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REPORT TO THE CONGRESS⁰⁹⁹³⁶⁸



BY THE COMPTROLLER GENERAL OF THE UNITED STATES



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Acquisition Of Public Buildings By Leasing And Purchase Contracting

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General Services Administration

General Services Administration lease files of-
ten did not show

--whether negotiations had taken place
with other than the lessor or

--whether market surveys had been made.

The General Services Administration reports
to the Congress on construction costs do not
show whether projects can be completed
within the authorized cost limits.

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APRIL 16, 1976

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

B-95136

To the President of the Senate and the
Speaker of the House of Representatives

This report summarizes the results of our review of the acquisition of public buildings by leasing and purchase contracting by the General Services Administration.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget and the Administrator of General Services.

A handwritten signature in black ink, reading "James R. Stacks".

Comptroller General
of the United States

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ABBREVIATIONS

GAO	General Accounting Office
GSA	General Services Administration

D I G E S T

The General Services Administration provides the Government with buildings either by leasing or by construction.

Public Law 92-313 enacted in 1972 requires that the approval of Senate and House Committees on Public Works be obtained before leasing space in any building at an average annual rental over \$500,000. (See p. 2.)

During fiscal years 1973 and 1974, the General Services Administration awarded seven leases (\$9.5 million a year) which required congressional approval. (See p. 5.)

Market surveys (made to determine whether property is suitable for leasing) are required by regulations. They were either not made or not documented for about half of the 79 leases not requiring congressional approval in 1974. The Government may or may not have identified the most advantageous leasing opportunities. GAO does not know. Lease files often did not show whether negotiations had taken place with other than the lessor. GAO could not assess how often negotiations had been conducted with prospective lessors. (See pp. 6 and 7.)

The Administrator of General Services should adopt controls so that market surveys and negotiations are conducted and recorded as required. (See p. 7.)

Public Law 92-313 also provided a 3-year authorization for the General Services Administration to contract with private contractor to finance and construct public buildings. (See p. 2.)

As of January 1976, General Services Administration had arranged for about \$3.65 billion for financing and constructing 68 projects. Twenty-three projects (\$283.1 million) are financed under a package system employing contracts which cover both financing and constructing. (See p. 8.)

The remaining 45 projects (\$3,369.2 million) are financed under the dual system--General Services Administration arranges for the financing and constructing separately. Of 30 projects financed at the time of GAO's review, 23 construction contracts had been awarded--16 to the lowest bidder. GAO did not identify any problems with awards of the remaining seven contracts. (See p. 9.)

As of January 1976, General Services Administration had no specific plans to propose legislation to extend the 3-year contract authority. (See p. 8.)

The General Services Administration annually reports to the Congress the original cost estimate and the status of construction of buildings authorized. Current cost estimates (which should) do not provide a measure of whether projects can be completed within the amounts approved. (See p. 10.)

The Administrator of General Services should include in his reports to the Congress his most recent construction cost estimates. (See p. 10.)

GAO discussed this report with General Services Administration representatives who agreed with it.

CHAPTER 1

INTRODUCTION

In 1972 the Congress enacted Public Law 92-313 to strengthen its control over the General Services Administration's (GSA's) acquiring space through leases and to expedite construction through purchase contracts. Since 1972 some widely publicized instances of alleged kickbacks and favoritism in awarding these contracts caused Members of Congress to question the adequacy of GSA procedures for leasing and constructing buildings under Public Law 92-313.

SCOPE

We reviewed GSA policies, procedures, and practices for acquiring space by lease or construction, as well as the validity of the prospectus 1/ data GSA submitted to the Congress. We did not look into the backup data supporting any comparative cost analyses relating to lease versus purchase; this is the subject of another review. We also looked into leasing actions not requiring submittal of prospectuses to the Congress. We examined records and held discussions with appropriate officials. We made our review at GSA Headquarters; Region 3, Washington, D.C.; and Region 8, Denver, Colorado.

1/A prospectus is a proposal document containing information about the need for a project, including estimated cost or rental.

CHAPTER 2

BACKGROUND

In fulfilling its responsibility for acquiring space to meet Federal agencies' needs, GSA normally either leases space from private contractors or has them design and construct new public buildings.

The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490), and Executive orders issued pursuant to the act direct the Administrator of GSA to initiate and maintain plans and programs for the effective and efficient acquisition of federally owned and leased buildings. Buildings are acquired by Federal construction, purchase contract, or lease. The act specifically authorizes the Administrator to enter into leases not to exceed 20 years, to accommodate Federal agencies in buildings which are in existence or which are to be erected by the lessors for such purposes.

In fiscal year 1963, by a restriction in its appropriation act, GSA was required to obtain prospectus approval of the Public Works Committees of the Congress prior to the payment of rent for space in buildings to be erected with a construction cost in excess of \$200,000. In 1972, Public Law 92-313 amended the law to require prospectus approval prior to the appropriation of funds for the leasing of space in buildings exceeding an average annual rental of \$500,000. The law not only raised the minimum from \$200,000 construction cost of buildings to be erected to an annual rental of \$500,000 but brought under this procedure all other leases over \$500,000 annual rental. As the result of this law, the annual appropriation restriction was no longer placed in GSA's appropriation act. Public Law 92-313 also required congressional approval of a prospectus in cases where construction, alteration, or purchase of a building was expected to exceed \$500,000. (Previously the limits were \$100,000 for construction and \$200,000 for alterations.)

Public Law 92-313 further provided GSA a 3-year authorization to make purchase contracts with independent contractors which would finance and construct public buildings to meet GSA specifications. GSA would make installment payments over 30 years to amortize construction and financing costs. Title to the buildings would transfer to the Government at the end of this period.

We have issued several reports on GSA's leasing procedures in which we concluded that GSA was following its regulations and procedures. Since 1963 the annual appropriation

acts have contained restrictions requiring that GSA obtain congressional Public Works Committees approval for leasing buildings to be erected for Federal agencies at construction costs estimated to exceed \$200,000.

In our report to the Congress dated April 19, 1972 (B-118623), we stated that GSA considered these restrictive provisions not applicable to the leasing of a building to be erected, if the building were already under construction. GSA classified a building as under construction if the bidder for the lease: (1) had title to or control of a building site, (2) had a complete design of the building, (3) had construction financing fully committed, (4) had a building permit for the entire building, and (5) had a firm construction contract or had started construction.

We noted that (1) GSA conducted advance discussions and negotiations with private developers, (2) developers did not undertake construction as private ventures until after GSA made known its space requirements, (3) lease solicitations were not issued until GSA was satisfied that the developers with whom discussions had been held had met the five criteria, and (4) competition was thus limited. We stated that this practice did not constitute an objective administrative application of the appropriation act restriction.

Before our report was issued April 1972, legislation was introduced which required congressional approval of all leases having annual rentals exceeding \$500,000, thus strengthening congressional control over GSA's leasing program. Public Law 92-313, approved June 16, 1972, enacted this legislation. Since enactment of this law, GSA has submitted prospectuses for space requirements exceeding \$500,000 annually.

As of June 30, 1975, GSA was leasing about 88 million square feet of space with an annual rental cost of about \$424 million.

CHAPTER 3

LEASING

On receiving a Federal agency's space request, GSA determines whether federally controlled space is available or whether space must be acquired by leasing or construction. If GSA decides to lease space, the following procedures are used.

- A newspaper notice is published, including amount and type of space, delineated area, solicitation date, offer submission deadline, and proposed lease terms. (This requirement is waived for (1) space acquisition of less than 1,000 square feet or (2) Social Security Administration and Selective Service System activities of 5,000 square feet of space or less.)
- A market survey is made of available properties and offers are solicited.
- Offers are evaluated and those properties deemed capable of meeting agency needs are physically inspected.
- After inspection discussions are held with all responsible offerors meeting the minimum stated requirements. These discussions are held for negotiating an acceptable price and resolving uncertainties about requirements and specifications. If the annual net rent (excluding costs such as heat, light, and janitorial services) exceeds \$2,000, GSA must appraise the fair market value of the property before lease award. The Economy Act (40 U.S.C. 278(a)) limits the net rent to 15 percent of the property's fair market value.
- Before lease award the requesting agency must provide written acceptance of the space.
- The lease is then awarded to the offeror whose negotiated offer is most advantageous to the Government, price and other factors considered. If the lease is awarded to other than the low offeror, justification must be documented.

VALIDITY OF LEASE PROSPECTUS DATA

According to GSA there were about 80 leases with net annual rentals over \$500,000 in February 1975. Since Public Law 92-313 was enacted through fiscal year 1974, the Congress has approved seven lease prospectuses. Of these, one was a new lease, and the others were renewals or extensions. The lease awards were for a total of 1,544,000 square feet at an annual rental of \$9,473,000. Each lease award was equal to or less than the rental specified in the prospectus. In six leases the amount of space leased was equal to or greater than the prospectus estimate. Thus, in these instances the Government received lease space at the same or lower cost per square foot than that in the approved prospectus. In the remaining lease the square footage and annual rental was less than that in the approved prospectus.

The lease contained a square footage rate that was greater than in the prospectus estimate. Specifically GSA proposed leasing 150,000 square feet at an annual rental of \$1,425,000. The actual lease award was for 137,193 square feet at \$1,396,500 annual rental. Thus, on a basis of square footage cost GSA paid \$0.68 (7 percent) more per square foot while staying within the total dollar value approved for the lease.

Agency officials said the differences between actual amount of the lease awards and the prospectus estimates were due to (1) changes in agency requirements, (2) the time lapse between the prospectus submission and the lease negotiations, and (3) market fluctuations.

Public Law 92-313 does not specifically provide for exceeding the maximum costs in lease prospectuses. According to GSA officials, further approval of the Public Works Committees of the Congress is required before the estimated maximum rental cost stated in the previous approved prospectus can be exceeded. They stated, however, that the amount of square feet may vary without further congressional approval from that stated in the prospectus so long as this is within a reasonable range.

LEASE ACTIONS UNDER \$500,000

We reviewed lease actions in two GSA regions which accounted for about 45 percent (about \$145 million) of the annual rental GSA paid during fiscal year 1974. We examined 248 terminated leases having annual net rentals of \$2.9 million and 79 new leases having annual net rentals over \$2.1 million. None of the leases exceeded \$500,000 in annual rental.

Of the terminated leases, two were canceled before the normal termination dates. One lease was terminated 6 months early because a fire made the space unusable. The other lease was terminated because the using agency vacated almost 20,000 square feet of space due to a reduction of personnel. An agreement was reached with the lessor for a lump-sum payment of about \$30,000 to relieve the Government of further liability.

Most of the remaining terminated leases (139 leases, or 56 percent) were for consolidating Selective Service System offices due to the All-Volunteer Army requirements.

The 79 new leases were awarded either to meet the expanding space needs of Federal agencies or to relocate other activities. GSA generally complied with its leasing procedures; however, we believe some improvements are needed.

Market surveys

GSA regulations require that thorough market surveys be made of properties suitable for the Federal Government to lease. The surveys are to be fully documented and used as a basis for negotiating lease contracts. An October 1973 GSA memorandum to all regional offices provided a standardized format (type of building, location, condition, and estimated rental) for documenting these surveys. Market surveys were either not conducted or not documented as GSA regulations require for 37 of the 79 leases. Hence, it was difficult to determine whether the Government was identifying the most advantageous leasing opportunities.

Undocumented market surveys occurred primarily in GSA Region 3 where only 7 of 37 leases reviewed had proper documentation. Of the remaining 30 leases, the files of 24 mentioned market surveys, but no supportive documentation was available. For six leases the files contained no references to market surveys. Realty specialists responsible for these surveys said they either had not seen the October 1973 memorandum or had chosen not to use the standardized format because it duplicated work and information which was contained elsewhere in the files.

Negotiations with offerors

Although GSA regulations required negotiations with all responsible offerors, lease files often did not contain

documentation showing that negotiations had taken place with other than the offeror who received the lease award. Thus, it was difficult to assess the extent of negotiations with all prospective lessors.

At times negotiations only took place with the offeror because only one offer was received or because only one site was suitable. An agency official stated that in other instances negotiations had taken place with other offerors but had not been documented. He said all negotiations will be documented in the future.

CONCLUSIONS

GSA generally complied with its regulations for acquiring leased space. There were instances, however, when it was difficult to determine from the lease files because of a lack of documentation whether market surveys were performed or negotiations had taken place with other than the lessor. For leases which required congressional approval, there were often differences between the cost of space and the square footage rental as shown in the prospectus and as shown by the actual lease award. However, the total lease amounts the Congress approved were not exceeded.

RECOMMENDATION

We recommend that the Administrator of GSA adopt controls to insure that GSA regions are performing and recording market surveys and conducting and documenting negotiations as required.

CHAPTER 4

PURCHASE CONTRACTING

In supporting Public Law 92-313, GSA asked the Congress in 1971 for purchase contract authority for 3 years as a stopgap expedient for eliminating the backlog of congressionally approved but unfunded Federal construction projects. At that time GSA listed a backlog of 63 projects, with estimated construction costs of about \$750 million, that could be built under purchase contract arrangements. For various reasons GSA withdrew nine projects from its 1971 list and added another nine projects which the Public Works Committees approved after Public Law 92-313 had been enacted.

As of January 1976, GSA had arranged for about \$3.65 billion for financing and constructing 68 projects, consisting of \$283.1 million for 23 projects under a package system and \$3,369.2 million for 45 projects under a dual system. GSA had no specific plans to propose legislation to extend the purchase contract authority.

PACKAGE SYSTEM

Under this system GSA contracts with independent contractors on a competitive-bid basis for financing and constructing buildings on Government-owned sites. The contract is awarded to the lowest bidder on an annual-payment basis.

The 23 projects to be constructed under the package system were originally approved by the Congress at a total cost of \$86.9 million; due to allowable escalation and financing costs, this amount has increased to \$283.1 million. All these projects are complete. Three projects with total estimated costs, including escalation, finance, and construction, of \$19.2 million went to other than the low bidders.

In one instance the contract was negotiated and awarded on a noncompetitive basis through the Small Business Administration under the authority contained in section 8(a) of the Small Business Act (15 U.S.C. 637(a)). This act allows the Small Business Administration to contract with Federal agencies for procurement (including construction) and then subcontract to minority businesses.

In the other two cases the contract award was made to the second lowest bidder because, according to the project manager, the low bids did not comply with the Government's specifications.

DUAL SYSTEM

The dual system differs from the package system in that GSA obtains the financing mainly through the sale of 30-year participation certificates and awards separate contracts for construction. Financing is required to cover architect-engineer services, construction, taxes on improvements during construction, and other specified costs.

GSA raised \$3,369.2 million to finance and construct 45 projects (originally estimated to cost \$848.4 million) by selling participation certificates for groups of projects. Each of the 9 groups (30 projects) of certificates issued at the time of our review was awarded to the bidder who offered the lowest effective interest rate. Since then the certificates have been sold to the Federal Financing Bank at negotiated rates.

Once financing is arranged GSA enters into construction contracts similar to construction projects funded through direct appropriation. At the time of our review, GSA had entered into construction contracts for 23 projects. Of these, 16 were awarded to the lowest bidder, 1 to the second lowest bidder, 2 under authority of section 8(a) of the Small Business Act, and 4 under the construction manager concept.

Where the second lowest bidder was chosen, a GSA official said the low bidder was not responsive because he submitted more than one subcontractor to do one increment of the project.

GSA makes multiple contract awards under the construction manager concept. A construction manager is selected on the basis of a combination of technical qualifications and price which best serves the interest of the Government. The construction manager is responsible for coordinating and providing general direction to the construction work and progress of the separate construction contractors. Three Social Security Administration payment centers are being constructed using this concept. In addition to contracts for an executive architect-engineer firm and a construction manager to oversee all 3 projects, GSA, acting as a prime contractor, had awarded 50 separate contracts for those 3 projects at the time of our study. Except for two contracts (when the award was to the second lowest bidder) others were awarded to the low responsive bidder or negotiated under authority of section 8(a) of the Small Business Act. In one contract the low bid contained an error, and it was allowed to be withdrawn. In the other contract the low bid was determined to be nonresponsive.

ALLOWABLE COST ESCALATION

Public Law 92-313 allows the maximum cost of any project approved before the law to increase 10 percent a year excluding financing or other costs attributable to this construction method from the date the prospectus was transmitted to the Congress until award of the construction contract. Projects approved after June 1972 are limited to a total 10-percent increase. If costs increase at a higher percentage, additional congressional approval is required.

At the time of our review, GSA had determined that the construction and site acquisition costs of the 23 package-system projects can increase to \$156.3 million without needing to seek further congressional approval. GSA had also raised funds for 30 dual-system projects where congressionally approved prospectus for construction and site acquisition totaled \$539.9 million. GSA translated this amount into a maximum allowable cost of \$780.5 million. Eleven of the dual-system projects and all of the package-system projects were complete as of January 1976.

GSA is required to report annually the cost and status of each building authorized. The cost reported, however, is the amount the Congress approved and does not reflect the latest construction estimate.

CONCLUSIONS

Awards under the purchase contract program were made to low responsive bidders unless awarded under authority of section 8(a) of the Small Business Act.

Because GSA does not report the latest construction cost estimates nor the escalated amounts on projects under the purchase contract program, it is difficult to judge whether these projects will be completed within the congressionally approved limits or if GSA will have to seek additional authorization from the Congress.

RECOMMENDATION

We recommend that the Administrator of GSA include in GSA reports to the Congress on the cost and status of each building its most recent estimate of construction costs on those projects for which contracts have already been awarded.

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