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Report to Rep. Jack Brooks, Chairman, House Committee on Government Operations; .

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A claim was settled by GSA for \$5.3 million in connection with the construction of a Federal Court House and office building in Honolulu, Hawaii. Construction problems, including large quantities of water flowing through the site, added \$9.1 million to the project cost and delayed the project by about 19 months. Findings/Conclusions: The settlement resulted, in part, from GSA's acts and omissions during the project's design and construction. It could not be determined if GSA's decision to settle for \$5.3 million was reasonable. GSA did fail to test the site adequately; it changed the foundation design without making additional tests and eliminated the contract requirement for an onsite dewatering expert. GSA also failed to implement fully a 1967 recommendation to maintain inhouse experts to review foundation designs, interpret soil tests, and correct foundation problems occurring during construction. GSA made several concessions for having the contractor resume work; these concessions provided support to the contractor's allegations of wrongdoing. In addition, GSA did not provide adequate resources to vigorously litigate the

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*REPORT TO THE COMMITTEE
ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES*

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*



Settlement Of Contractor Claims For Construction Of A Federal Building In Hawaii

General Services Administration

General Services Administration settled 29 contractor claims for \$5.3 million.

The construction problems and contract disputes which gave rise to the claims have added \$9 million to the total cost of the project and delayed its completion by about 19 months.

Settlement resulted, in part, from General Services' acts and omissions during the project's design and construction.



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

B-181931

The Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This report is in response to your July 2, 1976, request that we review the \$5.3 million settlement of claims by the General Services Administration in connection with the construction of a U.S. courthouse and Federal office building in Honolulu, Hawaii. The settlement amount, together with litigation expenses and other costs, added \$9.1 million to the project cost.

As your office requested, we did not ask the General Services Administration or the contractor for comments nor did we give them a copy of the report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James B. Atchaf".

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

On December 14, 1972, the General Services Administration awarded a \$28,985,000 contract for construction of a U.S. courthouse and Federal office building in Honolulu. Construction problems eventually led the contractor to file 29 claims with General Services for \$16.6 million in added costs. (See pp. 1-4.)

These problems delayed the project by about 19 months. On June 11, 1976, after 3-1/2 years of dispute, General Services settled the 29 claims for \$5.3 million. This amount, together with litigation expenses and other costs, added \$9.1 million to the total cost of the project. (See pp. 1 and 31.)

The settlement amount may or may not have been reasonable. GAO could not predict how a judge might weigh conflicting evidence in deciding the merits of the claims and only limited information was available on 22 of the 29 claims. The settlement resulted, in part, from General Services' acts and omissions during the project's design and construction. (See p. 7.)

For example, if General Services had made more preconstruction tests of subsurface conditions, its vulnerability to \$11.8 million of the contractor's claims would have been reduced. An earlier evaluation by GAO--reported on in 1967--indicated a need for more effective testing of soil conditions and better review of foundation designs. (See p. 9.)

When the contractor suspended work in June 1974, General Services made several concessions in return for having the contractor resume work. According to a General Services justification for settlement, these concessions gave support to some of the contractor's allegations of wrongdoing. The contractor's largest claim of \$5.6 million was for a 12-month time extension allegedly granted by the agency's contracting officer. (See p. 20.)

After the contractor had filed claims, General Services, at the contractor's request, hired an independent expert to review the claims to expedite settlement. The expert's report, which criticized General Services' project supervision, could have damaged General Services defense if litigation before its Board of Contract Appeals had continued. Efforts to settle the claims delayed the agency's defense preparation by 7 months. (See p. 25.)

When defense preparation resumed, General Services realized that a lot of additional legal, audit, and technical support was needed quickly if an adequate defense were to be prepared. Because it did not provide this support, the agency would not have been well prepared to defend the Government's interests had litigation continued. (See p. 27.)

As the Committee requested, GAO did not ask the agency or the contractor for comments nor did we give them a copy of this report.

CHAPTER 1

INTRODUCTION

In 1960, the Congress authorized the construction of a post office and courthouse in Honolulu, Hawaii, at an estimated project cost of \$23.5 million. Construction offers were solicited in April 1969, but the only offer received exceeded the construction funds appropriated for the project by \$10.8 million. The Postal Service then withdrew from the project and it was redesigned.

In 1972, the Congress approved a revised plan for the construction of a U.S. courthouse and Federal office building with a gross area of 869,000 square feet at a total estimated project cost of \$47.54 million. Construction bids were invited on August 30, 1972. Four bids were received, and an award was made by the GSA San Francisco regional office on December 14, 1972, to Haas and Haynie, South San Francisco, California, which submitted the low bid of \$28,985,000. The other three bids ranged from \$30.5 to \$31.77 million. The original estimated contract completion date was August 27, 1975. It is now estimated to be March 31, 1977. An artist's conception of the completed project is shown on page 2.

Shortly after construction began in January 1973, the contractor experienced construction problems because of large quantities of water flowing through the construction site. These problems and bitter disputes between the contractor and the General Services Administration's (GSA's) construction engineer resulted in the contractor filing six claims on April 1, 1974, totaling \$4.1 million; the contractor also requested a 396-day time extension.

The claims were for added costs and delays to dewater and excavate the construction site, pour concrete foundation pads, place and correct concrete foundation piles, and accelerate work to overcome delays resulting from these problems. The contractor later increased the amount of the original six claims to \$6.2 million and filed another claim for \$5.6 million for added costs caused by the delay. These seven claims totaled \$11.8 million.

On February 9, 1976, the GSA Board of Contract Appeals began trial on the seven claims. Four months later, on June 11, 1976, GSA settled the seven claims that were in trial plus 22 claims not in trial, for \$5.3 million.



HONOLULU FEDERAL BUILDING

Until July 1974, the GSA San Francisco regional office was responsible for contract administration including on-site inspections. These responsibilities were then transferred to the GSA Ft. Worth regional office. The GSA Office of General Counsel in Washington, D.C., was responsible for the litigation of the claims before the Board of Contract Appeals.

SCOPE OF REVIEW

By letter dated July 2, 1976 (see app. I), the House Committee on Government Operations requested that we review the claims settlement. Items of specific information requested by the Committee and page references indicating where these matters are discussed in this report are as follows:

- Determine if the settlement decision was reasonable. (See p. 7.)
- Identify any claims not included in the settlement. (See p. 5.)
- Determine the number of months construction is behind the originally scheduled completion date and the current estimated date of completion. (See p. 31.)
- Determine the adequacy of staffing efforts following the settlement. (See p. 5.)
- Determine if adequate support was provided to the claims litigation team. (See p. 27.)
- Identify any added costs resulting from the time extension granted, including waived liquidated damages. (See p. 31.)
- Identify the value of planned contract change orders. (See p. 32.)
- Report any other information of importance developed during the audit.

During the review we examined the settlement agreement, various correspondence and contract files, depositions, transcripts, trial exhibits, reports, and studies related to the contract and the contractor's claims. This data was supplemented by interviews with selected GSA legal, technical, and audit personnel in Washington, D.C., Fort Worth, Texas, and San Francisco, California, who were responsible for administering the project and litigating the contractor claims.

CHAPTER 2

THE CLAIMS SETTLEMENT

GSA decided to settle the claims for \$5.3 million because this amount was less than the estimated \$6.1 million to \$10.7 million liability that GSA estimated could have resulted if litigation had continued. GSA's estimates of potential Board of Contract Appeals' awards were subjective opinions arrived at by using the limited information available on the claims.

TERMS OF THE SETTLEMENT

On June 11, 1976, GSA officials agreed to settle 29 claims totaling \$16.6 million for a cash payment of \$5.3 million. The amount of each claim at the settlement date is shown below. Each claim is discussed in detail in appendix II.

<u>Claims settled</u>	<u>Amount of claim</u>
Claims in trial:	
Dewatering	\$ 1,838,507
Excavation	1,241,126
Foundation piling	889,063
Tie beams	806,750
Foundation pad correction	278,310
Acceleration of work	1,151,897
Time extension	<u>5,628,160</u>
Total amount of the 7 claims in trial	<u>11,833,813</u>
Claims before the Board:	
Form work	2,592,908
Column alignment	297,847
Underground utilities	260,000
Suspension of work	250,707
"J" joists	32,291
Hardwood	31,625
Pipe coating	34,000
U.S. seal	12,597
Automatic sprinkler system	7,578
Demolition of shack	1,006
Labor slowdown	-----
Total amount of the 11 claims before the Board	<u>3,516,099</u>
Claims not yet before the Board:	
Reshoring	403,248
Uneven floors	200,000
Acceleration from March 1976	200,000
Concrete surcharge	150,000
Partitions	140,000
Soffit and fascia	60,000
Exposed aggregate	56,000
Defaulted subcontractors	35,000
Bar chart preparation	26,000
Masonry cleaning	26,000
Rollup door	<u>8,000</u>
Total amount of 11 claims not yet before the Board	<u>1,304,248</u>
Total, 29 claims	<u>\$16,653,160</u>

The settlement agreement required GSA to pay the contractor \$5.3 million. In addition, GSA extended the contract completion date 14 months to October 15, 1976, and granted a 1-day time extension for every \$15,000 in additional work incorporated into the contract by change order.

Possibility of future claims

In return, the contractor released the Government from all claims and disputes known to GSA as of the settlement date. This release included claims in trial, pending trial, or in the process of being submitted to the Board of Contract Appeals, as well as all known claims waiting final decision by the contracting officer.

In addition, it was agreed that any future claims could not be based on events occurring before the settlement date or related to any of the settled disputes. This provision, of course, does not prevent future claims by the contractor as a result of events occurring after the settlement.

The contractor also agreed to preclude subcontractors from suing the Government in the contractor's name and to reimburse GSA for any losses based on subcontractor claims relating to the settled disputes. As of October 31, 1976, there were no contractor or subcontractor claims before the contracting officer; however, continued disagreement on the cost of eight contract change orders valued at \$1.8 million could result in additional claims. Because the GSA internal audit report concludes that the contractor will lose money on this project, GSA counsel anticipates that there may be additional claims.

Contractor's efforts to complete construction

As part of the settlement, the Government obtained assurances that construction would proceed at an acceptable rate to October 1, 1976, and a guarantee that the contractor's onsite management would be replaced by more experienced personnel acceptable to the contracting officer. Specifically, the contractor agreed to complete \$3 million of work during the 4-month period ending September 30, 1976, or credit GSA for any work not completed. In addition, the contractor agreed to correct nine areas of work which GSA had rejected as unsatisfactory.

After the settlement, the contractor increased its work force and made significant increases in its rate of progress. As a result, the areas of unsatisfactory work have been, or were in the process of being, corrected and the contractor has exceeded the \$3 million work completion requirement by \$1.2 million. However, the contractor continues to lag behind the construction completion schedule. As of October 31, 1976, GSA estimated that the project would not be completed until March 31, 1977.

THE SETTLEMENT DECISION

On June 10, 1976, GSA counsel and Public Buildings Service officials recommended that the Administrator accept the contractor's \$5.3 million settlement offer. This recommendation was based on their estimates that the Government's financial loss could range from a minimum of \$6.1 million to as high as \$10.7 million if the claims were ultimately decided by the Board of Contract Appeals. The following schedule shows GSA's estimated liability:

	<u>Amount of claims</u>	<u>Amount used during GSA calculations</u>	<u>Estimated reduction for over-stated claims</u>	<u>Estimated maximum liability</u>	<u>Estimated reduction for legal responsibility</u>	<u>Estimated minimum liability</u>
(000 omitted)						
Claims:						
In trial	\$11,834	\$11,373	\$5,399	\$ 5,974	\$2,979	\$2,995
Pending trial	3,515	529	1,749	1,780	915	865
Not yet before the Board	<u>1,304</u>	<u>792</u>	<u>542</u>	<u>250</u>	<u>250</u>	<u>---</u>
Total	16,653	15,694	7,690	8,004	4,144	3,860
Other factors considered:						
Future litigation expenses	-	-	-	1,800	-	1,800
Interest accrued as of date of settlement	<u>---</u>	<u>---</u>	<u>---</u>	<u>898</u>	<u>---</u>	<u>433</u>
Total	<u>\$16,653</u>	<u>\$15,694</u>	<u>\$7,690</u>	<u>\$10,702</u>	<u>\$4,144</u>	<u>\$6,093</u>

To estimate its total liability, GSA tried to determine whether the Government was liable for each claim and, if so, the amount of potential liability. GSA's estimated maximum liability assumed that GSA was responsible for all claims but that these claims were inflated. GSA estimated its maximum liability before future litigation and interest costs at \$8 million, about one-half the amount claimed by the contractor. The estimated minimum liability considered both the probable dollar liability for each claim and the probability

that GSA would be held responsible for the claim. To these estimates, GSA added additional litigation costs before the Board of Contract Appeals and interest payable on the estimated liability.

We believe GSA's estimates were speculative for three reasons. First, GSA assumed that the contractor had doubled the true value of the claims. Consequently, GSA reduced the claims by about one-half in anticipation of audit adjustments identifying the true value. GSA's audit, however, covered only the 7 claims in trial; no audit work had been done on the remaining 22 claims included in the settlement agreement. Moreover, as discussed in chapter 6, the audit of the seven claims was not complete and lacked the technical evaluation necessary to determine whether the contractor's stated costs were valid.

Second, we believe GSA could not have accurately predicted whether the Board would find the Government liable for the claims. To make a "determination" of the Government's potential liability, GSA personnel were forced to guess how a judge would weigh conflicting data and testimony on each of the seven claims in trial. Complicating GSA's evaluation was the interdependent nature of the claims; thus, a decision on any one claim could affect the outcome of the remaining claims. Moreover, GSA assigned a loss probability factor to the 22 claims not in trial, even though GSA did not have full knowledge of the nature of the claims and did not know the full extent of the contractor's case or of its own potential line of defense on some of the claims.

Finally, we believe that interest costs should not have been added to GSA's estimates, because the contractor had included interest in its claims. Thus, GSA provided for interest twice in its computations.

REASONABLENESS OF THE SETTLEMENT DECISION

We could not determine whether GSA's decision to settle for \$5.3 million was reasonable because (1) it was not possible to predict what weight the judge might give to conflicting evidence in deciding the merits of the claims and (2) only limited information was available on the 22 claims not in trial. These factors make any estimate of potential Government liability highly speculative.

Although we cannot comment on the decision's reasonableness, GSA's defense could have been damaged by its own actions or inactions during the project's design and construction. Specifically,

- GSA failed to make additional subsurface tests of the construction site when further testing could have reduced its vulnerability to claims,
- GSA made concessions to end the contractor's suspension of work which GSA considered damaged its claims defense posture,
- GSA's efforts to expedite settlement by hiring an independent expert resulted in (1) the expert's preparation of a critical report which influenced GSA's decision to settle and (2) a 7-month delay in defense preparation, and
- GSA failed to provide the resources necessary to vigorously litigate the claims.

These issues are discussed further in chapters 3 through 6.

CHAPTER 3

GSA FAILED TO TEST SITE ADEQUATELY

Of the 29 contractor claims settled, 7 claims amounting to \$11.8 million were based either wholly or partially on unanticipated subsurface conditions. GSA might have avoided these claims had it identified these conditions before issuing invitations for bids. Although the Board of Contract Appeals may have decided that the tests performed were legally adequate in deciding the merits of the claims, we believe that the tests performed were not adequate to identify existing subsurface conditions. GSA's exposure to contractor claims was increased because it

- failed to follow the soil engineer's recommendation to conduct additional testing,
- changed the foundation design without making additional tests,
- eliminated the contract requirement for an onsite dewatering expert, and
- failed to fully implement GAO's 1967 recommendation to maintain in-house experts to review foundation designs, interpret soil tests, and correct foundation problems occurring during construction.

WHY SUBSURFACE TESTS ARE IMPORTANT

Because GSA includes a differing site conditions clause in its construction contracts, the Government is financially responsible for (1) subsurface or latent physical conditions differing materially from those indicated in the contract documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the work being performed. Most unknown conditions relate to the subsurface construction site. GSA's experience shows that it is important to conduct adequate subsurface tests to provide prospective contractors with the complete and accurate information.

With respect to subsurface tests for large construction projects, GSA regulations provide for a soil engineering firm to (1) plan the subsurface exploration program, (2) analyze test results, and (3) prepare recommendations for specific foundation design concepts and measures necessary to protect against surface and subsurface water.

TESTS WERE INADEQUATE

The 1969 foundation design for the post office and courthouse was based on subsurface tests conducted by a soil engineer. Because the project site had an average elevation of about 5-1/2 feet before excavation and considering its proximity to the ocean, as shown on page 11, problems in controlling water during foundation construction were anticipated. To minimize these problems, the design provided for a foundation supported by concrete piles resting on a coral ledge. The soil engineer concluded that major dewatering problems would be encountered if the foundation was supported by either concrete pads or concrete mats, the two other foundation types evaluated.

These tests did not provide sufficient information for prospective contractors to prepare their bids. Consequently, the only bid received included a large contingency cost to remove water entering the construction site at estimated flows ranging from 2,000 to 40,000 gallons a minute.

Recommended tests not made

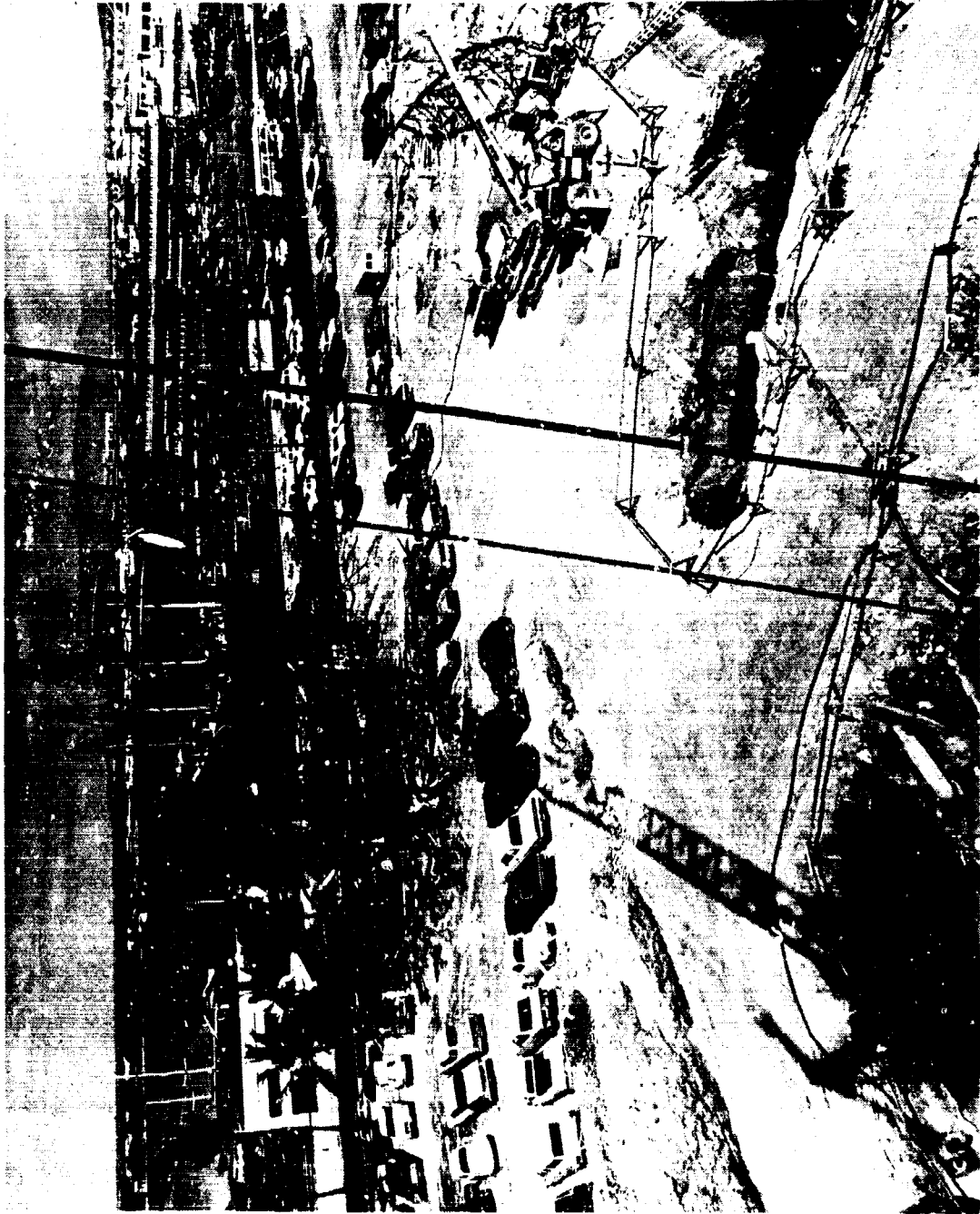
GSA became aware of this dewatering contingency in July 1969. Instead of making additional tests, GSA asked the architect to determine whether additional tests were needed.

About 1 month later, on August 19, 1969, the architect forwarded a recommendation to conduct additional testing at an estimated cost of \$1,700. This proposal was rejected because GSA did not know whether the proposed building redesign would include a basement which would affect the elevation of the project. Although the final design included a basement, GSA did not conduct additional testing.

Foundation design changed without additional tests

GSA revised the foundation design to reduce costs. It replaced the concrete piles, which were recommended by the soil engineer, with a hybrid system of concrete piles and concrete pads and required that the concrete piles be imbedded a minimum of 2 feet into, rather than placed on, the coral ledge.

Each of these changes greatly affected the project's construction. The use of pad foundations resulted in major dewatering problems previously warned against by the soil



PROXIMITY OF CONSTRUCTION SITE TO HARBOR

engineer. The contractor's inability to remove the water resulted in several claims. In addition, the contractor claimed added costs because many concrete piles cracked the supporting coral ledge and had to be driven much deeper than originally anticipated. Driving the concrete piles into the ledge rather than placing them on it contributed to this problem. Although dewatering problems should have been anticipated when the foundation was redesigned, GSA did not conduct additional tests to determine the extent of these problems.

CONTRACT REQUIREMENT FOR ONSITE DEWATERING EXPERT DELETED

The 1969 contract specifications for the post office and courthouse required the contractor to hire an onsite dewatering expert. This requirement was omitted from the 1972 specifications to reduce costs.

GSA believed that the contractor's attempts to dewater the construction site were ineffective because the contractor's top management did not obtain adequate consulting service or furnish a technically capable supervisory staff. An onsite dewatering expert--as originally required by GSA--might have devised a more efficient system for dewatering the construction site. This would have reduced dewatering costs. In addition, other problems and their associated claims may have been avoided if the construction site had been successfully dewatered.

EXAMPLES OF CONSTRUCTION PROBLEMS

The seven claims in trial totaling \$11.8 million were based wholly or partially on allegations that unanticipated conditions were not adequately identified in GSA's subsurface tests. The contractor believed that only minor problems would be encountered during the foundation construction. Because major problems were encountered, the contractor believed GSA was responsible for his additional costs and delays.

The first stage of construction was to remove soil to within one foot of the water table. Muddy spots soon developed throughout the site. This hampered the movement of pile-driving equipment and other heavy equipment. Since further excavation would have increased the water problems, concrete foundation piles were driven from a higher elevation than originally specified. GSA believed this resulted in additional costs to correct improperly aligned piles.

Simultaneously, deeper excavations were made for the large concrete pads used to support sections of the foundation. The photograph on page 14 shows that these deeper excavations filled with water. The contractor claimed \$1.8 million for unsuccessful attempts to remove this water.

The inability to completely dewater the construction site affected other phases in the foundation construction. The mobility of equipment entering the excavations was hampered because of the muddy conditions shown in the photograph on page 15. In addition, freshly poured concrete pads were damaged by water. The photograph on page 16, for example, shows water washing away the cement in one pad, leaving only the coarse pebbles and exposed reinforcing rods. To insure the pad's structural integrity the defective concrete was repaired and a 3-foot concrete cap was added to the pad. To avoid water damage to two other pads, the contractor partially filled some excavations to raise the bottom elevation. The photograph on page 17 shows the contractor filling one of these excavations after water problems appeared.

The additional costs and delays resulting from these problems were included in five of the seven claims in trial. The two other claims in trial were for accelerating the work schedule to overcome previous delays and for added contractor and subcontractor costs to conduct other segments of work at a later time than originally anticipated.

OUR 1967 RECOMMENDATION NOT FOLLOWED

In our May 1967 report to the Congress entitled "Review of Subsurface Exploration for Design and Construction of Foundations of Public Buildings," we reported that, in 15 out of 28 buildings, the Government had encountered construction difficulties because of foundation design problems and unanticipated soils conditions. Settlement of claims for these cases increased project costs ranging from \$2,500 to \$4.1 million.

We recommended that GSA develop in-house expertise capable of (1) reviewing proposed foundation designs and specifications, (2) providing interpretations of soil tests, (3) recommending solutions to problems arising during foundation construction, and (4) reviewing contractor claims of changed subsurface conditions.

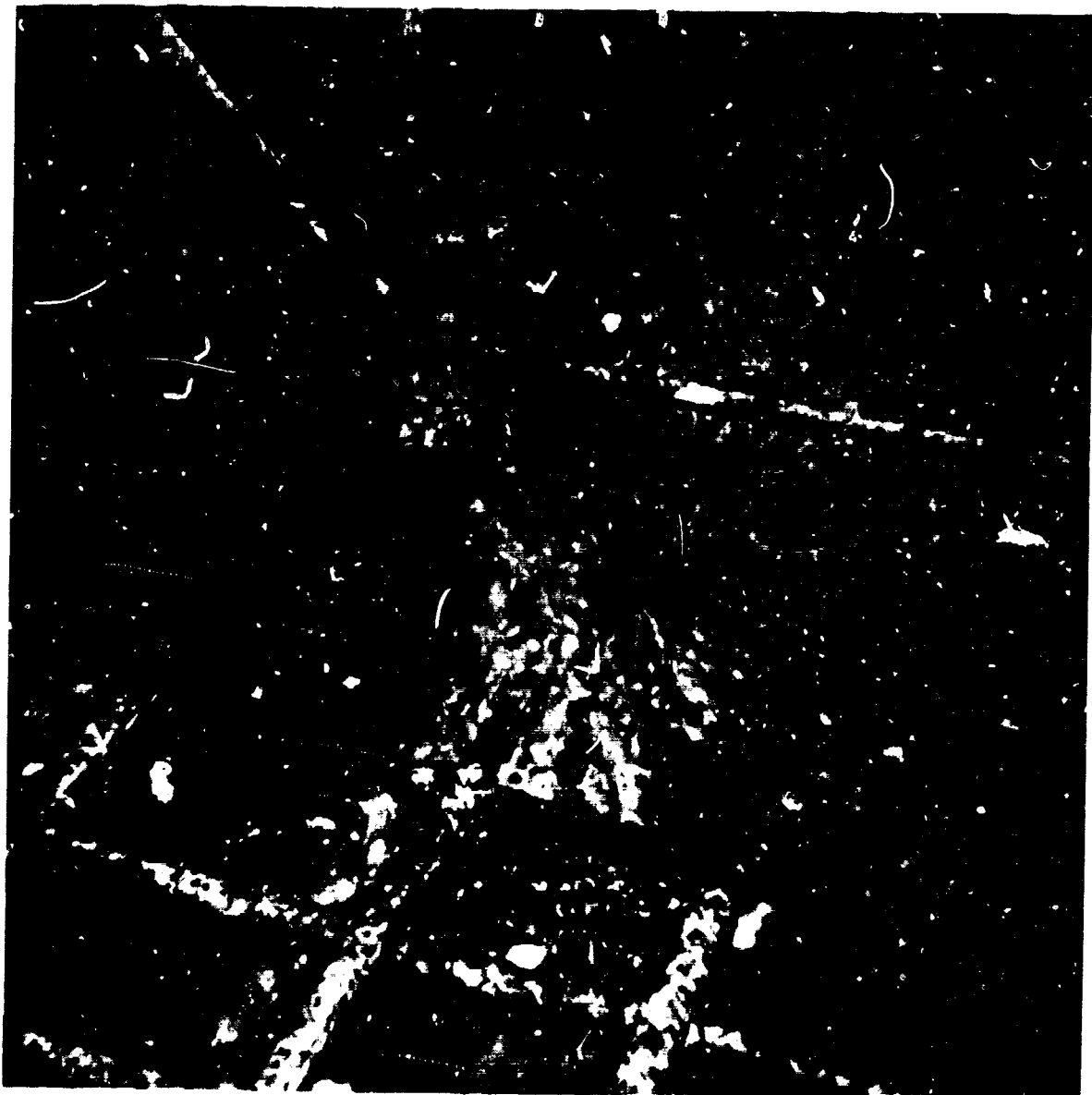
As a result of the report, GSA expanded the use of contract soil and foundation experts and hired an in-house



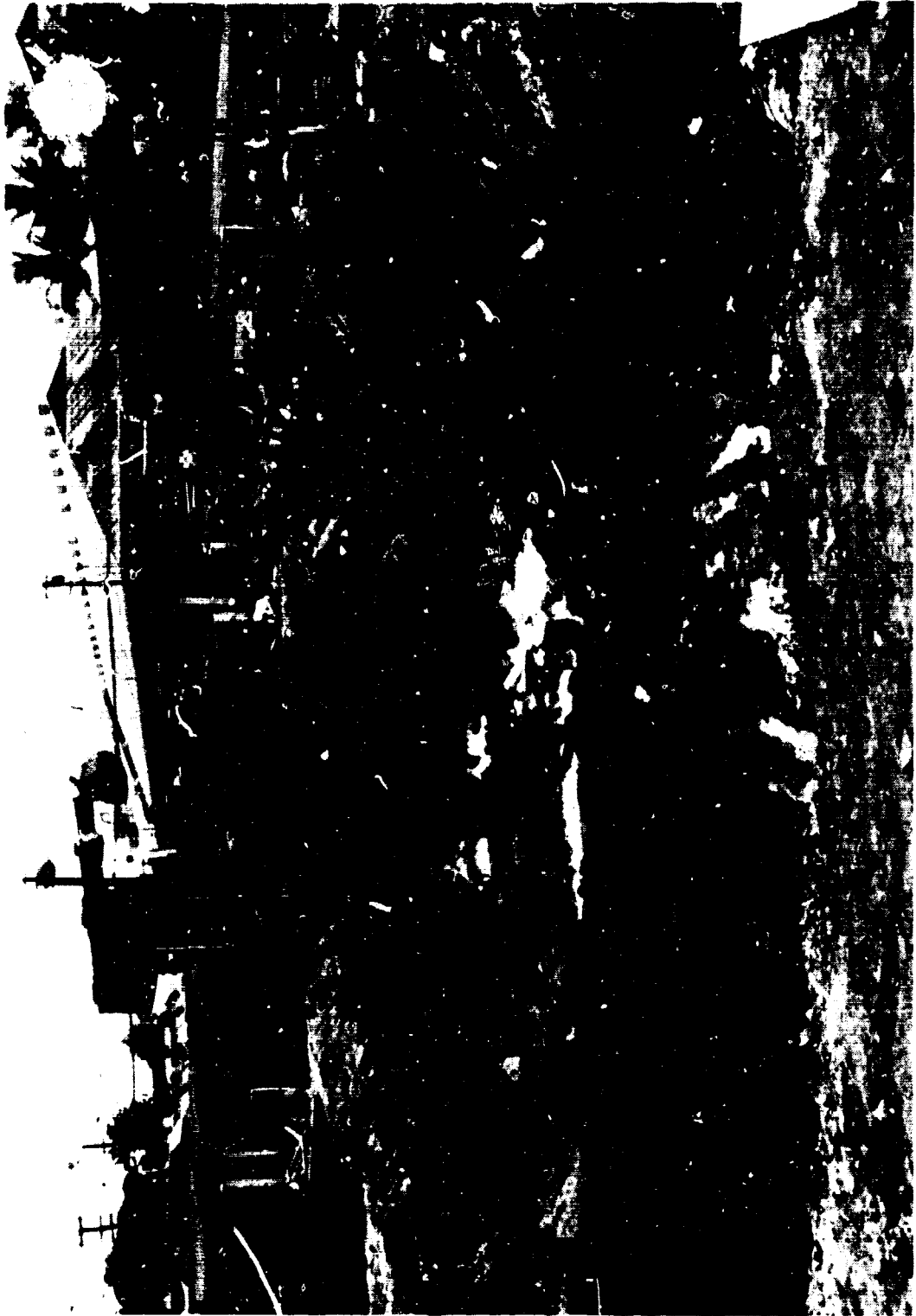
FLOODED EXCAVATIONS



MUDDY SITE CONDITIONS



WATER DAMAGING FRESHLY POURED CONCRETE



EXCAVATION BEING FILLED AFTER FLOODING

expert in Washington, D.C., in July 1967. This position, however, was abolished in October 1968 when GSA decentralized its contract administration to the GSA regions. The in-house expert's responsibilities included

- establishing a system to monitor the adequacy of sub-surface testing,
- reviewing the adequacy of the testing program for individual projects,
- providing onsite expertise if subsurface problems developed, and
- providing expert testimony before GSA's Board of Contract Appeals.

Because of continued costly foundation design and construction problems, GSA hired a consultant to analyze eight public building projects and to identify methods of minimizing these problems. The consultant's report, dated March 22, 1976, discussed the causes of these problems and contained recommendations to assist GSA in minimizing such problems in the future. One of these recommendations was that GSA develop an in-house expertise in soil engineering. In addition he recommended that GSA

- stop relying on the contractor for all aspects of foundation support systems and
- insure that the architect and the construction contractor have soil engineering expertise.

As of October 1, 1976, GSA officials had not decided whether to implement these recommendations. Correspondence from GSA's regional offices generally favors the development of in-house expertise, either centrally or on a regional basis.

ADDITIONAL TESTS WOULD HAVE REDUCED POTENTIAL LIABILITY

The Government is not responsible for additional costs or time delays under the differing site conditions contract clause unless the contractor experiences unknown physical conditions of an unusual nature, differing materially from those specified in the contract documents or those ordinarily encountered and generally recognized as inherent in the work being performed.

In this case, the contractor argued that the volume of water encountered, the existence of certain underground obstructions, and certain other problems were conditions which were not and could not be anticipated during his bid formulation. The contractor could argue that these conditions were unusual and not his responsibility unless they were identified during subsurface tests and specified in the contract documents.

The absence of specific data in the contract, however, does not necessarily establish Government liability. GSA believed that the conditions encountered were not unusual for the construction location. If GSA had demonstrated that the contractor knew or should have known that these conditions existed, the Government's potential liability would have been significantly reduced.

CHAPTER 4

GSA CONCESSIONS COULD HAVE DAMAGED ITS CLAIM DEFENSE

On June 24, 1974, the contractor suspended construction, alleging many breaches of contract by GSA. After certain Congressmen expressed interest and the Administrator had become personally involved, GSA decided to negotiate an agreement rather than terminate the contract for default. GSA subsequently agreed to the following demands of the contractor:

- Pay the contractor \$2 million for reevaluated work in place and previously retained progress payments.
- Pay the contractor an additional \$200,000 by increasing two progress payments.
- Reduce the withholding rate on progress payments from 10 to 5 percent of the value of work in place.
- Replace the contracting officer, construction engineer, and an inspector, and transfer the contract administration to another GSA region.
- Sign the contractor's progress chart showing a 12-month delay in the estimated project completion date.

These concessions could have supported some of the contractor's allegations. In addition, recognizing a 12-month delay was used by the contractor to support a \$5.6 million claim for added costs to complete the project on the revised time schedule. The adverse effect of these concessions on GSA's defense contributed to the settlement decision.

CONTRACTOR COMPLAINED ABOUT GSA PERSONNEL AND REQUESTED ADDITIONAL FUNDS

On March 29, 1974, the contractor's representatives and the GSA Administrator met in Washington, D.C. The representatives complained that improper and untimely progress payments, excessive inspections, arbitrary and capricious actions by the GSA construction engineer and a lack of objectivity on the part of the contracting officer were severely affecting the contractor's ability to complete the project. The representatives also said \$2 million was needed to continue work and asked the Administrator to provide early relief to solve the financial plight of the company. Three

Days later, the contractor filed six claims totaling \$4.1 million for added costs resulting from changed site conditions.

One week later, on April 5, 1974, the contractor's counsel advised two Senators that the construction engineer acted arbitrarily and capriciously and the contracting officer was not able to resolve the problems. He concluded that conditions were not likely to improve as long as the construction engineer and contracting officer continued to supervise and direct the contract. Two other Senators and two Congressmen were also advised of these problems.

In response, four Senators cosigned a letter urging the Administrator to personally resolve the disputes.

CONSTRUCTION ENGINEER REPLACED

The week following the March 29, 1974, meeting, the Administrator sent a representative to Honolulu to evaluate the allegations. Based on this evaluation, the Administrator replaced the construction engineer and directed the contracting officer to resolve any remaining controversial matters. These actions were taken because continued disagreements would not contribute to meeting the project's scheduled completion date.

On May 9, 1974, about 3 weeks after his assignment, the new construction engineer reported the project's status to the Administrator's special representative. His report concluded that the charges of harassment and incompetence were based on his predecessor's insistence that the contractor meet firm contract requirements. He also noted that (1) many construction deficiencies existed, (2) the contractor's site management was either irresponsible or incompetent or both, and (3) the contractor was attempting to inundate his predecessor with paperwork.

OTHER CONCESSIONS

On June 24, 1974, the contractor stopped work because continued construction was allegedly operationally, financially, and legally impossible until alleged breaches of contract were resolved. The contractor charged that:

- The contract contained deficient and defective specifications and misrepresented subsoil conditions, thus requiring extra work beyond the contract requirements.

- The contracting officer required compliance with the deficient specifications, failed to promptly investigate differing subsoil conditions, and refused to approve payment for additional work.
- The contracting officer illegally and improperly withheld progress payments.
- The former construction engineer and other inspectors harassed and intimidated the contractor.

In response, the contracting officer stated that the contractor was attempting to burden GSA with the cost of his own mismanagement. Both the contracting officer and GSA counsel recommended that the contract be terminated for default because the contractor stopped work.

On June 27, 1974, the Administrator again met with the contractor's representatives to discuss the alleged breaches of contract. The contractor's representatives complained about a GSA inspector and the contracting officer and repeated their request for \$2 million to alleviate the company's financial problems. The representative also said work would not resume until these problems were solved.

Notwithstanding the contracting officer's and GSA counsel's recommendations to terminate the contract, the GSA Administrator decided to negotiate an agreement to resume work. On July 11, 1974, GSA officials agreed to make certain staffing changes, reevaluate the work in place, and pay the contractor for all work for which he had not been paid.

Following the reevaluation, a final agreement was reached on July 22, 1974, for the contractor's return to work. GSA agreed to

- pay the contractor \$2 million, consisting of \$992,000 in previously withheld progress payments and \$1,032,000 for reevaluated work in place,
- replace the contracting officer, construction engineer, and inspector, and transfer the contract administration to another GSA region, and
- sign the contractor's progress chart which recognized a 12-month delay in completing the project.

Payment of \$2 million

GSA justified the payment of \$2 million as funds to which the contractor was entitled but did not receive because the work performed was not evaluated correctly. Increased work in place accounted for only 26 percent of the payment. The remainder was based on a release of previously withheld progress payments and acceptance of the contractor's revised value for specific categories of work.

The \$2 million payment was based on two factors--the contractor's estimate of each work category's total value and GSA's revaluation of each category's percentage of completion. For example, the contractor increased the value of concrete work by \$936,000, to \$10.7 million. Based on an evaluation of the concrete work completed and materials on hand, GSA determined that the percentage of concrete work completed was 57 percent, rather than the previously estimated 54 percent. As a result of these revisions, the contractor was paid an additional \$855,000.

GSA also agreed to release all previously withheld progress payments. Therefore, the \$2 million payment was composed of (1) \$992,000 based on release of previously withheld progress payments, (2) \$505,000 based on the contractor's estimated value for each category of work and (3) \$527,000 based on GSA revisions of the work actually in place.

Additional \$200,000 payment

According to testimony by the contractor's construction manager before the Board of Contract Appeals, GSA paid the contractor \$200,000 in addition to the \$2 million provided for in the July 22, 1974, agreement, a combined payment of \$2.2 million. He said the \$2.2 million payment was a compromise between the contractor's request in July 1974 of \$2.5 million and GSA's offer of \$2 million. The testimony indicates that GSA made the additional payment in two increments. Each of the next two progress payments due the contractor was increased by \$100,000.

GSA records listing concessions made in July 1974 do not mention this \$200,000 payment. The current GSA contracting officer told us that payment was made as indicated in the testimony.

12-month time extension

On July 22, 1974, 6 days after his assignment to the project, the new contracting officer signed a bar chart showing a 12-month delay in the project's estimated completion

date. Both the contractor and the contracting officer agreed this action constituted approval of a 12-month time extension.

GSA later denied that a time extension had been approved, even though there was evidence to the contrary. The draft amendment incorporating the agreements into the contract, as approved by GSA counsel, stated: "No change is made in the contract amount or completion date as a result of the modifications contained herein." Before signing the amendment, however, the contracting officer deleted all reference to a time extension. In addition, he later denied a 66-day time extension request because it was included in the 12-month time extension.

In a letter to the contractor on October 10, 1974, the contracting officer denied that GSA had granted a time extension. This letter was prepared by GSA counsel.

EFFECTS OF CONCESSIONS

GSA acceded to the issues raised by the contractor's representatives during the March 29 and June 27, 1974, meetings with the Administrator. In effect, the personnel charged with performing excessive inspections, arbitrary and capricious actions, and lack of objectivity were replaced, and the \$2 million which the contractor's representatives said was needed to solve their financial problems was paid.

These charges were included as part of the contractor's claims. For example, several claims were based on allegations that GSA officials acted in an arbitrary and capricious manner in such things as rejecting work as not meeting specifications and withholding progress payments that the contractor claimed it had earned. The delays and financial strain on the contractor allegedly resulting from these actions caused the contractor many problems. According to the GSA trial lawyer's justification for settlement, these concessions either tacitly admitted GSA wrongdoing or strengthened the argument that GSA was responsible for the claims.

In addition, the contractor filed a \$5.6 million claim for additional contractor and subcontractor costs to perform certain work at a later time than originally anticipated. The contractor claimed that GSA had recognized responsibility for the delays by signing the bar chart showing a 12-month time extension, GSA estimated a \$1.5 million to \$3 million loss if this claim were decided by the Board of Contract Appeals. In addition, if the Board agreed that a time extension was authorized, GSA could not collect liquidated damages for failure to meet the original construction completion schedule.

CHAPTER 5

EFFORTS TO EXPEDITE SETTLEMENT DELAYED GSA'S

LITIGATION PREPARATION AND DAMAGED ITS DEFENSE

After construction resumed in July 1974, GSA counsel assigned to litigating the claims began preparing for trial. These efforts were suspended for 7 months, beginning in late November 1974, because the GSA Administrator attempted to expedite settlement consideration by hiring an independent outside expert. GSA's litigation position would have been damaged by the critical nature of this expert's report if released.

GSA GRANTED CONTRACTOR'S REQUEST FOR INDEPENDENT REVIEW

On November 21, 1974, a meeting was held in Washington, D.C., between the GSA Administrator and contractor representatives. The contractor's counsel complained that several key GSA personnel were "so biased and subjective as to make it impossible to receive a fair and objective evaluation" of the contractor's claims. Because of this alleged bias and the contractor's weak financial position, its counsel suggested that the Administrator "hire an independent consultant or expert to conduct an objective, factual, in-depth review and evaluation" of the claims.

After this meeting, the Administrator and other GSA officials agreed to hire an independent expert and prepare a GSA position regarding the claims by December 31, 1974. As a result, GSA had to select an expert and have him complete his study in a very short time. An expert was selected on December 6--about 3 weeks prior to the reporting deadline.

The use of an independent expert to expedite settlement considerations was considered extraordinary by GSA's General Counsel. The expert's independence, however, was not specified in his contract. Instead, the contract provided that he would be an expert witness for GSA. GSA counsel advised us that they normally work very closely with potential expert witnesses. In this case, however, the Assistant General Counsel, Claims and Litigation Division, directed counsel not to work with the expert until the expert had conducted his analysis and formed conclusions. This procedure precluded counsel from explaining the legal significance of evidence, assuring that evidence favorable to the GSA was presented, and placing evidence provided by the contractor in perspective.

The expert's report, issued in January 1975, found technical merit, in over one-half of the issues involved in the contractor claims. The expert concluded that the GSA construction engineer had been oppressive in applying the contract specifications, thus contributing significantly to the inefficient performance of the work. The construction engineer allegedly intimidated the contractor.

GSA counsel strongly objected to some of the expert's conclusions. They believed the report contained unsupported opinions, made assumptions and conclusions based on legal considerations which the consultant was not qualified to make, and accepted the contractor's rather than the Government's version of events in every major instance of conflict.

The contractor believed the expert was an independent fact-finder whose report would be available when completed. When GSA refused to release the report, the contractor began litigation efforts. On February 24, 1975, a motion for production of documents, including the expert's report, was filed with the Board of Contract Appeals. After this motion was refused, the contractor filed suit under the Freedom of Information Act (5 U.S.C. 552) in the U.S. District Court for the District of Columbia. The court ruled the report must be released. On June 11, 1976, the date of settlement, the Government was in the process of appealing the District Court's ruling.

GSA did hire other experts to help prepare its case. The reports prepared by these experts generally supported GSA's litigation position.

EFFECTS OF SETTLEMENT EFFORT

GSA's efforts to expedite settlement adversely affected its litigation position in two ways. First, efforts to prepare a claim's defense were suspended during the 7-month period ending in June 1975. During the first 5 months, counsel refrained from preparing a defense because the Administrator was actively pursuing a basis for settlement. During May and June 1975, counsel was preoccupied with the contractor's court actions to obtain the report.

Second, sections of the expert's report accused the construction engineer of oppressively applying contract specifications or concluded that the contractor's claims had technical merit. Thus, unless GSA won its appeal of a previous court decision, the report would be used to support the contractor's claims. The possibility that the report would be released contributed to GSA's decision to settle the claims.

CHAPTER 6

INADEQUATE LEGAL AND TECHNICAL SUPPORT

Soon after defense preparation efforts resumed in July 1975, counsel realized the magnitude and complexity of the pending litigation. This, combined with a 7-month delay in preparing a defense, required a crash effort to prepare for trial by November 10, 1975. Adequate resources were not provided to satisfactorily complete this accelerated defense preparation effort. Staff reductions in the litigation team and GSA's failure to technically review the claims would have adversely affected GSA's defense had the trial continued.

REQUESTED LEGAL STAFF NOT ASSIGNED

Defense preparation efforts resumed in July 1975, after a 7-month delay. The two GSA senior attorneys assigned to the case part time soon realized that it was more complex than originally estimated. The case's complexity, coupled with the Board of Contract Appeals' decision to consider both who is liable and the amount of liability in one trial required accelerated defense preparation efforts to meet the November 10, 1975, trial date. Consequently, on September 20, 1975, counsel requested a total litigation team of six attorneys from the GSA Assistant General Counsel for Claims and Litigation. He limited the litigation team to four attorneys.

Since the trial was scheduled to begin within 2 months, the two senior attorneys divided the case between them. As a result, each attorney developed expertise in only his area of responsibility. Even with divided responsibilities, the attorneys had to work 60 to 80 hours per week.

In February 1976, one of the senior attorneys announced that he intended to resign in May 1976. Since an acceptable replacement was not available, the remaining experienced attorney reassigned his responsibilities to two junior attorneys and began preparing expert witnesses and other technical aspects of the case--duties previously handled by the departing counsel. On April 5, 1976, counsel requested additional funds to meet with certain expert witnesses and provide for expert technical evaluation of the day-to-day trial testimony. These funds had not been approved as of June 11, 1976, the date of settlement.

The reassignment of responsibilities for expert witness testimony and the absence of funds to pay these witnesses increased the remaining senior attorney's already heavy workload beyond manageable proportions. In addition, the two junior attorneys were required to assume responsibilities normally assigned to senior attorneys.

These problems adversely affected GSA's ability to continue the trial.

INADEQUATE TECHNICAL SUPPORT

Litigation involving technical matters requires sufficient technical consultation, evaluation, and opinion to help evaluate the merits of claims. Technical assistance is also essential when auditing the reasonableness of the amounts claimed. We found that technical support provided to GSA's legal and audit staff was both untimely and inadequate.

Insufficient technical assistance provided to legal staff

Adequate technical support was not available to assist the litigation team. On September 19, 1975, and again by letter dated November 17, 1975, counsel requested three engineers, one secretary, and one clerk to compile and analyze data concerning the claims and to interpret several reports prepared by GSA's and the contractor's consultants.

In December 1975, 3 months after the initial request, the recently appointed Commissioner of the Public Buildings Service established a Honolulu task force to provide needed technical assistance. The assistance provided by the task force was not only late but also ineffective. For example, GSA counsel said several task force employees were removed before they completed their duties. Consequently, certain parts of the technical evaluation were delayed or never completed.

Additionally, conflicts between the task force and the litigation team prevented these groups from working together effectively. For example, the head of the task force insisted on written requests from counsel before providing technical assistance. GSA counsel said the attorneys spent so much time writing requests and verbally justifying their needs that they soon stopped working with the task force and did their own review of technical issues.

To supplement the work of the task force, GSA hired a consultant on December 22, 1975, to analyze the contractor's acceleration of work claim. The work of another consultant was expanded to assist the attorneys in analyzing technical matters brought up during day-to-day testimony--a service normally provided in-house.

Insufficient technical support provided to audit staff

The GSA auditor's review of claims in trial resulted in two reports--"An Interim Audit of Claims for Equitable Adjustment," dated August 29, 1975, and "Audit of Reformulated Claims for Equitable Adjustment," dated September 13, 1976. Technical assistance for the audits was crucial because amounts claimed were based on the estimated staff-hours, supplies, and equipment required to perform specific operations. For example, a technical evaluation should have been made of the contractor's claim for rental costs and estimated operating costs for 25 pieces of equipment. A technical review would have determined whether the proper equipment was used, whether all equipment was needed, and whether operating costs, including labor, were reasonable. As it was, the auditors could determine only the reasonableness of the rental rate.

The auditors challenged \$6.1 of the \$10.2 million in claims reviewed because the contractor's estimates for labor, material, and other costs were excessive. Without technical review the remaining \$4.1 million claimed would have been conceded by GSA. In addition, the \$6.1 million challenged by audit was not questioned on the basis of need or reasonableness. Although the auditors' reviews were adequate, both the interim and final audit reports had to be qualified because requested technical support was not provided.

GSA realized that the absence of technical review would increase the contractor's monetary award. Consequently, when the settlement decision was reached on June 11, 1976, GSA was still planning to hire a consultant to help the auditors.

EFFECTS OF INADEQUATE SUPPORT

In justifying the settlement decision, GSA officials stated that inordinate overtime, combined with a senior attorney's resignation, made vigorous defense preparation difficult. Defense preparation was complicated also by a shortage of technical personnel to interpret consultants'

findings and advise counsel on the proper use of technical evaluations. GSA officials conceded that the lack of technical assistance represented a missed opportunity to strengthen their case.

The justification did not point out that GSA had to embark upon a crash defense preparation program, because virtually no work was done on the case during the 7 months ended in June 1975. Assigned technical and legal staff was not sufficient to prepare a defense in the limited time remaining before trial.

CHAPTER 7

HOW CONTRACT DISPUTES HAVE INCREASED

PROJECT COSTS

Three and a half years of disputes between GSA and the contractor will increase the project's cost by an estimated \$9.1 million and delay completion an estimated 19 months. In addition, \$1.8 million in potentially collectible liquidated damages may be excused by contract extensions. The following schedule shows our estimate of project costs which will be incurred by March 31, 1977, the estimated project completion date based on GSA data available on October 31, 1976.

Project costs of the type normally incurred:

Construction contract, as awarded		\$28,985,000
Changes to the contract:		
Changes agreed to and finalized	\$ 721,536	
Changes agreed to but prices not finalized	1,752,102	
Anticipated changes	<u>1,009,166</u>	3,482,804
Demolition of existing structures		139,559
Design cost		2,094,657
Supervision and administration		1,000,708
Site costs (land acquired by exchange)		-----
Total normal project cost		<u>\$35,702,728</u>
Additional cost due to disputes:		
Litigation and adjudication expenses		1,136,747
Settlement payment to contractor		5,300,000
Additional supervision and administration		521,486
Leasing and other costs incurred due to late completion of project		<u>2,179,942</u>
Total additional cost due to disputes		<u>9,138,175</u>
Total project cost		<u>\$44,840,903</u>
Liquidated damages waived		<u>\$ 1,768,450</u>

COST NORMALLY ASSOCIATED
WITH CONSTRUCTION PROJECTS

Normally, building projects require funds for design, supervision, inspection, and construction. The original fixed-price contract and other related costs for this project amounted to \$32 million. Actual and anticipated changes to the contract will increase this cost by an estimated \$3.5 million.

As of October 31, 1976, GSA had finalized 141 changes valued at \$722,000. In addition, to allow construction to continue while negotiating prices, GSA has approved eight changes for which prices will not be finalized until January 1977. GSA anticipates that the final price of these changes will be substantially less than the current maximum authorized price of \$1.75 million. Finally, GSA was aware of 43 potential changes totaling \$1 million. Appendix IV contains a brief description of all known or anticipated change orders costing over \$20,000.

According to the contracting officer, contract changes occur routinely throughout a construction contract's life. Thus, additional changes are expected on this contract. However, the contracting officer was not aware of any additional significant changes.

ADDITIONAL COSTS RESULTING
FROM DISPUTES

The project's cost has increased by about \$9.1 million because of disputes between GSA and the contractor. This additional cost was incurred to (1) defend against and settle the contractor's claims and (2) supervise the contractor and provide leased office space during the 19-month delay in completion. Also, waived liquidated damages could vary from \$1.2 million already waived to \$1.8 million if excusable delays are eventually granted to March 31, 1977, the current estimated project completion date.

Cost to settle the claims

On June 11, 1976, GSA agreed to settle 29 contractor claims valued at \$16.6 million for a cash payment of \$5.3 million. Seven of these claims were in trial on June 11, 1976. The cost of conducting the trial and settling the claims was \$6.4 million, as shown in the following schedule.

Cash payment to contractor		\$5,300,000
Litigation expenses:		
Salaries for GSA legal, technical, and audit personnel	\$354,160	
Expert consultants and material witness compensation	571,737	
Travel	104,214	
Court reporting and printing	<u>48,701</u>	1,078,812
Adjudication cost:		
Salaries for judges	25,492	
Transcripts of trial	30,718	
Travel	<u>1,725</u>	<u>57,935</u>
Total cost to settle the claims		<u>\$6,436,747</u>

Cost attributable to
construction delays

GSA also will incur additional costs totaling \$2.7 million, because the project will not be completed until March 31, 1977--19 months after the original completion date. The expenses shown in the following schedule include costs to supervise and inspect construction and obtain alternative facilities until the project is completed.

<u>Additional costs</u>	<u>Amount</u>
Supervision and administration	\$ 521,486
Extending leases for 28 buildings	2,991,612
Continued operation of a Government- owned building	595,245
Temporarily relocating prospective tenants	67,394
Less: estimated operating costs if the building had been completed on time	<u>-1,474,309</u>
Costs resulting from delay	<u>\$2,701,428</u>

The operations of 13 agencies were disrupted during their temporary relocation while awaiting completion of the project.

LIQUIDATED DAMAGES WAIVED

The contractor is required to pay GSA liquidated damages of \$3,130 a day for any inexcusable delay in completing the project. The settlement agreement authorized an excusable delay until October 15, 1976, and provided for an additional day's delay for each \$15,000 increase in the contract price.

The total liquidated damages waived could vary from \$1.2 million already waived to \$1.8 million if excusable delays are eventually granted to March 31, 1977, the current estimated project completion date.

Whether the contract completion date will eventually be extended to March 31, 1977, is uncertain. As of October 31, 1976, GSA had already approved eight changes, but their prices will not be finalized until January 1977. If these changes are approved at their maximum authorized price, the contract will automatically be extended to February 20, 1977, because, as indicated above, the contract completion date is extended 1 day for every \$15,000 increase in the contract. This contract completion date could be extended to March 31, 1977, through additional routine contract changes. If the eight approved change orders are not finalized at their maximum price, liquidated damages could be assessed at a reduced rate of \$750 per day as provided for in the June 11, 1976, settlement.

The amount of liquidated damages GSA might have collected without the settlement agreement is uncertain. Damages are only awarded when delays are caused by the contractor. If the Board of Contract Appeals had found the Government responsible for delays as the contractor's claims charged, liquidated damages could not have been assessed.

CHAPTER 8

CONCLUSIONS

We believe that the decision to settle the contractor claims for \$5.3 million resulted at least in part from GSA's actions and omissions during the project's design and construction. Specifically, GSA

- failed to conduct additional preconstruction subsurface tests,
- granted concessions to the contractor which could have damaged its claims defense, and
- failed to provide adequate resources to vigorously litigate the claims.

Had these actions not occurred, we believe that many of the construction problems and corresponding claims might have been avoided and that GSA's litigation position would have been substantially strengthened.

Problems began when the project was in the design phase, which started in 1966 and extended through 1972. Despite our May 1967 recommendation that GSA conduct in-house reviews and evaluations of soil tests and site conditions, GSA relied completely on tests by the architect's soil engineering expert. Because our recommendations were not fully implemented, GSA was unable to identify the need for additional testing even though events suggested that additional tests were needed.

The first event was the inclusion, by a prospective contractor, of a large contingency cost for dewatering in his 1969 bid. The soil engineer then proposed that additional tests be conducted. However, GSA rejected this proposal because the building was being redesigned. Later, when the redesign was completed, these tests were not made. We believe many of the contractor's claims might have been avoided if GSA had provided adequate test data. Although the Board of Contract Appeals may have decided that the tests performed were legally adequate in deciding the merits of the claims, we believe that the tests performed were not adequate to identify existing subsurface conditions.

After the claims were filed, GSA acceded to many of the contractor's requests and demands and made several unusual concessions in return for having the contractor resume work. In each instance, the concessions made by GSA were used by

the contractor to support its claims. Specific GSA concessions included

- replacing the contracting officer, inspector, and construction engineer,
- paying the contractor \$2 million by releasing previously withheld progress payments and revaluating work in place, and
- recognizing a 12-month delay in completing construction.

According to a GSA justification for settlement, these concessions gave support to some of the contractor's charges of wrongdoing. The contractor's largest claim for additional costs of \$5.6 million was for a 12-month time extension allegedly granted by the GSA contracting officer.

GSA, at the contractor's request, hired an independent expert to review the claims for expediting settlement. Had the expert's critical report been released, GSA's defense would have been damaged. The time devoted to attempting to settle the contractor's claims and to preventing the report's release delayed efforts to prepare a defense by 7 months.

When GSA defense preparation resumed in July 1975 after the 7-month delay, counsel realized that substantial legal, audit, and technical support was needed in the very short period of time remaining before trial. However, this support was not provided.

Because of the disputes between the contractor and GSA, the project's cost has increased by about \$9.1 million and its completion has been delayed by about 19 months. We believe much of this added cost is the result of GSA's own acts and omissions.

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NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2157 Rayburn House Office Building

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July 2, 1976

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Honorable Elmer B. Staats
 The Comptroller General
 U. S. General Accounting Office
 441 G Street, NW
 Washington, D. C. 20548

Dear Elmer:

The General Services Administration recently settled existing claims filed against it by Haas and Haynie Company for \$5.3 million in connection with an office building that Haas and Haynie is constructing for GSA in Hawaii.

The General Accounting Office in the past conducted an excellent preliminary audit into this claims dispute. The size of the settlement by GSA greatly concerns me. I would greatly appreciate it if GAO would update their audit on this project, placing emphasis on the following matters:

1. The estimated value of known outstanding claims pending against GSA by Haas and Haynie and subcontractors which were not included in the settlement.
2. During the various phases of litigation, the amount of staff support made available by GSA to its claims litigation unit and the extent to which such support seems adequate in light of the dollar volume of the claims and the complicated nature of the case.
3. Considering the value of liquidated damages, specified in the contract, the additional cost to the Government of the time extension given Haas and Haynie in the Settlement Agreement of June 11, 1976.
4. Based upon the schedule at the time the contract was originally negotiated, the number of months behind schedule that the construction is to date and the present estimated time of completion.

Honorable Elmer B. Staats

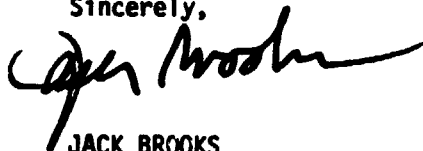
July 2, 1976

5. The efforts presently being made by the contractor to staff the construction project since the June 11 settlement.
6. The degree to which the evidence reasonably supports the claims settlement of \$5.3 million.
7. The dollar amount of change orders which GSA presently plans to submit to the contractor.
8. Any other information of importance developed by GAO during the course of the audit.

It would be appreciated if this request is given priority consideration. We would be pleased to discuss any aspect of the audit with members of your staff prior to or during the course of the audit.

With kind personal regards, I am

Sincerely,



JACK BROOKS
Chairman

DESCRIPTION OF CONTRACTOR CLAIMS

The 29 contractor claims, which were settled for \$5.3 million on June 11, 1976, can be divided into three categories:

- Seven claims, valued at \$11.8 million, were being tried by the Board of Contract Appeals.
- Eleven claims, valued at \$3.5 million, were awaiting trial before the Board of Contract Appeals.
- Eleven disputes, valued at \$1.3 million, which were not yet before the Board of Contract Appeals.

Each of these claims is described briefly below.

CLAIMS IN TRIAL--\$11.8 MILLION

Dewatering

The contractor claimed \$1.8 million for additional costs to remove unanticipated amounts of water from the construction site. The contractor contended that the lack of information in the contract documents led him to believe only a minor dewatering problem would be encountered.

Although the contract documents did not identify the waterflow rate, GSA believed that this information was not necessary because the documents did warn that major dewatering would be required. GSA also contended that, because of his prior experience in Honolulu, the contractor should have known potential site variations would be encountered during foundation construction. Finally, although prospective subcontractors warned the contractor before he submitted his bid, the contractor attempted to dewater the site with inexperienced personnel.

After recognizing the contractor's arguments, GSA estimated its liability for this claim would be between \$300,000 and \$920,000.

Excavation

The contractor claimed \$1.2 million and a 170-day time extension because (1) wooden piles from previously existing structures had to be removed, (2) water removal problems required manual excavation around pile caps, and (3) additional excavation was needed to dewater the site. As a result,

according to the contractor, the work flow could not be planned and a crisis-oriented construction scheme for the excavation work had to be adopted.

GSA believed that the contractor's use of inexperienced personnel, rather than an experienced expert, resulted in its inability to dewater the construction site. The presence of water, in turn, resulted in additional excavation costs and time delays.

GSA estimated its liability for this claim would be between \$250,000 and \$620,000.

Foundation piling

The contractor claimed additional costs of \$889,063 because piles unexpectedly penetrated the coral ledge or were deflected off wooden piles. Some wooden piles from previous existing structures were imbedded in the ledge. Removal of these wooden piles opened avenues for water flow, aggravating the dewatering problems. The contractor also claimed that variations in the coral ledge required the use of numerous short piles. This resulted in excessive waste of unused pile lengths. The contractor contended that these occurrences were totally unexpected, because the contract documents stated that the coral ledge could support the piles and did not disclose the existence of wood piles.

GSA contended that the contractor should have anticipated these problems. GSA contended also that the pile length variations were reasonable and were due, in part, to the contractor using a heavier striking force to drive the piles than required by the specifications.

GSA estimated its liability for this claim would be between \$335,000 and \$445,000.

Tie beams

The contractor claimed \$806,750 to correct the pile cluster alignment. The contractor contended that the Government erroneously interpreted the specifications to require the installation of unnecessary tie beams. Also, since the alignment problems were caused by alleged changed site conditions, the contractor believed GSA was responsible.

GSA believed the correct specification interpretation required the tie beams to correct errors in the contractor's placement of piles.

GSA estimated its liability for this claim would be between \$260,000 and \$400,000.

Foundation pad correction

The contractor claimed \$278,310 to correct two foundation pads damaged by water. The contractor believed that GSA was responsible for these costs because the force and direction of the water flow was unanticipated and the pads were poured at the direction of GSA's construction engineer.

GSA believed the contractor failed to (1) dewater the site and (2) obtain GSA approval prior to pouring concrete in one pad. GSA estimated its liability for this claim would be between \$5,000 and \$14,000.

Acceleration of work

This \$1.1 million claim is for additional manpower and overtime costs to accelerate work to meet the contract work schedule. This acceleration was necessary to overcome delays resulting from foundation construction problems. Because GSA refused to accept responsibility for the delays and adjust the payment schedules, the contractor allegedly accelerated work to avoid contract termination for failing to meet the work schedule.

GSA believed that the contractor did not accelerate work but, if acceleration did occur, the contractor was responsible for any additional costs incurred because the delay resulted from his mismanagement.

GSA estimated its liability for this claim would be between \$345,000 and \$575,000.

Time extension

The contractor's largest claim was \$5.6 million for actual and anticipated costs due to disruption of the original construction schedule. At issue was whether the July 1974 agreement between GSA and the contractor granted a 12-month extension. The contractor contended that GSA had granted the extension because of changed site conditions and meddling by GSA personnel. The contractor believed it should be reimbursed because of the inflationary effect on material prices and additional costs associated with attempting to replace subcontractors.

GSA contended that the July 1974 agreement did not constitute a time extension or an admission of any wrongdoing. GSA believed the delays resulted from contractor mismanagement during the construction process. GSA estimated its liability for this claim would be between \$1,500,000 and \$3,000,000.

CLAIMS BEFORE THE BOARD BUT
NOT IN TRIAL - \$3.5 MILLION

Form work

This \$2.6 million claim was for added cost to install form work and form work bracing. According to the contractor, the GSA construction engineer required concrete form drawings and engineering analyses beyond the contract requirements. The contractor contended that (1) the drawings were erroneously and arbitrarily rejected by GSA and (2) the GSA inspectors directed the installation process in minute detail.

GSA contended that the drawings were required by a GSA handbook which was incorporated in the contract. Moreover, the contractor's drawings were so bad that they could hardly be identified. GSA believed that most of the amount claimed was not valid because the contractor did not give written notice within the legal limit of 20 days.

GSA estimated its liability for this claim would be between \$650,000 and \$1,300,000.

Column alinement

The contractor claimed \$291,837 and a 194-day time extension for installing rolled steel columns to comply with the rigid specifications for structural steel. The contractor contended that the steel columns should meet the less rigid specifications for reinforcing steel because each column was self-contained within a concrete column.

Because the contract defined the columns as structural steel, GSA believed they must meet the more rigid specification. However, on July 29, 1974, after numerous columns had been installed, GSA agreed that future columns could be installed using the less rigid reinforcing steel specifications.

GSA estimated its liability for this claim would be between \$75,000 and \$145,000.

Underground utilities

At issue in this \$260,000 claim was whether the contract required utility lines to be placed underground. Because GSA rescinded its demand to place the utility lines underground after the claim was filed, the \$260,000 estimated expense was never incurred.

Suspension of work

The contractor claimed \$250,707 and a 61-day time extension for GSA-caused suspension of work from June 24 to July 22, 1974. The contractor contended that differing site conditions, Government-imposed contract changes without cost adjustments, and the refusal to act on earlier claims created a financial burden that forced the contractor to suspend work.

GSA believed the contractor was responsible for stopping construction because GSA had not previously breached the contract--the only basis which would justify suspension of work.

GSA estimated its liability for this claim would be between \$125,000 and \$250,000.

"I" joists

Following discussions between GSA and the contractor on alternative construction methods, the contractor canceled its order for "I" joists. The contractor claimed increased costs of \$32,921 because the joists had to be reordered at a higher price. At issue was whether GSA was responsible for cancellation of the original order.

GSA estimated its liability for this claim would be between \$15,000 and \$30,000.

Hard wood

At issue was the type of wood required for certain paneling and furniture. The contractor wanted \$31,625 if the more expensive wood were used, but the GSA construction engineer interpreted the specifications as requiring the expensive wood. GSA estimated a maximum liability of \$15,000.

Pipe coating

A subcontractor claimed \$34,000 to coat sewer pipes with an anticorrosion gel. The subcontractor proposed an

alternative because he considered the gel and its application to be outdated. The GSA construction engineer, however, insisted on the gel called for in the specifications. GSA estimated its maximum liability at \$20,000.

U.S. seal

GSA offered \$7,916 for the contractor to purchase certain seals which were originally to be Government-furnished material. The contractor claimed material and labor costs of \$12,597. GSA estimated its maximum liability would be \$2,500.

Automatic sprinkler

The contractor claimed \$7,578, while the Government offered \$4,530 for work on the automatic sprinkler system. GSA estimated its maximum liability would be \$1,500.

Demolition of shack

The contractor contended that GSA delays in approving certain demolition increased dumping costs by \$1,500. GSA stated that the building was demolished when called for by the contract. GSA estimated its maximum liability at \$1,000.

Labor slowdown

The contractor claimed a 5-day time extension because of a concrete workers strike, but the GSA contracting officer believed other contractor caused problems were to blame for the lack of progress. Although the contractor did not claim any additional costs, GSA estimated a maximum liability of \$15,000 for this claim.

CLAIMS NOT YET BEFORE THE BOARD--\$1.3 MILLION

Reshoring

At issue was whether \$403,248 spent by the contractor to support concrete slabs, joists, and beams was necessary. GSA estimated a maximum estimated liability of \$100,000 for this claim.

Acceleration from March 1976

In January 1976, GSA notified the contractor that construction was behind schedule and must be improved. The contractor hired additional men and later asserted a \$200,000

claim for accelerating the work. GSA did not have sufficient data to estimate its liability for this claim.

Uneven floors

The contractor said he would claim \$200,000 to correct uneven concrete floors because GSA had not rejected the floors when they were originally installed. GSA estimated its maximum liability for this claim at \$50,000.

Partitions

At issue was whether GSA delayed the installation of certain partitions and was consequently responsible for a \$140,000 increase in their cost. GSA could not estimate its liability for this claim because of insufficient data.

Exposed aggregate

At issue was the acceptability of certain concrete finish work. GSA believed the contractor could not win this \$56,000 claim.

Other claims

The settlement agreement also resolved six other potential claims totaling \$305,000 for concrete surcharges, defaulted subcontractors, and other problems. GSA could not estimate its liability for these claims because of insufficient data.

GSA ESTIMATE OF GOVERNMENT'S LIABILITY IF
CONTRACTOR'S CLAIMS HAD BEEN LITIGATED

<u>Claim description</u>	<u>Amount of claim</u> <u>(note a)</u>	<u>Amounts used in</u> <u>GSA calcu-</u> <u>lations</u> <u>(note a)</u>	<u>Estimated</u> <u>maximum</u> <u>liability</u>	<u>Estimated</u> <u>minimum</u> <u>liability</u>
Claims in trial:				
Dewatering	\$ 1,838,507	\$ 1,838,507	\$ 920,000	\$ 300,000
Excavation	1,241,126	1,241,126	620,000	250,000
Foundation piling	889,063	889,063	445,000	335,000
Tie beams	806,750	806,750	400,000	260,000
Pad correction	278,310	278,310	14,000	5,000
Acceleration of work	1,151,897	1,151,897	575,000	345,000
Time extension	<u>5,628,160</u>	<u>5,167,041</u>	<u>3,000,000</u>	<u>1,500,000</u>
Subtotal	<u>11,833,813</u>	<u>11,372,694</u>	<u>5,974,000</u>	<u>2,995,000</u>
Claims pending trial:				
Form work	2,592,908	2,592,908	1,300,000	650,000
Column alinement	291,837	291,837	145,000	75,000
Underground utilities	260,000	260,000	-	-
Suspension of work	250,707	250,707	250,000	125,000
"I" joists	32,291	32,921	30,000	15,000
Hardwood	31,625	31,625	15,000	-
Pipe coating	34,000	30,000	20,000	-
U.S. seal and case	12,597	4,681	2,500	-
Automatic sprinkler system	7,578	3,048	1,500	-
Demolition of shack	1,556	1,556	1,000	-
Labor slowdown	-	30,000	15,000	-
Subtotal	<u>3,515,099</u>	<u>3,529,283</u>	<u>1,780,000</u>	<u>865,000</u>
Claims not yet before the board:				
Reshoring	403,248	286,000	100,000	-
Masonry cleaning	26,000	250,000	100,000	-
Uneven floors	200,000	200,000	50,000	-
Soffit and fascia	60,000	30,000	-	-
Exposed aggregate	56,000	26,000	-	-
Acceleration from March 1976	200,000	-	-	-
Concrete surcharge	150,000	-	-	-
Defaulted subcontractors	35,000	-	-	-
Bar chart preparation	26,000	-	-	-
Rollup door	8,000	-	-	-
Partitions	<u>140,000</u>	<u>-</u>	<u>-</u>	<u>-</u>
Subtotal	<u>1,304,248</u>	<u>792,000</u>	<u>250,000</u>	<u>-</u>
Total claims (29)	<u>16,653,160</u>	<u>15,693,977</u>	<u>8,004,000</u>	<u>3,860,000</u>
Other costs considered:				
Future litigation expense	-	-	1,800,000	1,800,000
Interest accrued as of date of settlement	-	-	898,000	433,000
Total	<u>\$16,653,160</u>	<u>\$15,693,977</u>	<u>\$10,702,000</u>	<u>\$6,093,000</u>

a/Differences are due to (1) increases in some claims which occurred after GSA's estimates were prepared but prior to settlements and (2) using incomplete data for some claims.

SCHEDULE OF CHANGE ORDERS OVER \$20,000

	<u>Amount</u>
<u>Description of change orders costing</u>	
<u>\$20,000 and over with firm prices</u>	
Increase strength of beams	\$ 20,103
Delete 16,000 feet underfloor signal duct and 367 junction boxes	-21,840
Furnish and install complete waterproofing system at and above first floor	63,008
Furnish and install integrated ceiling system plus additional 300 control luminaries	559,184
Furnish and install signal and communications system	48,263
Delete allowance for fine arts	-160,000
Delete surface mounted integrated ceiling accent luminaries with transformers	<u>-29,400</u>
	<u>479,318</u>
<u>Description of change orders costing \$20,000 and</u>	
<u>over with estimated prices</u>	
Modify the waste disposal system and make certain changes on the first floor	120,335
Add certain windows and change window washing equipment	82,685
Revise the interior space design	1,068,373
Add a judge's office on third floor	131,023
Provide 24-hour air-conditioning equipment required by selected tenant agencies	178,733
Revise air-conditioning duct work	29,544
Provide programed light switching control for light fixtures	<u>134,067</u>
	<u>1,744,760</u>
<u>Potential work to be added to the contract</u>	
Reduce the number of relocatable partitions and install four cashier windows, folding door sets, sinks, showers, and lavatories	- 40,000
Furnish and install additional public address system in cafeteria	20,000
Furnish and install partitions and perform cer- tain electrical, mechanical, and other work for the Veterans Administration outpatient clinic	<u>1,000,000</u>
Total	<u>\$3,204,078</u>

PRINCIPAL OFFICIALS OF THE
GENERAL SERVICES ADMINISTRATION
RESPONSIBLE FOR THE ACTIVITIES
DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
ADMINISTRATOR OF GENERAL SERVICES:		
Jack Eckerd	Nov. 1975	Present
Arthur F. Sampson	June 1973	Oct. 1975
Arthur F. Sampson (acting)	June 1972	June 1973
Rod Kreger (acting)	Jan. 1972	June 1972
Robert L. Kunzig	Mar. 1969	Jan. 1972
COMMISSIONER, PUBLIC BUILDING SERVICE:		
Nicholas A. Panuzio	Sept. 1975	Present
Walter Meisen (acting)	Oct. 1974	Sept. 1975
Larry F. Roush	Aug. 1973	Oct. 1974
Larry F. Roush (acting)	Jan. 1973	Aug. 1973
John F. Galuardi (acting)	July 1972	Jan. 1973
Arthur F. Sampson	Mar. 1970	June 1972
Arthur F. Sampson (acting)	Dec. 1969	Mar. 1970
Raymond F. Myers	June 1969	Dec. 1969