conducts its public buildings program. Some of the changes are in line with recommendations contained in our prior reports. Among other things, the proposed legislation would revise the method of financing public buildings construction and would require emphasis on the disclosure of GSA's long-range planning for its building program.

We would be pleased to meet with you and your staff to discuss further our comments on the proposed legislation and to assist you in any way to secure its passage.

Sincerely yours,

Milton J. Socolar

Milton J. Socolar
Acting Comptroller General

Enclosure

Bill Comment - Enclosure to be abstracted per GPL

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ENCLOSURE

PUBLIC BUILDINGS ACT AMENDMENTS OF 1981 (H.R. 1938)

PUBLIC BUILDING FINANCING

Section 4(c) of the proposed legislation would authorize the Administrator of General Services to borrow from the Treasury for periods up to 30 years, to the extent authorized in annual appropriations acts, amounts necessary to finance the acquisition or construction of any public building. This section is consistent with the recommendation contained in our October 17, 1979, report (LCD-80-7). We reported that for several years, funds for construction, either through direct appropriations or from General Services Federal Buildings Fund, have been limited. As a result, General Services has relied on leasing as the only practical method available to meet increased space needs.

Also, we stated that from the standpoint of the Federal Buildings Fund, direct Federal construction has a more favorable long-term budgetary impact than either purchase contracting or leasing. Purchase contracting, however, has a more favorable long-term budgetary impact than leasing.

We recommended that, if the Congress wants to provide the General Services Administration (GSA) with another financing alternative to direct Federal construction and leasing, it should limit the agency's financing authority to direct loans from either the Treasury or the Federal Financing Bank.

ALTERATIONS TO LEASED BUILDINGS

Section 4(c) of the proposed legislation would add also subsection 7(f) to the Public Buildings Act of 1959. This new subsection would require the Administrator to submit a report on proposed alterations in leased buildings that exceed $500,000 to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation. Such alterations could not be made if either Committee disapproved the alterations during a 30 day period after the report was submitted by the Administrator.

In our September 1978 report (LCD-78-338), we stated that there is no requirement in the 1959 act for congressional approval of, or reporting of, alteration projects in leased buildings. However, the 1959 act does require prior approval for alterations in Government-owned buildings over $500,000. We concluded that alterations to a leased building require closer scrutiny because they may (1) increase the value of the leased building which the Government does not own and (2) weaken the agency's negotiating position for follow-on leases.

We recommended that the Congress amend the Public Buildings Act of 1959 to require congressional authorization of alterations to leased space which involve a total expenditure in excess of $500,000.

The proposed requirement for advanced reporting will give the Congress the needed visibility and control over alterations in leased buildings and it is consistent with our prior recommendation.

Section 4(c) of the proposed legislation would further amend the 1959 act by adding subsection 7(g). This subsection would provide that the Administrator may not lease space to accommodate, among other things, major computer operations.

In our September 1978 report and in our January 1980 testimony on Senate bill 2080, we stated that GSA spent large amounts of money for altering leased space for computer operations. Some of these alterations were made before leases expired without attempting to renegotiate the lease term or the rent. We concluded that alterations made shortly before the expiration of the lease is poor strategy and weakens GSA's negotiating position on follow-on leases.

We agree that major computer operations should not be located in leased space; rather, they should be located in Government-owned buildings. However, since so many computer facilities are presently located in leased space and limited Government-owned space is available, GSA may not be able to avoid locating computer operations in leased space.

According to the proposed subsection 7(g) of the 1981 amendments to the 1959 act, exceptions to the requirement for not locating major computer operations in leased space must be reported to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation.

COMPETITIVE OFFERS FOR LEASING SPACE

Section 4(c) of the proposed legislation, which adds subsection 7(h)(1) to the Public Buildings Act of 1959, requires the Administrator to publicly solicit competitive offers or bids to procure space by lease for the Federal Government. This section is consistent with a recommendation made in our 1978 report that GSA ensure that competition is obtained to the maximum extent practical for both new and follow-on leases.

Generally, leased space is acquired by negotiation rather than advertised sealed bids because true competition--in the sense bidders are offering the same or substantially the same property--is impossible since no two buildings are alike. Federal Procurement Regulations require that, whenever property or services are to be procured by negotiation, proposals should be solicited from the maximum number of qualified sources to the end that procurement will be made to the best advantage to the Government, price and other factors considered (41 CFR 1-3.101).

Although most of the Federal Procurement Regulations do not specifically apply to leasing of real property, GSA has adopted

and implemented many of the provisions of the regulations in its leasing program to encourage competition. In our 1978 report (LCD-77-354), we reported that although it was GSA's policy to obtain competition, only limited competition existed on many lease awards. We reviewed 65 lease awards and 43 follow-on lease actions and found that GSA negotiated with only one offeror on 55 percent of the new lease awards and 95 percent of the follow-on leases.

ANNUAL REPORT

Section 5 of the proposed legislation would amend section 11 of the 1959 act to require the Administrator to include more information on public buildings projects and leasing activities in GSA's annual report to the Congress.

So that Committees, the Office of Management and Budget, and GSA management can monitor GSA's progress and performance in satisfying agencies space requirements, we suggest that information on GSA's performance in this area also be included in the annual report. Specifically, GSA should report on the number of space requirement requests on hand at the beginning of the year, requests received during the year, number satisfied during the year, and the number on hand at the end of the year. Concerning the number remaining at years end, information should be provided for those pending more than 6 months, which is GSA's standard for meeting a space request.

Agencies consistently complain that it takes GSA too long to satisfy space requirements and we noted that the time frame and backlog of requests is increasing each year. Some of the agencies are frustrated because GSA has not filled their requests in a timely manner. As a result, they have requested independent leasing authority in their annual appropriations acts.

PUBLIC BUILDINGS PROGRAM PLAN

Section 5(b) of the proposed legislation, amending section 11 of the 1959 act, would require GSA to submit to the Congress each year a program plan for construction, acquisition, and alteration, lease and lease renewals, buildings to be vacated, and other information relating to its public building needs. The proposed program plan should provide the Congress with a better overview and visibility over GSA's entire public buildings program.

In prior reports we have commented on deficiencies in GSA's space planning and lease alterations. We have concluded that GSA should allow sufficient time prior to lease expiration for developing alternative space plans. In three of our reports, we commented on seven cases where GSA paid rent of about $3.5 million before leased buildings were available for occupancy. This situation can be attributed in part to poor space planning.

ECONOMY ACT LIMITATIONS

Section 6 of the proposed legislation provides for a waiver of the 15 percent rental limitation contained in section 322 of the Economy Act of 1932 (40 U.S.C. 278a). Granting the Administrator the authority to waive the 15 percent limitation on rental rates could result in a routine waiver process that, in effect, renders the limitation meaningless.

Section 322 of the Economy Act states that for any building occupied for Government purposes the rental will not exceed the per annum rate of 15 percent of the fair market value of the rented premises at the date of the lease. In addition, alterations, improvements, and repairs will not exceed 25 percent of the first year's annual rent. These limitations apply to leases with an annual rent in excess of $2,000 a year.

Section 210 of the Federal Property and Administrative Services Act of 1949, as amended, permits GSA to exceed the 25 percent limitation if the Administrator submits a certificate of determination (waiver) indicating that work in excess of the limitation is advantageous to the Government. In other words, the Administrator can waive the 25 percent limitation but he cannot waive the 15-percent limitation on rental rates.

In our September 14, 1978, report (LCD-78-338) we concluded that the 25-percent limitation on alterations in leased buildings is not an effective mechanism for limiting and controlling the amount expended for alterations and we recommended that the Congress eliminate the provisions of the law relating to the 25-percent limitation. The limitation was exceeded on most leases reviewed. Automatic approval of certificate of determinations (waivers) and noncompliance with procedures make the limitation ineffective.

In a May 1978, draft report done as part of the President's Reorganization Project on Real Property, the task force suggested that the threshold for applicability of the Economy Act be changed from $2,000 to 5,000 square feet.

In our reviews of GSA leasing activities, we found that application of the 15-percent limitation is sometimes a problem when acquiring small blocks of space in the inter city because very limited or no suitable space is available and that which is available may exceed the Economy Act limitation. For example, GSA has experienced difficulty in leasing Social Security district offices (which average about 5,000 square feet) in part because no suitable space was available.

We suggest that as an alternative to granting the Administrator the authority to waive the 15-percent Economy Act rental limitation,

consideration be given to changing the threshold figure from $2,000 to 5,000 or 10,000 square feet. In line with our prior recommendations, we also suggest that the 25-percent limitation on alterations in leased buildings be eliminated.

FULL FUNDING

Section 10 of the proposed legislation would amend the Public Buildings Act of 1959 by adding several new sections including section 26. This new section would require an appropriation for the estimated cost of construction, renovation, or acquisition projects in the fiscal year for which the appropriations are authorized. In other words, the total estimated project costs would be fully funded and be recorded as budget authority in the first year. This section would also apply the full funding concept to leases in excess of 5 years. The maximum costs of such leases over the entire term would be recorded as budget authority in the first year.

We have reported and testified that as a matter of budget policy we favor the full funding concept because it more accurately discloses the total obligations associated with a project. Application of the full funding concept to construction or acquisition projects is difficult because of the large initial outlays for such projects which have a significant impact on the national budget in the years that appropriations are approved. In times of unusually large demands on the budget, construction projects, because of their impact, are the first to be eliminated. Since sufficient funds are not available for construction, GSA has been unable to sustain a viable building program, and it has relied on leasing as the only practical method available to meet space needs.

Currently, the full funding concept does not apply to leasing. The total rental payments on leases (up to 20 years in some cases) to which the Government is committed is much greater than the annual lease payments that appears as budget authority in the annual appropriations acts. For example, in fiscal year 1980, annual lease payments of $575 million appears as budget authority in GSA's annual appropriations act, yet the Government is committed to over $2 billion in lease costs over the remaining life of these same leases.

The total outlays on a lease project spread over 20 years will be greater than the total outlays for a comparable federally constructed project. Recording the budget outlays in one year rather than in 20 increments has a greater impact for the federally constructed project in the first year.

We recognize that it may not be practical to apply the full funding concept to all GSA leases (over $2 billion) in any one year. However, we believe that there should be a consistent application

of the full funding concept to both leasing and construction projects. So that the total budgetary impact of either a lease or a construction project is disclosed and compared uniformly, the total costs should be recorded as budget authority in the first year.

The proposed legislation would apply the full funding concept to leases over 5 years. With this procedure, we believe that GSA could avoid the full funding concept by limiting most of its leases to 5 years or less and entering into follow-on leases for continued occupancy of the same space. Therefore, the impact of leasing from a budgetary standpoint would continue to have an advantage over Federal construction.

You may want to reexamine this section and have the full funding concept apply consistently to all future leases and construction projects.

STANDARD LEVEL USER CHARGES

Section 12 of the proposed legislation amends section 210(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(j)) and requires GSA to establish user charge rates for each year for buildings "at a level approximating commercial rates and charges for space and services of comparable quality, but in no case less than the anticipated costs of providing space and services (including amortized construction cost or leasing costs)."

Under the proposed subsection, GSA could charge an agency a rate equal to the total annual outlays for the space even though the rate is more than comparable commercial rates. If this happens, agencies will complain especially if there are inconsistent rates based on comparable commercial rates or if total outlays exceed commercial rates. For example, we have reported that purchase contract buildings generate a negative cash flow. The income for these buildings from standard level user charges, based on comparable commercial rates, is less than the outlays for principal, interest, taxes, and operating costs.

The basis of amortizing construction costs (30, 40, or 50 years) or amortizing lease costs (initial lease term or total term including options) would have an effect on the user charge rates. But the proposed legislation does not contain criteria for the period and costs for such amortization.

We suggest that the Committee reexamine section 12(a) of the proposed legislation.

ENCLOSURE

CONGRESSIONAL APPROVAL OF
PROPERTY ACQUIRED BY EXCHANGES

Section 3(c) of the proposed legislation adds a new paragraph to section 4(b) of the 1959 act, providing that no public building valued at over $1 million is to be acquired by exchange without a prospectus being approved. This subsection is consistent with prior GAO report recommendations and testimonies. We have reported and testified that any exchange involving the acquisition of public buildings valued at over $500,000 should be subject to either approval by, or advance reporting to, the Congress.