

109500

RELEASED

~~10/189~~



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

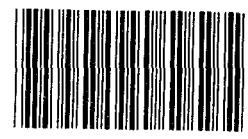
LOGISTICS AND COMMUNICATIONS
DIVISION

RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

MAY 16, 1979

B-95136

The Honorable Wyche Fowler, Jr.
House of Representatives



109500

Dear Mr. Fowler:

As requested in your November 21, 1978, letter, we have reviewed the construction of the Richard B. Russell Federal Building in Atlanta, Georgia. You expressed concern about the costs and the delay in completing the building and requested us to investigate the causes of a cost overrun and the legitimacy of the claims filed by the construction contractor, the Frank Briscoe Company, Inc. *QMB 00299*

AG-C-00017

In April 1979, when we completed our review, the General Services Administration estimated the total cost of the Russell Building project, excluding claims, at about \$62 million or about \$15 million less than the amount authorized by the Congress for the project. Claim awards could significantly increase the total cost. As discussed with your office, this report does not contain any conclusions or recommendations concerning the validity of the claims because this is an issue pending before the General Services Board of Contract Appeals.

The results of our review are contained in the enclosure. In summary, we found that:

- Most of Briscoe's claims are related to change orders. At the time we completed our review, the General Services Administration had issued 167 change orders on the Briscoe contract. The change orders increased the Briscoe contract by a net amount of \$32,387. Other contracts to perform work deleted from the Briscoe contract and additional work requirements increased the construction cost by another \$3.15 million. Thus, the total increase in construction cost for change orders and other contracts amounts to \$3.18 million. Most of the change order amounts were determined unilaterally by General Services and have been protested by the contractor, giving rise to claims. About 20 additional change orders are being considered by General Services.

109500

Letter Report
505316

LCD-79-313
(945164)

--The majority of the change orders are due to design deficiencies or changed agency requirements. The design deficiencies were not identified and corrected before award of the construction contract because of insufficient review by General Services. The long delay from the inception of the project in 1966 and the start of construction in 1976 is the primary reason given for many changes in agency layouts. A General Services official told us that some of the Federal agencies were slow in submitting their space layout requirements to General Services because they did not want to move into the Russell Building. Insufficient coordination between General Services and client agencies may have contributed to the need for some costly design changes.

(The review was completed Construction Contractor)
--At the time we completed our review, the Briscoe Company had filed or expressed its intent to file claims totaling \$39.6 million. General Services anticipates that the total of Briscoe's claims will exceed \$50 million. The bulk of the claims are for time extensions. The contractor has provided General Services no backup support for these claims. Most of the other claims involve disputes over amounts to be paid for change order work. General Services believes that a substantial portion of the claimed amount is not allowable. However, any attempt at this point to evaluate claims is a speculative matter. In many cases, the General Services Board of Contract Appeals or the U.S. Court of Claims will make the final determination.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from the date of the report. At that time we will send copies to the Chairmen, House Committee on Public Works and Transportation and Senate Committee on Environment and Public Works; the Director, Office of Management and Budget; the Acting Administrator of General Services; and the Frank Briscoe Company, Inc. Copies will also be available to others upon request.

Sincerely yours,



R. W. Gutmann
Director

Enclosure

INQUIRY INTO CHANGE ORDERS AND
CLAIMS FOR CONSTRUCTION OF THE
RICHARD B. RUSSELL FEDERAL BUILDING

BACKGROUND

The initial prospectus for construction of the Courthouse and Federal Office Building in Atlanta, Georgia, was approved by the House and Senate Committees on Public Works in 1966. The approved prospectus provided for a building containing 1,125,000 gross square feet of space for a total estimated maximum project cost of \$27,353,000, including site, design, and construction. Funds for site selection and design were made available in the Appropriation Acts for fiscal years 1970, 1972, 1973, 1975, and 1976. It was not until 1972, when the Public Buildings Act of 1959 was amended (Public Law 92-313) to provide for purchase contract construction, that funds for construction of the Richard B. Russell Federal Building (formerly the Courthouse and Federal Office Building) and similar projects became available. By the time construction funds became available, the original estimate and prospectus limitation of \$27,353,000 was inadequate due to inflation and escalation of construction costs, and design changes.

In April 1975, the General Services Administration (GSA) submitted a prospectus to amend the approved project to the Public Works Committees of the Congress. This prospectus provides for a building with 1,213,000 gross square feet and raised the total estimated maximum project cost to \$77,066,000. The estimated cost for construction was \$67,334,000. The committees approved the prospectus in the fall of 1975.

GSA received nine bids for the construction contract. In May 1976, a contract was awarded to the Frank Briscoe Company, Inc., of East Orange, New Jersey, the low bidder, in the amount of \$47,349,102.10 with a construction completion date of July 3, 1978.

This project is now approximately 1 year behind schedule. Responsibility for the delay is a matter of controversy between the Government and the construction contractor, which will be resolved by negotiation or litigation. The contractor takes the position that some or all of the delay is attributable to the Government, while the Government takes

the position that some or all of the delay is the fault of the contractor. Several appeals which involve elements of this controversy are presently pending before the GSA Board of Contract Appeals, and GSA anticipates that this litigation may reach the U.S. Court of Claims in the near future.

The Richard B. Russell Federal Building is a combination Federal office building and courthouse and contains 24 useable floors (13 office floors, 8 floors for courtrooms and court related service offices, and 3 floors for special and joint use space). The contractor's work under the contract was over 90 percent complete at the beginning of April 1979. Occupancy of the 13 office floors (2 through 14) is scheduled for the spring of 1979. The eight court floors (16 through 23) are expected to be occupied in the fall of 1979.

In April 1979, when we completed our review, GSA estimated the total cost of the Russell Building project, excluding claims, at about \$62 million or about \$15 million less than the amount authorized by the Congress for the project. Claim awards could increase the total cost significantly.

CHANGE ORDERS

As of April 3, 1979, GSA had issued a total of 167 contract change orders (excluding canceled change orders). The change orders increased the Briscoe contract by a net amount of \$32,387.30. However, the contractor does not agree with GSA's cost estimates for many of the change orders and they are the subject of claims and appeals. Other contracts to perform partition and carpet work deleted from the Briscoe contract and additional work requirements increased the construction cost by another \$3,146,710.50. Thus, the total increase in construction cost for change orders and other contracts amounts to at least \$3,179,097.80. About 20 additional change orders are being considered by GSA. The majority of the change orders are due to design deficiencies or changed agency requirements.

The partition and carpet work was removed from the Briscoe contract to avoid undue delay on Briscoe's work due to the lack of final agency office arrangements. The layout plans for most of the lower floors were not received until November 1978 and called for about three times as much partitioning as the initial contract. This represented a change from the open area concept originally contemplated.

Procedures

When the GSA contracting officer plans to issue a change order, he requests the construction contractor to submit a proposal, including cost for the changes and justification for time extension, if any. Meanwhile, GSA's cost consultant prepares an estimate of the cost and project schedule impact of the proposed change order. The GSA contracting officer uses this information to evaluate the reasonableness of the contractor's proposal.

In the event GSA and the contractor cannot reach agreement on change order terms, the GSA contracting officer issues a unilateral determination as to the equitable adjustment of the contract price and the time required for performance of the contract. Most of the change orders on the Briscoe contract involve such unilateral determinations. Usually, the contractor then proceeds to do the change order work under protest and may file a claim for the difference between the contractor's proposal amount and GSA's unilaterally determined amount. If after further negotiations no agreement is reached, the GSA contracting officer issues a final decision. The contractor can appeal the GSA contracting officer's final decision to the GSA Board of Contract Appeals and to the U.S. Court of Claims. Most of the contractor's claims and appeals are related to change orders.

Change orders due to design deficiencies

Firm-price change orders attributable to design deficiencies are reviewed by the GSA Region 4 Architect-Engineer Deficiency Committee. (The firm price of a change order is determined through bilateral agreement or litigation.) At the time we completed our review, the Deficiency Committee had reviewed 14 firm-price change orders for the contract and determined that 12 of the change orders with a total value of \$21,210 resulted in whole or in part from corrections of errors and omissions in design plans and specifications prepared by the architect-engineer. GSA has notified the architect-engineer of a possible impending claim against him on account of the above-mentioned 12 change orders. The estimated recoverable cost on these change orders stemming

from apparent architect-engineer deficiencies is \$4,700. 1/ About 45 additional change orders which are not yet in a firm amount have been tentatively identified as resulting in whole or in part from corrections of design deficiencies and may be referred to the Deficiency Committee in the future. GSA has deferred recovery action until all of the corrections due to design deficiencies have been identified and evaluated.

The chairman of the Deficiency Committee told us that based on past experience, he expects deficiency change orders on the contract to ultimately total \$400,000 and potential claims against the architect-engineer to total \$50,000.

Many of the design deficiencies were not identified and corrected before award of the construction contract because of insufficient review of architect-engineer designs by GSA, apparently due in part to the rush to get the Russell Building and other authorized purchase contract projects out for bids. Furthermore, in recent years, GSA regions have reduced in-house review time and relied more heavily on the expertise of the contracted designers in an effort to reduce project time and costs. The results of this approach have been unsatisfactory since anticipated savings have been overshadowed by costly corrective change orders and other costs.

On July 5, 1978, the Commissioner of GSA's Public Buildings Service issued instructions to the GSA regions saying that a reversal of this approach was imperative and directed them to conduct substantive reviews of each key design submittal. These key submittals are concepts, tentatives, mid-point in working drawings, and final submission. GSA anticipates that the substantive reviews may require additional time to be programed in project design sequences, but it believes this should be minimized by intensive efforts of all Public Buildings Service staff elements.

1/The estimated recoverable cost is based on the cost differential between the amount of a change order and the cost of the same work if it had been included in the original bid, plus the administrative cost for GSA to handle the change order.

Change orders due to
changed agency requirements

Changes in agency layouts occurred because of the long delay between the inception of the project in 1966 and the start of construction in 1976. Some change orders involved layout plans that were not known and developed at the time of construction contract award in 1976. For example, Federal agencies did not submit floor plans for most of the lower floors until November 1978. Although GSA recommended and planned for "open space" offices without interior walls, most agencies on those floors chose walls. There were also extensive changes on the upper floors in September 1977 after the 5th U.S. Circuit Court of Appeals decided not to move into the Russell Building.

GSA knew when it advertised for bids on the construction contract that the plans needed to be updated. Nevertheless GSA proceeded with the bidding and contracting because it estimated cost escalation to be approximately \$500,000 per month. An 8-month delay to update the plans would have increased the bid price by \$3-1/2 million to \$4 million. Despite the fact that the building is scheduled for complete occupancy in the fall of 1979, GSA expects further changes. For example, the Office of Personnel Management is scheduled to occupy the building and space is being prepared accordingly. However, the recent Civil Service Reform Act of 1978 may affect these layouts; how and to what extent is not yet known. GSA also expects that the Omnibus Judgeship Act of 1978 which provides for five additional district judges in the northern district of Georgia may require further changes in the layout of court-related space on the upper floors.

A GSA official told us that some of the agencies were slow in submitting their space layout requirements to GSA because they did not want to move into the Russell Building. To what extent this contributed to construction delay and additional costs has not been determined. There is also some indication that insufficient coordination with client agencies may have contributed to the need for costly design changes. The rework on two areas of the 22d floor discussed below appears to be an example of this type of problem.

Demolition and rebuild work on 22d floor

Two areas on the east side of the 22d floor had to be demolished and redone because the floor, as originally built, would not have supported the high density mechanical filing system the clerk of the U.S. District Court planned to obtain.

GSA has issued two change orders to accomplish this work at a unilaterally determined cost as follows:

Change Order No. 92 - Demolition	\$ 60,000
Change Order No. 123 - Rebuild	<u>187,139</u>
	<u>\$247,139</u>

Briscoe did not agree with these determinations and proceeded with the work under protest. The contractor is expected to submit claims for additional compensation for this work.

GSA attributes the 22d floor situation to a breakdown in communication with the U.S. District Court clerk's office. The Director of Region 4's Construction Management Division said he learned in the spring of 1977 that the court planned to install a heavy filing system which required a floor load capacity of 130 pounds per square foot. He said however, that information such as the physical characteristics of the system and the specific location on the 22d floor, were not furnished by the U.S. District Court clerk's office until late summer 1977. According to the Director, the information was furnished too late to make the necessary structural changes to the 22d floor before it was poured during June 6 through 13, 1977.

GSA records show that the Administrative Office of the U.S. Courts notified GSA by letter on February 25, 1977, that "* * * Space for the clerk of the court on the 22nd floor should have a section provided with a floor loading capacity of 130 lbs./ft. to accommodate filing equipment and contents." The notification was dated more than 3 months before the concrete floor form on the 22d floor was poured. Apparently the Director did not follow up on this information, thus necessitating a major change on the 22d floor which will increase the construction cost by about \$247,000 or more.

The Director also said GSA tried to persuade court officials to consider other filing systems that could be supported by the existing floor design or to place the heavy filing system at the south end of the 22d floor which was designed with a floor loading capacity strong enough to support the filing system. The clerk of the court, however, refused to accept either alternative and as a result GSA ordered a redesign of the two areas. GSA notified the court on October 27, 1977, that it was proceeding to redo two designated areas on the 22d floor to provide a 150 pounds per square foot floor loading capacity rather than 130 pounds per square foot as the court had requested.

New GSA procedures for approving change orders

The numerous change orders on the Russell Building and other Federal construction projects prompted the Administrator of General Services to order new procedures for approving such changes. In a September 12, 1978, memorandum he directed all GSA Regional Administrators to obtain approval from the Public Buildings Service Commissioner at GSA Central Office for construction change orders worth \$100,000 or more. The memorandum also stated that once the aggregate dollar value of construction change orders on a project exceeds 2 percent of the contract price, contract modifications of \$10,000 or more must be submitted to the Public Buildings Service Commissioner for approval. The memorandum points out that change orders are a breeding ground for claims and often result in costly delays in completing projects. The new procedures are intended to reduce the incidence and adverse impact of construction contract modifications.

CLAIMS

A claim, as the term is used in this discussion, is a request from a contractor for additional compensation for costs incurred and/or time extension. If the GSA contracting officer and the contractor are unable to agree on a reasonable settlement of the claim, the GSA contracting officer will render a final decision which the contractor may appeal to the GSA Board of Contract Appeals and to the U.S. Court of Claims.

At the time we completed our review of the Russell Building, GSA records indicated that the contractor had filed or expressed its intent to file claims totaling

\$39,621,758 (excluding claims withdrawn, denied, or settled). The claims consist of nine docketed cases before the GSA Board of Contract Appeals and numerous claims still under consideration by the GSA contracting officer. Two of the docketed cases have been dismissed by the Board as premature and may be reinstated later. In addition, the contractor has reserved the right to file claims for alleged acceleration of work, impact on unchanged work, and Government-caused delays. Consequently, GSA anticipates that the contractor will file appeals totaling over \$50 million. This would be the largest construction claim ever filed before the GSA Board of Contract Appeals.

The bulk of the claims are for time extensions. The contractor has included in its proposal breakdown for 51 change orders, claims for 1,083 calendar days of time extension at a cost of \$34,791,375. The contractor has provided no backup support for the number of days or the costs claimed. Since the start of construction, GSA has granted the contractor 50 calendar days of time extension due to contract modifications, but no extension costs have been allowed. (The time extension relieves the contractor of liability for liquidated damages for late completion for the specified number of days.) The contractor has also claimed additional compensation of \$3,564,477, representing the difference between 131 change order amounts unilaterally determined by the GSA contracting officer and the amounts proposed by the contractor. The remaining claims primarily involve interpretation of contract requirements.

LITIGATION TASK FORCE

In October 1978 the GSA Office of General Counsel formed the Russell Building Litigation Task Force. The purpose of the Task Force is to determine GSA's litigation posture in the appeals and to prepare for trial before the GSA Board of Contract Appeals. The Task Force consists of individuals from the GSA Office of General Counsel, Public Buildings Service, and Office of Audits. GSA expects the Litigation Task Force to remain in existence until all claims relating to the contract have been resolved.

GSA believes that a substantial portion of the claimed amount is not allowable. However, any attempt at this point to evaluate claims--what claims will have merit and what claims will not--is a speculative matter. In many

cases, the GSA Board of Contract Appeals or the Court of Claims will make the final determination. Therefore no prediction can be made as to the outcome. Much will depend on how effectively GSA defends its case during the litigation. GSA attorneys say it is difficult to predict how long it will take to adjudicate all of the claims, but they think it will take at least until early 1980.

THE CONTRACT DISPUTES ACT OF 1978

In recent years, GSA and other Government agencies have been plagued by large dollar amounts of unsupported contractor claims. The incentive for this practice exists because the payment of such inflated claims permits a contractor to make up losses or increase profits whether the claim was justified or not.

Problems that arise from unsupported claims include the following:

- The submission of an unsupported claim may lead the Government to enter into settlements independent of their legal merits.
- The burden shifts to the Government to disprove claims because they lack specificity.
- The Government has limited resources that can be devoted to resolving claims disputes.

On November 1, 1978, the Congress enacted the Contract Disputes Act of 1978 (Public Law 95-563) to provide for the resolution of claims and disputes relating to Government contracts. Section 5 and section 6 (c) (1) of the act are designed to specifically address the inflated claim problem. Section 5 provides that:

"If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim * * *."

Section 6 (c) (1) also provides that:

"* * * For claims of more than \$50,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable."

The act will apply to all contracts entered into after March 1, 1979.

GSA AUDIT OF THE CONTRACT

In three of the docketed cases pending before the GSA Board of Contract Appeals, the contractor raised procedural issues pertaining to the Equitable Adjustments clause of the contract. The issues concern overhead limits, requirements for information in support of requests for time extensions, and overhead items included as direct costs. The Board declined to render a ruling on these three appeals. By its October 2, 1978, order the Board directed the contractor to present specific substantive claims representative of the procedural issues raised by the three appeals for the GSA contracting officer's consideration. Furthermore, the Board's order directed the contracting officer to issue appropriate final decisions under the contract's Disputes clause, if the parties are unable to reach a negotiated agreement on the claims.

Later in October 1978 the contractor notified the GSA contracting officer that it had selected the following four specific claims for the contracting officer's consideration:

<u>Change order no.</u>	<u>Contractor's price proposals</u>	<u>Time extension claims</u>	<u>Total</u>
11	\$ 8,126	\$ -	\$ 8,126
38	94,245	353,375	447,620
55	130,134	963,750	1,093,884
65	<u>282,690</u>	<u>10,119,375</u>	<u>10,402,065</u>
	<u>\$515,195</u>	<u>\$11,436,500</u>	<u>\$11,951,695</u>

The Director of Region 4's Construction Management Division then requested GSA's Office of Audits to review the

above four change order proposals in order to assist the GSA contracting officer in evaluating their reasonableness. The Office of Audits reported on its review in January 1979, questioning \$367,807 of the contractor's proposals as follows:

<u>Change order no.</u>	<u>Contractor's price proposals</u>	<u>GSA audit questioned costs</u>	<u>GSA audit adjusted prices</u>
11	\$ 8,126	\$ 841	\$ 7,285
38	94,245	81,373	12,872
55	130,134	125,090	5,044
65	<u>282,690</u>	<u>160,503</u>	<u>122,187</u>
	<u>\$515,195</u>	<u>\$367,807</u>	<u>\$147,388</u>

The major items questioned during the audit involved unsupported costs, overhead items that were incorrectly charged as direct costs, overhead in excess of the maximum allowed under the contract, and incorrect computations of various costs.

The Office of Audits did not report on the contractor's time extension claims (\$11,436,500), because the contracting officer had not authorized extensions. The GSA auditors also found that the contractor furnished no backup support for the claimed time extension cost.

After reviewing the auditors' findings, the GSA contracting officer conducted further negotiations with the contractor, but the parties were unable to agree on some elements of claimed cost and the interpretation of certain contract terms. The contracting officer issued final decisions on the contractor's claims for change order numbers 11 and 38 on November 27, 1978, and March 12, 1979, respectively. The decisions established a price of \$7,653 for change order number 11 and \$26,695 for change order number 38. No time extensions were allowed on either change order.

The contracting officer expects to issue final decisions soon for change order numbers 55 and 65. A GSA attorney told us that if the contractor decides to appeal, hearings will probably be held before the GSA Board of Contract Appeals in August 1979, and that a decision by the Board is not likely before January 1980.

ENCLOSURE I

ENCLOSURE I

The GSA Office of Audits plans to review the entire contract to determine GSA's potential liability. A report on the audit will probably be issued toward the end of calendar year 1979.