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REPORT BY THE U.S.

General Accounting Office

~~SECRET~~

The General Services Administration Has Been Lax In Managing The Columbia Plaza Building Lease

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The General Services Administration did not devote enough management attention to the administration of the lease for the Columbia Plaza Building in Washington, D.C. Rather than planning ahead and avoiding problems, it waited too long and reacted to problems after they occurred. Many of these problems and some of the \$16.7 million in extra costs could have been avoided.



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LCD-79-307
APRIL 17, 1979





UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

LOGISTICS AND COMMUNICATIONS
DIVISION

B-95136

The Honorable Paul E. Goulding
Acting Administrator of General
Services

AGC00017

Dear Mr. Goulding:

This report discusses (1) various deficiencies in the General Services Administration's management of the Columbia Plaza Building lease, (2) extra costs incurred by the Government as a result of lease modifications or building deficiencies, and (3) problems with water leakage and carbon monoxide fumes in the building.

In his October 31, 1978, letter former Congressman Newton I. Steers, Jr., requested that we review problems concerning the unhealthy conditions existing within the Columbia Plaza Building and the extent of repairs necessary to correct alleged building deficiencies. The Chairman, House Committee on Government Operations, also expressed interest in a review of the Federal leasing arrangements at the building in a January 3, 1979, letter.

Our review focused on the points raised by the Congressman. In addition, we reviewed the modifications made to the lease in 1974 and followed up on action taken by General Services on recommendations in our prior report (LCD-77-354, Jan. 24, 1978) relating to the Government paying for utilities used by the commercial garage in the Columbia Plaza Building.

We made our review at the Central and Regional offices in Washington, D.C.

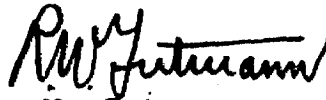
This report contains recommendations to you on page 16. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60

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days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Director, Office of Management and Budget; the Chairmen, House Committee on Public Works and Transportation; the Senate Committee on Environment and Public Works; the Subcommittee on Federal Spending Practices and Open Government, Senate Committee on Governmental Affairs; the Subcommittee on Treasury, Postal Service, and General Government, Senate Committee on Appropriations; Congressman Michael D. Barnes; and former Congressman Newton I. Steers, Jr.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "R. W. Gutmann".

R. W. Gutmann
Director

GENERAL ACCOUNTING OFFICE
OF GENERAL SERVICES

THE GENERAL SERVICES
ADMINISTRATION HAS BEEN LAX
IN MANAGING THE COLUMBIA
PLAZA BUILDING LEASE

D I G E S T

Because the General Services Administration was lax in managing its lease for office space in the Columbia Plaza Building in Washington, D.C., it encountered many unnecessary problems and incurred about \$16.7 million in extra costs. The situation follows:

In September 1971 General Services awarded a 20-year, \$45.68 million lease to the Columbia Plaza Corporation for 422,118 net usable square feet of space in an office building under construction at 23d Street and Virginia Avenue, NW.

F/C Construction was slow, and in November 1972 the building was sold unfinished at a foreclosure sale to John McShain, Inc., one of the principal stockholders in the Columbia Plaza Corporation. (See p. 1.)

As a result, the lease was modified in April 1974, increasing the cost of the lease to the Government by \$13.88 million and delaying occupancy. Other actions increased Government costs by \$2.78 million--a total increase of \$16.7 million. (See pp. 2 to 4.)

PAYING RENT BEFORE BUILDING WAS OCCUPIED

General Services paid rent of \$1.58 million while all or part of the Columbia Plaza Building was vacant. Although the building was not ready for occupancy because alterations had not been completed, General Services started paying rent for the entire building in April 1974. General Services should avoid situations in which rent is paid before the space is ready for use, thus providing an incentive for the lessor to make necessary alterations quickly. *delete*
(See p. 4.)

ADDITIONAL COSTS INCURRED FOR
U.S. CUSTOMS SERVICE ALTERATIONS

In addition

Costs of \$567,000 incurred to adapt space to meet special needs of the U.S. Customs Service were unnecessary because the agency did not move to the building as planned. Part of these costs could have been avoided had General Services promptly suspended alteration work when Customs decided to move to another building. (See p. 5.)

FAILURE TO OBTAIN TIMELY
CLARIFICATION OF GOVERNMENT RIGHTS

After the foreclosure sale in November 1972, General Services waited too long to obtain clarification of the Government's rights under the 1971 lease. Oral agreements ~~to~~ were not put in writing and General Services was not in a good bargaining position because it had not developed alternative plans for obtaining needed space. Result: The Government will incur additional lease costs of about \$13.88 million over the 20-year lease period. (See p. 7.)

because

FAILURE TO PROMPTLY RESOLVE
RESPONSIBILITY FOR BUILDING MAINTENANCE

General Services did not resolve the question of whether the lessor or the Government is responsible for maintaining the structural integrity of the building. It paid over \$460,000 to correct leaks of water and carbon monoxide. General Services has continued to pay the full rent amount provided in the April 1974 modified lease. (See p. 8.)

GOVERNMENT PAYING FOR UTILITIES
USED BY COMMERCIAL GARAGE

The Government has been paying for electricity used by the building's commercial garage since 1974. As of December 1978 about \$175,500 was due the Government. (See p. 12.)

PAYING RENT FOR MORE USABLE SPACE
THAN MAY BE AVAILABLE

General Services is paying rent based on 422,118 net usable square feet of space. All available evidence indicates that the building contains less than that. No measurement was made to determine if the building contained the required amount of space. General Services may be paying extra rent of about \$68,900 a year. (See p. 13.)

Also, GAO believes that, consistent with the Public Buildings Act of 1959, as amended, General Services should have obtained congressional approval before amending the lease because the net annual rent increased by more than \$500,000. (See p. 11.)

RECOMMENDATIONS

The Administrator of General Services should:

- Resolve the issue of whether the lessor or the Government is responsible for maintaining the structural integrity of the building.
- Negotiate with the lessor for the deduction from the rent payments those costs incurred by the Government for repairs and maintenance which were the responsibility of the lessor. The deduction of such costs is authorized by the "failure in performance" clause contained in the lease.
- Require separate metering for utilities in the garage of the building and obtain reimbursement for utilities consumed at Government expense since 1974.
- Determine the amount of net usable square feet available in the building by making a field measurement in accordance with

the terms of the lease and, if necessary, adjust the rent payments to conform to the field measurement and negotiate with the lessor for the recovery of any overpayments arising from the rent having been based on more space than was available.
(See p. 16.)

In addition

General Services should include interest in its claims for reimbursement.

This report was not submitted to General Services for written comment. A preliminary draft was discussed informally with Region 3 officials, who did not object to the findings and recommendations.

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ABBREVIATIONS

GAO General Accounting Office

GSA General Services Administration

NIOSH National Institute for Occupational Safety
 and Health

CHAPTER 1

INTRODUCTION

In June 1971 the General Services Administration (GSA) solicited offers to lease 450,000 net usable square feet of space in the Washington, D.C., area. In response to this solicitation, a proposal was received from the Columbia Plaza Corporation providing 422,118 net usable square feet to be leased for a 20-year term in a building under construction at 23d Street and Virginia Avenue, NW. The annual rent, as amended, was \$2,342,754.90, including all services and utilities (\$5.55 a square foot). The Government was to receive 6 months free rent. Therefore, the total amount to be paid by the Government for 19.5 years was \$45.68 million. According to a GSA staff appraisal, the fair annual rental value of the property to be leased was \$2,571,327. On September 1, 1971, GSA accepted the lessor's offer.

The building site, located in an urban renewal area, was acquired from the District of Columbia Redevelopment Land Agency. According to the urban renewal plan, occupancy of the office building was limited to Government agencies and nonprofit organizations.

Building construction progress was slow. Finally the corporation was forced to dispose of the building, not yet complete, at a foreclosure sale when the construction loan funds of \$13 million were all used. On November 21, 1972, John McShain, Inc., purchased the building. The purchaser, one of the principal stockholders in the Columbia Plaza Corporation, advised GSA in December 1972 that it purchased the property free of the GSA lease. Later, according to GSA, John McShain, Inc., orally agreed to honor the lease, and GSA agreed to seek any financial relief for the lessor that might be available under the terms of the lease. GSA stated that in reliance on this oral promise, it notified agencies to prepare for the move to Columbia Plaza and furnished the lessor with tenant layout drawings.

GSA made plans to move the then newly established Federal Energy Office into a small portion of the building by late 1973. However, in December 1973 John McShain, Inc., notified GSA that the Government's possession of the space would not be permitted until GSA agreed to a substantial rent increase. Apparently, estimated expenses exceeded net rental income because debt service costs increased as a result of additional borrowings needed to resume construction after foreclosure action.

Since the space was urgently needed, on December 26, 1973, GSA requested the Department of Justice to file an action in condemnation, together with a motion for possession of 68,603 square feet of space. GSA also requested that the complaint allege a lease between John McShain, Inc., and the Government and that the court determine the rights of the Government under the lease.

The condemnation complaint was filed in early January 1974. GSA was granted possession, but the District Court refused to hear the matter concerning the validity of the original 1971 lease before the issue of just compensation for the condemned property was determined. The jury rendered a verdict of \$8.20 a square foot fully serviced to be applied to 77,900 square feet, which was calculated on the Building Owners and Managers Association measurement system.

GSA considered the verdict excessive and in March 1974 it moved the Federal Energy Office to alternate space. The Government asked the court to dismiss the condemnation action, but the court refused, thus vesting in GSA a 5-year leasehold interest in the portion of the building condemned.

Prior to a trial on the merits of the original lease, John McShain, Inc., offered to settle the litigation by agreeing to be bound by the terms of the 1971 lease, provided GSA agreed to certain modifications. On April 19, 1974, the original lease was modified, as follows:

- The Government assumed responsibility for services and utilities, estimated in 1974 at \$666,946.44 a year, or \$1.58 a square foot (\$13.3 million for 20 years based on 1974 estimated costs).
- The annual rent rate excluding utilities and services remained at \$2,342,754.90.
- The requirement for a lessor-furnished cafeteria in the building was deleted, but the lessor was required to furnish food service facilities in the Columbia Plaza Shopping Mall. Later, GSA paid about \$540,000 to install a cafeteria in the building because the shopping mall cafeteria was not sufficient for the number of employees in the building.
- The tax escalation clause was changed from 5 to 3 years.

--The Government received two 5-year renewal options at the same rental rate.

--The lease term was established from April 15, 1974, through April 14, 1994. The last 6 months (October 15, 1993, to April 14, 1994) were to be rent free.

As a result of these modifications, the overall cost to the Government increased from \$45.68 million to about \$59.56 million, a \$13.88 million increase for the 20-year lease period.

Tenant agencies occupied the building in increments starting in July 1974. To adapt the building to the special needs of the agencies, alterations costing the Government about \$3.3 million, or \$8 a square foot, were required.

In March 1976 John McShain, Inc., sold the building to the State of Kuwait.

CHAPTER 2

DEFICIENT PRACTICES FOLLOWED IN ADMINISTERING LEASE

We found deficiencies in GSA's management and administration of the lease for the Columbia Plaza Building. We believe that GSA did not forcefully administer the lease. Closer monitoring and more timely action could have prevented many problems with the lease and some extra costs.

Extra costs associated with this lease are about \$16.7 million. These costs are summarized below and are discussed in more detail in the following sections of the report.

	<u>Millions</u>
Paying rent while building was unoccupied	\$ 1.58
Space modifications for U.S. Customs Service that were not used	.57
Lease modifications in April 1974	13.88
Cost to correct water leakage and other building deficiencies	.46
Estimated cost to Government of utilities used by commercial garage since 1974	.17
Possible rent overpayment	not <u>determined</u>
	<u>\$16.66</u>

PAYING RENT BEFORE BUILDING WAS OCCUPIED

GSA paid rent of \$1.58 million while all or portions of the Columbia Plaza Building were vacant or unoccupiable. (See app. I.) Rent commenced for the entire building starting April 15, 1974, but the building was occupied in increments starting July 1, 1974, and ending July 1, 1976. When the lease was modified in April 1974, the building was not available for occupancy because tenant alterations had not been completed. GSA and the building owner later negotiated supplements to the lease for alteration work needed to adapt the space to the special requirements of the occupying agencies.

Generally, rent is not paid until space is available for occupancy. Therefore, a lessor has an incentive to make

necessary alterations quickly. In prior reports (LCD-78-338, Sept. 14, 1978, and LCD-77-354, Jan. 24, 1978), we reported similar findings regarding GSA's payment of \$1.9 million in rent for six buildings while they were being altered. In our January 24, 1978, report we recommended that GSA take appropriate steps to insure that alteration work is supervised and coordinated properly and that alterations are completed by the occupancy date. In a March 13, 1978, memorandum to all the regions, the Commissioner, Public Buildings Service, stated that GSA is committed to fully implementing this recommendation and other recommendations contained in our January 1978 report.

ADDITIONAL COSTS INCURRED FOR
U.S. CUSTOMS SERVICE ALTERATIONS

Costs of \$567,000 incurred to adapt space to the special needs of the U.S. Customs Service were unnecessary because the agency did not move to the building as originally planned. Part of these costs could have been avoided if GSA promptly suspended alteration work when Customs decided it wanted to move to another building.

When the lease was awarded in 1971, the plan was for Customs to occupy about 200,000 square feet in the building when completed. This would enable Customs to consolidate its headquarters offices from eight locations to one location in the Washington, D.C., area. Tenant alteration plans were provided to the lessor (John McShain, Inc.) in 1973.

Because GSA was uncertain about the availability of the building in early 1974 and the pending court action, it developed an alternate space plan. This alternate plan was to move Customs by late 1974 to the Main Labor Building (14th St. and Constitution Ave., NW., Washington, D.C.) when the Department of Labor relocated to its new headquarters building at 3d Street and Constitution Avenue, NW.

In a February 26, 1974, letter the Department of the Treasury informed GSA that it considered the Main Labor Building to be ideal for Customs and better than the Columbia Plaza Building. On April 11, 1974, the Department of the Treasury sent an updated request to GSA for 270,116 square feet of space to consolidate Customs in the Main Labor Building.

After the lease modifications were agreed to in April 1974, GSA informed the Treasury in an April 25, 1974, letter that it was now able to continue with the original plan and assign Customs to the Columbia Plaza Building. GSA said this would save the Government substantial expense since the owner was proceeding to finish the building for Customs occupancy,

including construction of a number of special requirements, such as laboratories and computer facilities.

In May and June 1974 Treasury and GSA officials discussed the assignment plan and exchanged correspondence. GSA's position, basically, was that assigning Customs to the Columbia Plaza Building was in the best interests of the Government, whereas the Treasury believed that Customs should move to the Labor Building. The Treasury agreed to reimburse GSA for the costs incurred in connection with the alterations in the Columbia Plaza Building for Customs occupancy.

In a July 12, 1974, letter the Administrator of General Services informed the Secretary of the Treasury that he would grant the Secretary's request to assign Customs to the Labor Building but the Treasury would have to reimburse GSA about \$1.5 million to \$2 million for costs.

On September 4, 1974, the lease was amended to provide for a lump-sum payment to the lessor of \$522,932 for alterations made to the Columbia Plaza Building in connection with Customs occupancy requirements. The work items were as follows:

<u>Description of Work</u>	<u>Amount</u>
Computer area on 5th floor (work halted)	\$130,000
Laboratory on 15th floor	215,000
Heavier telephone conduit	73,000
Design changes necessitated by Customs layout change requests	24,420
Block partition, folding doors, etc., on 3d floor	19,000
Other work items	<u>61,512</u>
	<u>\$522,932</u>

Two of the above items--the laboratory and computer area--account for \$345,000 or 66 percent of the alterations. These special installations were not completed. The space to be used for Customs laboratory and computer installation is now used as office space. Customs reimbursed GSA \$566,858.29 for the alterations. This included a payment of \$522,932 to the lessor and a GSA overhead charge of \$43,926.29.

In addition to incurring alteration costs of \$566,858.29 for Customs requirements, extra costs were incurred to remove some of these alterations installed specifically for Customs, such as partitions, before other agencies could occupy the space.

We believe that GSA should have suspended alteration work for Customs in April 1974 until the issue of where to move the agency was resolved. Instead, alteration work continued while the two agencies exchanged correspondence and discussed the space assignment.

As stated in our September 14, 1978, report on alterations to leased buildings (LCD-78-338), there is no requirement in the law for congressional approval of, or reporting on, alteration projects in leased buildings. We did recommend that the Congress amend the law to require congressional authorization of alterations exceeding \$500,000 in leased buildings.

If GSA had to obtain prior congressional approval for the \$3.3 million of alterations to the Columbia Plaza Building, there would have been disclosure of, and justification for, all the alteration work in the building, including the \$567,000 to be spent for Customs. If prior disclosure had to be made to the Congress, we believe that Customs would have been reluctant to move to another location after GSA had incurred alteration costs of \$567,000 on its behalf.

FAILURE TO OBTAIN TIMELY CLARIFICATION OF GOVERNMENT RIGHTS

Due to lease modification resulting from the foreclosure action, the Government will incur additional costs of about \$13.88 million for the 20-year lease period. After the foreclosure sale in November 1972, GSA did not effectively follow through and obtain clarification of the Government's rights under the 1971 lease before completing occupancy plans. GSA waited too long.

In a December 6, 1972, letter John McShain, Inc., informed GSA that it purchased the property at the foreclosure sale free and clear and it had no obligation to honor the lease between GSA and the Columbia Plaza Corporation. In February 1973 GSA did prepare a submission to the Department of Justice requesting appropriate action to determine the Government's rights under the lease agreement. However, before formalizing the request, the lessor, according to GSA, orally advised GSA at a meeting that the corporation intended to honor the lease agreement. GSA agreed to seek any financial relief for the lessor that might be available under the terms of the lease. However, these understandings were not agreed to in writing.

GSA stated that in reliance on the lessor's promise, it refrained from taking legal action or developing alternative space plans. GSA notified agencies to prepare for a move to

the building. It also furnished the lessor with tenant layout drawings. The lessor accepted the drawings, continued to complete the building, and furnished GSA schedules of occupancy. As stated previously, the lessor then notified GSA in December 1973 that the Government could not occupy the space unless GSA agreed to a substantial increase in rent.

When the lease was modified in April 1974, GSA was not in a good negotiating position because (1) there was a need for the space, (2) no alternative space plan was developed for all agencies scheduled to move to the building, and (3) there would be a delay in acquiring a block of space as large as the Columbia Plaza Building. Nevertheless GSA, as the Government's leasing agent, should have been able to exert some leverage in negotiations because, in accordance with the urban renewal plan, the lessor could only lease the building to nonprofit organizations or Government agencies. GSA should have used its leverage and refused to lease from the lessor unless it received better terms, but GSA was not in a good negotiating position because it had not developed viable options.

FAILURE TO PROMPTLY RESOLVE RESPONSIBILITY FOR BUILDING MAINTENANCE

Problems have existed with water leakage and carbon monoxide fumes in the building. Due to the potential health problems, tenant agencies demanded corrective action. To maintain the building in a tenantable condition, GSA paid over \$460,000 to correct water leakage and other building deficiencies. (See app. II.) GSA has continued to pay the full rent amount provided in the April 19, 1974, modified lease.

Standard GSA leases provide that the lessor be responsible for maintaining the property in a tenantable condition. This standard provision was deleted from the modified lease and replaced by two other provisions which have caused some controversy in determining the responsibility for correcting the building deficiencies discussed in this report.

The modified lease now states that:

"The lessor shall maintain the structural integrity of the building, including all necessary repairs to the exterior walls, roof, and maintenance of the structure of the building not caused by the negligence of the Government's agents or employees and in addition provide for the replacement in whole or in part of major pieces of operating equipment such as boilers or air conditioning

units which make it impossible to provide the services available or agreed upon to be available at the time of the Government's initial occupancy of the leased premises."

Another provision in the modified lease states that:

"The Government assumes the obligations of maintenance, repairs and operations as set forth in Schedule C [Services, Utilities and Maintenance]."

GSA maintains that the lessor was responsible for making the repairs needed to correct the water leakage and other building deficiencies under the first lease provision cited above. We observed that this clause is similar to the standard lease provision concerning the lessor's responsibility for maintaining the leased premises that was deleted. However, the lessor argues that because the standard lease provision was deleted, the Government is responsible for the repairs under the second provision cited above notwithstanding the first provision directing the lessor to maintain the structural integrity of the building.

Water leakage

There have been extensive water leaks in the building affecting its tenantable condition. The water caused damage to walls, carpets, furniture, and ceiling tile. The leakage problem has existed since 1975 but became more severe in 1978. As a result of leakage caused by heavy rainstorms in late August 1978 coupled with high humidity in the building, mold started to grow on the walls, furniture, and other items in sections of the building. Initial efforts to combat the problem were to no avail because the mold appeared to spread faster than it could be removed through normal cleaning, and it reappeared in areas previously cleaned.

The National Institute For Occupational Safety and Health (NIOSH), Department of Health, Education, and Welfare, and the Department of Environmental Services, District of Columbia, evaluated the mold problem in the building. Both organizations concluded that the building leaks, is humid, and should be made watertight to stop mold growth. NIOSH also concluded that there is evidence of sensitization of some workers to the mold.

To correct the water leakage, humidity, and mold problems GSA

- replaced the high rise roof and repaired the 3d and 5th floor balcony and plaza areas;
- replaced partitions, carpeting, ceiling tiles, and windows; and
- installed an "I beam" drainage system in an attempt to preclude water from entering office areas from the 3d floor plaza area.

The GSA repairs to the 3d floor plaza area are temporary in nature. These repairs stopped most, but not all, water leaks. During visits to the building in November 1978 and January 1979, we observed water leaking into training rooms used by one agency. According to GSA, the present owner of the building has promised to make repairs to the plaza areas and promenade deck. The estimated cost for permanent repairs to this area is about \$260,000.

The present owner was notified before he purchased the building in March 1976 that there was a problem with water leaks. In connection with the sale of the building, GSA was required to submit a certificate which provided the details of the lease. This February 25, 1976, certificate indicated that the building was completed to the satisfaction of GSA except for water leaks which resulted from structural imperfections and the ongoing problems of windows being damaged by wind.

Carbon monoxide fumes

High concentrations of carbon monoxide fumes entered the lower floors of the building from the privately leased garage in 1977 and 1978. In 1977 a GSA study recommended that all openings around pipes in the garage be sealed to prevent further leakage of fumes and that the garage be ventilated to create a negative pressure. To correct the problem, two additional fans were installed in the garage. However, the problem occurred again in 1978.

In April 1978 GSA asked a consultant to make an industrial hygiene survey of the building. The consultant concluded in his May 19, 1978, report that:

- The concentration of fumes did not exceed the maximum allowable average concentration level over an 8-hour period established by the Occupational Safety and Health Act.
- The levels were great enough to possibly cause symptoms of headaches and nausea in certain sensitive individuals.

--The primary causes of contamination were inadequate garage ventilation, improper building ventilation balance, and openings between floors.

The consultant made seven recommendations. One of these was to increase the exhaust volume in the garage to meet the District of Columbia building code requirement of 500 cubic feet per minute per car during peak activity. The Department of Environmental Services of the District of Columbia inspected the building in May 1978 and reported that the ventilation system in the garage area was never completed. Apparently, this fact was overlooked by District of Columbia building inspectors when an occupancy permit was issued in 1974. The Department issued a citation to the lessor's agent on May 30, 1978, to provide adequate exhaust ventilation in the garage to meet the building code requirement of 500 cubic feet per minute during peak periods and 350 cubic feet per minute during non-active periods.

The building owner and GSA took corrective action. The owner made an out-of-court settlement to employees of one agency who claimed they were made ill by the exhaust fumes.

On November 13, 1978, a representative from the Department of Environmental Services of the District of Columbia visited the building and reported that the ventilation in the garage complied with the code requirement.

CONGRESSIONAL APPROVAL NOT OBTAINED WHEN
NET RENT WAS INCREASED MORE THAN \$500,000

Section 7 of the Public Buildings Act of 1959, as amended (40 U.S.C. 606), requires GSA to obtain prospectus approval by the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works of all leases having an annual average rent in excess of \$500,000. This requirement was enacted in 1972.

GSA procedures, which interpret the requirements of section 7 of the 1959 act, state that the "average annual rent" means bare rent (net rent) exclusive of the reasonable value of utilities and services.

When the lease was modified in April 1974, GSA concluded that no prospectus was required since the lease award was made in 1971, prior to the enactment of the approval requirement.

We believe that congressional approval was required since the net rent, as defined by GSA procedures, increased by more than \$500,000 in April 1974. The initial award in September 1971 was at an annual gross rent of \$2,342,754.90. After deducting the estimated cost of services and utilities of \$616,292.28 from gross rent, GSA computed the net annual rent at \$1,726,462.62 in 1971. As shown on GSA Form 387, Analysis of Values Statement, prepared in April 1974, the net annual rent increased to \$2,342,754.90 from the 1971 amount of \$1,726,462.62. Therefore, since net rent increased by \$616,292.28, it exceeded the \$500,000 approval threshold established by law.

We believe that GSA did not take deliberate action in this case to evade the prospectus approval requirement. In our January 24, 1978, report (LCD-77-354), we reported that GSA did not obtain congressional approval for two major leases. We recommended that GSA make periodic reviews of its leasing program to help insure that existing procedures for obtaining congressional approval are met. GSA agreed to implement the recommendation.

GOVERNMENT PAYING FOR UTILITIES
USED BY COMMERCIAL GARAGE

In our prior report (LCD-77-354, Jan. 24, 1978), we reported that non-Government tenants in 13 leased buildings in the Washington, D.C., area received electricity and, in some cases, other utilities at Government expense. One of these was the Columbia Plaza Building. The Government has been paying for electricity used by the commercial garage (about 360 vehicles) since the building was first occupied in 1974.

In an October 21, 1977, letter commenting on a draft of our report, General Services informed us that adjustments in rentals either have been made or are being made to compensate the Government for the cost of utilities in non-leased areas. However, GSA has been slow in implementing corrective action. No adjustments in rent had been made for 11 of the 13 buildings when we completed our field work in January 1979.

In September 1978 GSA received a refund of \$35,321.30 for the cost of utilities used in a cafeteria and a discotheque in one leased building. In December 1978 another lessor agreed to reimburse GSA \$80,202.10 for electricity used to generate chilled water for commercial activities in the Crystal Mall Building Number One during the period October 1, 1975, through September 30, 1977. For future periods, he

agreed to pay the Government 23 percent of energy necessary to generate chilled water for commercial tenants.

In a November 30, 1978, letter we informed the Administrator of General Services that although corrective action was promised, electricity in the Columbia Plaza garage was not yet being separately metered. In a December 8, 1978, letter GSA requested the lessor's agent to take immediate steps to have the garage separately metered. In December 1978 the GSA Maintenance and Utilities Branch in Region 3 (Washington) estimated that \$175,531.32 was due the Government for electricity consumed by the garage from 1974 to 1978.

PAYING RENT FOR MORE USABLE
SPACE THAN MAY BE AVAILABLE

GSA started incurring rent of \$5.55 a square foot on 422,118 net usable square feet effective April 15, 1974. All available evidence indicated that the building contains less than 422,118 net usable square feet.

In July 1971, before the building was constructed, the lessor proposed to lease 422,118 square feet to GSA.

No field measurement, as required by the lease, was made to determine if the building contained the required amount of space. The lease provided that:

"Space offered for lease to the Government must contain the required square foot net usable area * * * and upon delivery, the actual number of net usable feet of space delivered will be determined by mutual field measurement. Payment will be made on the basis of actual measurement but not to exceed the amount offered * * *."

The lease states that the "net usable space" is determined by computing the inside gross area and deducting from it the following:

- "(1) Toilets and lounges
- (2) Stairwells
- (3) Elevators and escalator shafts
- (4) Building equipment and service areas
- (5) Entrance and all elevator lobbies

- (6) Stacks and shafts
- (7) Fully enclosed convectors when the housing rests on the floor and each end abuts a column or wall.
- (8) In addition to the deductions specified above, a minimum deduction of 10 percent of the space remaining on each floor proposed for use for corridors for internal flow of traffic; or the area included in the corridors developed in the buildings as designed, or as presently built, (measured to the room side of said corridors) whichever is greater, shall be made."

Although there is no evidence that a mutual field measurement was made, a GSA factsheet prepared in September 1973 states that measurements have been made showing 405,000 to 407,000 square feet of space. According to this document, the difference in measurement would result in a rental difference in excess of \$75,000 a year. (422,000 - 407,000 sq. ft. x \$5.55 = \$83,000 a year.)

An undated worksheet in the GSA lease file shows measurements by floor with a total of 409,701 net usable square feet calculated thus:

	<u>Square feet</u>
Total for all floors before 10-percent deduction	455,223
Less 10 percent (See item 8 above)	<u>45,522</u>
Net usable square feet	<u><u>409,701</u></u>

If this measurement is correct, GSA is paying extra rent of about \$68,900 a year (422,118 - 409,701 x \$5.55).

OPERATING COSTS

The 1971 lease required the owner to provide services and utilities which GSA estimated the annual costs at \$616,292.28, or \$1.46 a square foot based on 422,118 square feet. When the lease was modified in April 1974 and the Government assumed the cost of utilities and services, GSA estimated the annual costs at \$666,946.44, or \$1.58 a square

foot. According to GSA records, the fiscal year 1978 costs for services and utilities were \$1,039,150, or \$2.46 a square foot. These figures include the extra costs for additional air-conditioning usage needed to control the high humidity attributable to the water leaks in the building.

CONCLUSION

Sufficient management attention was not devoted to the administration of the lease for the Columbia Plaza Building. Rather than planning ahead and avoiding problems, GSA waited too long and then reacted to problems after they occurred.

GSA's decision to agree to a modification of the lease was motivated by the uncertainty of the pending litigation and its need for the space. The effect was that the Government had to pay an increase in the net rent as well as additional expenses that had been the lessor's responsibility under the 1971 lease, but would have significantly reduced or even eliminated the lessor's profit if he had continued to assume such responsibilities under the modified lease.

GSA may have been in the position to avoid the additional costs it had incurred if it aggressively pursued its rights under the 1971 lease at the time the dispute with the lessor began in December 1972. For example, GSA did not obtain clarification of the Government's rights under the 1971 lease before completing occupancy plans or develop viable options. Moreover, GSA's understanding concerning lessor promise to honor the 1971 lease was not reduced to writing.

We believe that, consistent with section 7 of the Public Buildings Act of 1959, as amended, GSA should have obtained prospectus approval before amending the lease because the net annual rent increased by more than \$500,000.

As stated in our prior reports, GSA should avoid situations in which rent is paid before the space is ready for use and occupancy. Therefore, a lessor has an incentive to make necessary alterations quickly. We recognize that it is not always possible to avoid paying rent for unoccupied space in cases where alterations are needed following initial occupancy by the Government.

In order to protect the Government's interest, GSA should (1) act promptly and determine the amount of net usable square feet of space available in the building by making a field measurement, (2) require separate metering of

utilities in the garage space, (3) obtain reimbursement for utilities consumed in the garage at Government expense since 1974, and (4) obtain reimbursement for the cost incurred by the Government for correcting structural deficiencies. GSA should include interest in its claims for reimbursement.

RECOMMENDATIONS

The Administrator of General Services should:

- Resolve the issue of whether the lessor or the Government is responsible for maintaining the structural integrity of the Columbia Plaza Building.
- Negotiate with the lessor for the deduction from the rent payments those costs incurred by the Government for repairs and maintenance which were the responsibility of the lessor. The deduction of such costs is authorized by the "failure in performance" clause contained in the lease.
- Require separate metering for utilities in the Columbia Plaza Building garage and obtain reimbursement for utilities consumed at Government expense since 1974.
- Determine the amount of net usable square feet available in the Columbia Plaza Building by making a field measurement in accordance with the terms of the lease. If necessary, adjust the rent payments to conform with the field measurement and negotiate with the lessor for the recovery of any overpayments arising from the rent having been based on more space than was available.

Our report was not submitted to GSA for written comments. A preliminary draft was discussed informally with GSA Region 3 officials. They did not object to the findings and recommendations.

RENT PAID FOR THE COLUMBIA PLAZA
BUILDING BEFORE IT WAS OCCUPIED

<u>Unoccupied</u>			<u>Square Feet</u>	<u>Rate Per Square Foot (note a)</u>	<u>Rent Loss</u>
<u>From</u>	<u>To</u>	<u>Days</u>			
04-15-74	07-01-74	77	37,250	\$ 1.1708	\$ 43,612.30
04-15-74	08-02-74	109	17,075	1.6574	28,300.11
04-15-74	10-01-74	169	40,220	2.5697	103,353.33
04-15-74	10-07-74	175	30,520	2.6610	81,213.72
04-15-74	11-22-74	221	147,040	3.3604	494,113.21
04-15-74	01-29-75	289	34,595	4.3944	152,024.26
04-15-74	02-10-75	301	17,250	4.5768	78,949.80
04-15-74	02-15-75	306	8,650	4.6529	40,247.59
04-15-74	02-17-75	308	17,520	4.6833	82,051.42
04-15-74	03-17-75	336	17,420	5.1090	88,998.78
04-15-74	04-01-75	351	1,640	5.3371	8,752.84
04-15-74	12-15-75	609	9,465	9.2601	87,646.85
04-15-74	07-01-76	808	<u>23,890</u>	<u>12.2860</u>	<u>293,512.54</u>
Total			<u>b/402,535</u>		<u>\$1,582,776.75</u>

a/Computed on the basis of the annual lease rate of \$5.55 a square foot for the period vacant.

b/Space assignment records show a total of 403,090 square feet of occupiable area.

COSTS INCURRED BY THE GOVERNMENT
TO CORRECT WATER LEAKAGE AND OTHER
PROBLEMS IN THE COLUMBIA PLAZA BUILDING

<u>Description Of Work Performed</u>	<u>Amount</u>
Roof repairs and design review services for high rise section of building.	\$245,336
Labor and other costs to remove and replace partitions, carpets, and ceiling tiles due to water leakage, mold, and mildew.	63,904
Surveys of building deficiencies.	55,000
Remove and replace 117 windows.	41,130
Temporary repairs to 3d and 5th floor roofs and balcony.	40,637
Material for modifications to vertical fan coil units in heating, ventilation, and air-conditioning system.	13,696
Sealing around pipes to prevent the entrance of carbon monoxide fumes into office areas.	<u>1,031</u>
Total	<u>a/\$460,734</u>

a/ At the completion of our review in January 1979, GSA had not accumulated all costs incurred to correct building deficiencies.

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