

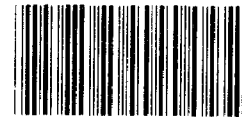
GAO

Briefing Report to the Ranking Minority  
Member, Committee on Governmental  
Affairs, United States Senate

July 1987

# FEDERAL BUILDINGS

## Purchase and Options to Expand the Silver Spring Metro Center



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United States  
General Accounting Office  
Washington, D.C. 20548

General Government Division

B-227725

July 21, 1987

The Honorable William V. Roth, Jr.  
Ranking Minority Member  
Committee on Governmental Affairs  
United States Senate

Dear Senator Roth:

In accordance with your letters of March 23 and June 2, 1987, and meetings with your representatives, we reviewed various issues and concerns relating to the General Services Administration's (GSA) acquisition of the Silver Spring Metro Center (SSMC) building in Silver Spring, Maryland.

We briefed your representatives, as well as representatives of the Senate Committee on Environment and Public Works, on July 7, 1987. Subsequently, your office requested that we summarize and formally transmit the information presented in the briefing. This report transmits the figures used in the briefing, supplemented with a discussion of the major points.

We were requested to review the nine issues and areas listed in figure I.1. During June 1987, we reviewed GSA's files relating to the purchase, toured the building, collected information on GSA's Building Purchase Program at GSA's central office, and interviewed GSA personnel and a commercial realtor. A detailed explanation of our objectives, scope, and methodology is given on page 8.

We found that most of the numerous concerns raised in the GSA inspection report on the building have been resolved. However, some of the items could be of greater concern in four adjacent buildings to be constructed. We also identified a potential concern over the government's ability to obtain fee simple title to two of the buildings, should it desire to purchase them. Although we identified these and other concerns, our work was not sufficient to enable us to conclude whether the lease prospectus for the four buildings should be approved or not. Because of the short time frame on this assignment, such a determination was not within the scope of our work. It would require, among other things, a thorough assessment of alternatives available to GSA.

In fiscal year 1983, Congress appropriated \$14.1 million for GSA to purchase buildings in a short time frame and without obtaining prospectus approval from the Public Works Committees.

This program evolved to a method of routinely obtaining a complex of buildings by purchasing an initial building and including options to lease and purchase others. Under this program, GSA has purchased seven buildings--two with options to lease and purchase additional buildings--at a total cost of \$144 million.

GSA's program guidance requires that proposed purchases satisfy an identified need for space, that an appraisal and a detailed engineering inspection be made of the proposed building, and that the Office of Management and Budget (OMB) approve the intended purchase. Although GSA followed these procedures in the purchase of SSMC, GSA officials said the guidance is not sufficiently specific for carrying out complex negotiations, but was supplemented by oral guidance from the central office. The SSMC building was purchased on February 17, 1987, for \$21,870,000. The contract included options to lease and subsequently purchase four other buildings yet to be constructed. Options to lease three of these buildings, originally scheduled to expire on June 30, 1987, were extended to August 1, 1987. The contract requires the lease options to be exercised before the purchase options. GSA has the option to purchase after initial construction or after years 5 or 10 of the leases. No credit against the purchase price is given for lease payments made. If GSA exercises the initial purchase options for all buildings immediately after they are completed, the cost of the five-building complex would be about \$240 million, not including the cost of a parking garage that is planned to be located beneath two of the buildings or any modifications to the buildings that GSA directs.

Your main area of concern focused on GSA's disposition of an engineering report dated September 22, 1986, on building I. The report contained 62 items that GSA referred to as deficiencies. According to GSA's architects and engineers, of the 62 items, the seller corrected or agreed to correct 36 while 25 were items not requiring action (such as personal observations and preferences of the inspector and calculation errors). The remaining deficiency--the absence of a freight elevator--was one that GSA decided to accept.

Based on the opinions of the GSA architects and engineers we interviewed and on our firsthand observations, we believe that the disposition of seven items could prove to be troublesome inconveniences to tenants. Three items--an improvised loading dock, the lack of a freight elevator, and the line-of-sight into the restrooms--will be troublesome no matter how the building will be used. Four other items--the floor live loads (weight carrying capacity), vertical height between floors, and the air

conditioning and electrical power capacities--could pose problems, if the building is used for more demanding purposes than normal office space. GSA said that these items will not be concerns in building I because the planned use of the building will be limited to office space. We think these items could be of greater concern in the four buildings to be constructed, because special space will be required in these buildings for which the office building design may be inadequate.

The contract provides that the four buildings will be constructed to the equivalent standard of building I. GSA is allowed to modify the design, but this will be at the government's expense. Although the principal proposed tenant, the National Oceanic and Atmospheric Administration (NOAA), has not yet identified its special space requirements, GSA's prospectus estimates that 25 percent of the total space will be for special space, such as mainframe computer rooms and telemetry equipment. The second through fifth buildings may have to be modified to meet these requirements. GSA said it will be less costly to incorporate such modifications before the buildings are built.

The contract requires that the third and fourth buildings must be leased or purchased together. The developer does not own the land for these two buildings or have a binding option to purchase the land but has entered into a Memorandum of Understanding with the owner, Montgomery County. The memorandum, which will expire in August 1987, states that it is not legally binding. Under the terms, the developer is to build a parking garage on the County's land and the two buildings will be constructed over the garage. If GSA leases the buildings, it will not have to lease the garage. If GSA wants to purchase the buildings and obtain fee simple title, it will have to purchase the garage. In short, a complicated set of circumstances must fall into place in order to consolidate NOAA at SSMC.

In its May 1, 1987, prospectus, GSA requested authority to lease the four additional buildings and proposed moving NOAA and the National Science Foundation into the complex. However, the National Science Foundation has not yet agreed to relocate to the complex, according to GSA officials. The prospectus states that direct construction is less costly than purchasing or leasing but recommends that the buildings be purchased after 5 years of leasing. The prospectus does not show the costs of purchasing after initial construction or purchasing after 10 years of leasing. GSA officials said this was because they only intended the prospectus to seek leasing approval.

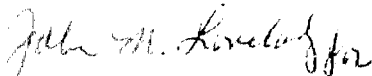
You asked about the reasonableness of the purchase price, the contracting officer's authority, and possible conflict of interest by the GSA Administrator. We found the purchase price for building I and the base lease prices for the four other buildings were slightly below the appraised value. We also found that the contracting officer who signed the purchase contract was properly authorized and warranted when he signed the contract. Further, we found no evidence of a conflict of interest in this purchase by the GSA Administrator, although the limited work we were able to do in this area is not conclusive.

At the July 7, 1987, briefing we were requested to ask three GSA officials mentioned in a newspaper article whether they had warned the Administrator of potential conflicts of interest. Two of the officials said they did caution the Administrator, in a general sense, that his involvement in decisions on GSA leases and purchases could give the appearance of a possible conflict of interest, but they never warned the Administrator on specific transactions. The third official, the GSA General Counsel, said he never talked to the Administrator about possible conflicts of interest, even in a general sense.

In view of the short period available for this work, we were asked not to obtain official agency comments on the results of our review. However, we discussed our findings with responsible GSA officials and their views are reflected in this report as appropriate. In general, GSA indicated it was aware of these concerns and was confident that they could be resolved.

As arranged with your office, we are sending copies of this report to the Chairmen of the Senate Committees on Environment and Public Works and Governmental Affairs, the House Committee on Public Works and Transportation, and to the Administrator of General Services. Copies will also be available to other interested parties upon request. Please feel free to contact Frank Oberson or me on 275-8676 if there are further questions on these matters.

Sincerely yours,



L. Nye Stevens  
Associate Director

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## Abbreviations

FAR	Federal Acquisition Regulation
GSA	General Services Administration
GSAR	General Services Administration Acquisition Regulation
MOU	Memorandum of Understanding
NSF	National Science Foundation
NOAA	National Oceanic and Atmospheric Administration
OMB	Office of Management and Budget
SF	square foot
SSMC	Silver Spring Metro Center

OBJECTIVES, SCOPE, AND METHODOLOGY

On March 23, 1987, Senator Roth, as Ranking Minority Member of the Senate Governmental Affairs Committee, requested that we review certain aspects of the purchase, by GSA, of the Silver Spring Metro Center building (SSMC) in Silver Spring, Maryland. In discussions with Committee representatives and as a result of later correspondence on June 2, 1987, we agreed to expand our review and provide our results before congressional action was required on GSA's proposal. Based on these agreements, our overall objective was to provide information on nine aspects (see fig. I.1) of the purchase of the SSMC building and on GSA's proposal to enter a complicated lease and purchase option arrangement with SSMC's developer for four additional buildings adjacent to the purchased building (building I).

We agreed to provide a brief overview of GSA's Building Purchase Program, which was the source of funds for the SSMC purchase in February 1987. We also agreed to review the procedures and guidelines governing negotiations for such purchases; evaluate their application in this purchase; and in particular to describe GSA's use of a September 22, 1986, engineering inspection report that had identified 62 potential "deficiencies" in the building. We obtained information on the concerns and deficiencies identified with building I which had been the subject of several critical news articles in a local newspaper (see fig. I.2).

In addition, we agreed to describe and analyze GSA's options to lease or purchase four additional buildings and determine whether the construction of these buildings involved foreseeable problems. Finally, we agreed to provide information on (1) the contract warrant authority of the principal GSA negotiator; (2) newspaper articles alleging a possible conflict of interest on the part of the Administrator of General Services; and, to the extent possible, (3) the comparative reasonableness of prices for the lease and purchase of the five buildings.

We conducted our work (see fig. I.3) during a 4-week period in June 1987 in accordance with generally accepted government auditing standards. To accomplish our objectives we toured the purchased building; reviewed GSA's files on these matters; interviewed GSA officials, the developer, and a commercial realtor knowledgeable about transactions in the Silver Spring area; and examined GSA's prospectus for leasing buildings II-V submitted to Congress on May 1, 1987. We also reviewed program guidelines, policies, and procedures.

## Figure I.1: Issues and Areas Reviewed

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- Overview of GSA's Building Purchase Program
- Procedures and guidelines
- GSA's use of inspection report
- BUILDING I CONCERNS AND DEFICIENCIES
- Options to lease or purchase and GSA's prospectus
- Potential problems with future buildings
- Contracting officer's authority
- Conflict-of-interest allegation
- Reasonableness of prices

**Figure I.2: Newspaper Allegations Reflect Controversy**

A BUILDING WITH PROBLEMS?

GSA report finds  
New Maryland site  
riddled with flaws

GSA chief questioned  
about building's flaws

GSA explains  
statements  
on building

Roth calls on GAO  
to probe purchase  
of office building

Authority of GSA bargainer questioned

## **Figure I.3: Scope of Review**

WORK DONE FROM JUNE 4 TO JUNE 30, 1987

- Toured building I and interviewed GSA personnel involved in purchase.
- Collected overall information available from central office on the program.
- Reviewed the prospectus and GSA's files relating to the purchase.
- Contacted a commercial realtor.

OVERVIEW OF GSA'S BUILDING PURCHASE PROGRAM

Beginning with the fiscal year 1983 appropriations act for GSA, funds became available for the Opportunity Purchase Program-- purchase of existing buildings from the private sector, as an alternative to direct federal construction. These funds were augmented annually except for fiscal year 1986, and GSA has requested \$150 million for fiscal year 1988.

The original focus of the program was on opportunity purchases-- such as distress sales or the purchase of buildings already under federal lease as they became available on attractive terms--but the name of the program was changed to the Building Purchase Program and the focus has recently become broader to include using a solicitation to purchase an initial building with options to lease and purchase other buildings.

Seven buildings have been purchased since 1983 under the program, including Silver Spring Metro Center as the latest purchase, at a total cost of \$144 million. GSA is actively investigating purchases of four additional buildings in Houston, Philadelphia, Denver, and Las Vegas.

GSA believes that the purchase of buildings constructed to commercial standards is preferable to direct federal construction under current conditions, particularly in view of historical difficulties in gaining congressional and OMB approval of construction funds and the long lead time involved in federal construction projects. When construction is undertaken, GSA said it favors financing arrangements, such as its recent joint undertaking with the city of Oakland, California, which involve annual federal lease payments devoted to retiring municipal bonds and eventual federal ownership upon retirement of the bonds.

We have long supported construction of federal office space to meet long-term needs but recognize that ownership of either purchased or directly constructed buildings is preferable to overdependence on leased office space.

## **Figure I.4: Overview of GSA's Building Purchase Program**

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### HISTORY

- Public Buildings Act of 1959 authorizes building purchase.
- Program first funded in fiscal year 1983 appropriations act.
- No-year money added in fiscal years 1984, 1985, and 1987.
- Program objectives were to
  - reduce reliance on costly leased space,
  - consolidate agencies,
  - provide quality, state-of-the-art facilities convenient to public transportation, and
  - achieve space reduction.
- Opportunity Purchase Program has become Building Purchase Program.

## Figure I.5: Overview of GSA's Building Purchase Program

### COST OF BUILDINGS PURCHASED TO DATE

Building	Date	Dollars in millions
Griffin Square Dallas, Tex.	02/83	\$ 7.2
Judiciary Square Washington, D.C.	06/84	13.4
IRS/VA Center Austin, Tex.	04/85	27.2
Brickell Plaza Miami, Fla.	09/86	13.9
One White Flint <sup>a</sup> Rockville, Md.	11/86	47.5
Chamblee IRS Center Chamblee, Ga.	12/86	13.2
Silver Spring Metro Center <sup>a</sup> Silver Spring, Md.	02/87	21.9
Total		<u>\$144.3</u>

<sup>a</sup>Include options to lease or purchase additional buildings.



## Figure I.6: Overview of GSA's Building Purchase Program

Year <sup>a</sup>	Program funding	Dollars in millions	Dollars in millions
1983	Appropriation		\$14.1
	Griffin Square		(7.2)
			<u>6.9</u>
1984	Appropriation	\$20.0	
	Reprogrammed	39.8	59.8
	Available in FY 1984		66.7
	Judiciary Square		(13.4)
			<u>53.3</u>
1985	Appropriation		81.9
	Available in FY 1985		135.2
	IRS/VA Center		(27.2)
			<u>108.0</u>
1986	One White Flint	47.5	
	Brickell Plaza	13.9	
	Chamblee IRS Center	13.2	(74.6)
			<u>33.4</u>
1987	Appropriation		93.3
	Available in FY 1987		126.7
	Silver Spring Metro Center		(21.9)
			<u>104.8</u>
1987	Projected purchases		
	Houston	13.0	
	Philadelphia	14.0	
	Denver	14.0	
	Las Vegas	14.0	(55.0)
	Current carryover		<u>\$49.8</u>
1988	Request	\$150.0	

<sup>a</sup>Appropriations are on a fiscal year basis and building purchases are on a calendar year basis.

## **Figure I.7: Overview of GSA's Building Purchase Program**

### **GSA'S VIEWS ON DIRECT FEDERAL CONSTRUCTION**

- GSA does not favor construction because
  - it takes too long,
  - it costs too much,
  - obtaining up-front money is not possible, and
  - the government does not have a good history of construction management.
- GSA favors purchase because it
  - is cheaper (avoids “monumentalism”),
  - is faster, and
  - enables GSA to obtain buildings in prime locations.
- When GSA must choose construction of office projects, it will favor alternative financing.
- GAO's position is that construction is generally cheaper than leasing or acquiring buildings through purchase contract.

PROCEDURES AND GUIDELINES

Current GSA guidance (see fig. I.8) and procedures to be followed in the Building Purchase Program is contained in a draft GSA order. Because GSA's central office attaches high importance to the program, it has supplemented the order with additional guidance in the form of memorandums, seminars, planning conferences, and direct contacts between regional and central office officials.

The guidance helps regions identify communities in which a building is to be purchased. A purchase must satisfy an identified need. Generally, the need is indicated by high federal lease costs in a community where the federal government expects to have a continuing presence.

Offered buildings are to be screened to insure they meet minimum needs and those that do are supposed to receive detailed engineering inspections. Before GSA can enter purchase negotiations, it must obtain approval from OMB and an appraisal of the building, develop its negotiating strategy, and inform Congress of its decision to attempt to purchase the building. Before settlement on a building, the agreed-upon price is to be compared to the appraisal and an economic analysis comparing lease and purchase costs is to be done using OMB's Circular A-104 guidance. If the analyses indicate purchase is cost-effective, and if GSA's legal counsel concurs, GSA can buy the building.

Our review of the chronology of the Silver Spring purchase (see fig. I.9) showed that, of the 16 offers GSA received in response to its solicitation, GSA ultimately selected two buildings which it desired to purchase. OMB approved the Silver Spring purchase, but disapproved GSA's other choice because no building yet existed at the site. OMB said the congressional intent for the program did not include purchase of buildings that have not yet been constructed.

A review of the procedures used by GSA's National Capital Region in conducting the Silver Spring acquisition shows that all procedures required in GSA's guidelines were followed. However, GSA officials told us that the written guidance is not sufficiently specific for carrying out complex negotiations. GSA said it plans to correct this guidance and that oral guidance was used to supplement the written guidance for this purchase.

GSA did not consider federal construction to be a viable alternative to the Silver Spring purchase (see fig. I.11). GSA said that construction is considered when choosing among options

to provide space. If construction is eliminated as an option, then purchase or lease are the only alternatives. GSA said that OMB's A-104 guidance requires only a comparison of the present value costs of purchasing and leasing before GSA may purchase a building under the program.

## Figure I.8: Procedures and Guidelines

### CENTRAL OFFICE GUIDANCE

Purchases must satisfy the following identified needs:

- conveyed voluntarily and
- acquired in fee simple.

Purchase program model identifies target cities through

- advertised government requirements,
- initial screening for acceptability, and
- engineering study.

Before negotiation, OMB must

- approve contract appraisal and
- coordinate negotiating strategy.

If negotiation is successful, GSA obtains contract clearance by

- comparing to appraisal,
- using OMB circular A-104, and
- obtaining legal concurrence.

GSA settles purchase.

## Figure I.9: Procedures and Guidelines

### SILVER SPRING METRO CENTER CHRONOLOGY

- 07/86            GSA issued solicitation.
- 08/86            16 offers received.  
Preliminary technical reviews completed.  
4 were nonresponsive and 12 were considered further.
- 10/86            4 selected as in competitive range because of
- proximity to Metro,
  - newer buildings,
  - general quality of building, and
  - efficiency of building design.
- 12/86            Best and final offers requested.  
GSA selects Silver Spring Metro Center and Union Center Plaza.
- 02/87            GSA signs contract for Silver Spring Metro Center.
- 04/87            OMB disapproves Union Center Plaza.

## Figure I.10: Procedures and Guidelines

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### GSA FOLLOWED THESE GUIDELINES.

- Purchase with lease options satisfied an identified need.
- National capital area was a targeted community.
- Advertising done as guidelines required.
- OMB approval sought and obtained for Silver Spring Metro Center.
- Contract clearance met requirements.

### BUT GUIDELINES HAVE DRAWBACKS.

- Guidelines do not cover all important points.
- GSA recognizes inadequacies of guidelines and is taking action to correct by developing new guidelines and assembling a task force.

## **Figure I.11: Procedures and Guidelines**

### **DIRECT FEDERAL CONSTRUCTION COSTS WERE NOT CONSIDERED**

- GSA did not consider constructing a building as an alternative to purchasing the Silver Spring building.
- GSA said that OMB guidance in Circular A-104 requires only a comparison of lease costs with purchase costs.
- GSA says construction is not an alternative in the building purchase program because GSA would not build the kind of building it buys.



GSA'S USE OF THE INSPECTION REPORT

GSA's National Capital Region received the engineering inspection report before it entered into negotiations with the developer of the Silver Spring building. The engineering report identified some modifications that would be required in the building to make it acceptable to the government. These modifications were discussed during negotiations and led to the development of a list of items requiring correction or retrofit (adding features that were not included in the original construction), which the seller agreed to accomplish before GSA agreed to purchase the building.

## Figure I.12: GSA's Use of Inspection Report

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- September 12, 1986, engineering report received at start of negotiating process.
- Report used to determine if building met minimum government standards.
- Nonprice negotiations were held before price negotiations.
  - Modifications required by engineering report became part of negotiation process.
  - GSA negotiators had an estimate of the costs necessary to correct deficiencies.
- GSA obtained agreement from seller to include retrofit items before entering price negotiations.

BUILDING I CONCERNS AND DEFICIENCIES

The GSA engineering report dated September 22, 1986, that was used to evaluate whether building I would satisfy the government's minimum standards, contained 62 items (see fig. I.13). Although GSA referred to each item as a "deficiency," many were not. The items included alleged actual or potential problems, questions requiring further investigation, and positive comments on certain building features. The inspectors' observations covered the building's provisions for the handicapped, whether the exterior precast concrete panels were anchored properly, lack of a loading dock and a freight elevator, incomplete installation of the roof, apparent water seepage, possible inadequate air conditioning and electrical power capacity, whether the water and fire services were adequate, and numerous other items.

At our request, GSA provided for each of the 62 items an explanation of GSA's criterion for the "deficiency," how GSA disposed of the item, and whether the architects and engineers within GSA were satisfied with that disposition (see figs. I.14 and I.15). Our review of that information showed that of the 62 items, the seller either corrected or agreed to correct 36, 25 were items not requiring action, and the remaining 1 item was a deficiency that GSA made a decision to accept (the absence of a freight elevator).

The GSA architects and engineers said that they considered building I to be a good commercial building, built to commercial codes, but not built to federal construction standards. They also said that they were satisfied with the disposition of all 62 items (see fig. I.16). However, it appears seven items could pose a problem to tenants. Four of the items--the 50 pound floor live loads (weight carrying capacity), the slab-to-slab vertical height of the floors, and the air conditioning and electrical capacities of the building--would be of concern if the building were used for more demanding purposes than normal office space. For example, the floor weight capacity may not be adequate for a library or high concentrations of file cabinets, and the floor-to-ceiling height and air conditioning and electrical power capacities might not accommodate very large computers. According to GSA, the planned use for building I would not pose problems in these areas.

However, the other three items--the lack of a loading dock and freight elevator and the line-of-sight into the restrooms--will be troublesome regardless of how the building is used. The seller and GSA have agreed to add a loading dock to the building,

but it will be located on the front of the building near pedestrian steps. Freight is to be unloaded into the first floor lobby area for short-term storage. GSA said that moving trash or furniture and equipment could be done on the passenger elevators, but the absence of a freight elevator would be inconvenient. The seller is adding a second door inside the entrance to each restroom to create a vestibule. We observed that at times it is still possible for passers-by to look directly into the restrooms.

## Figure I.13: Building I Concerns and Deficiencies

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GSA's September 22, 1986, report contained 62 items referred to as "deficiencies" in the following areas:

DEFICIENCIES	ITEMS
Architectural	
● Handicapped accessibility	11
● Loading dock	1
● Roof	8
● Other	5
Structural	5
Mechanical	8
Electrical	5
Elevators	19
Total	<u>62</u>

## Figure I.14: Building I Concerns and Deficiencies

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DEFICIENCY	DISPOSITION
<p>Handicapped (11 items)</p> <ul style="list-style-type: none"> <li>● curb cuts, ramps, power doors, grab bars, counter height, etc.</li> </ul>	<ul style="list-style-type: none"> <li>● Seller agreed to comply.</li> </ul>
<p>Loading dock (1 item)</p> <ul style="list-style-type: none"> <li>● unloading on ramp, difficulty for trucks, etc.</li> </ul>	<ul style="list-style-type: none"> <li>● Seller/GSA improvised solution.</li> </ul>
<p>Roof (8 items)</p> <ul style="list-style-type: none"> <li>● loose laid membrane, ponding, no drains, bumps, etc.</li> </ul>	<ul style="list-style-type: none"> <li>● Inspected before completed and 10-year warranty provided.</li> </ul>
<p>Other architectural (5 items)</p> <ul style="list-style-type: none"> <li>● line-of-sight, no ceramic tile on restroom wall, no flagpole,</li> <li>● parking arrangement, fountain</li> </ul>	<ul style="list-style-type: none"> <li>● Seller agreed to comply.</li> <li>● Observations, no action required.</li> </ul>
<p>Structural (5 items)</p> <ul style="list-style-type: none"> <li>● water seepage,</li> <li>● cracks</li> <li>● anchorage of precast concrete panels</li> <li>● live loads</li> <li>● design specification</li> </ul>	<ul style="list-style-type: none"> <li>● Seller installed sump pumps.</li> <li>● Accepted seller's explanation.</li> <li>● Accepted seller's explanation.</li> <li>● No action taken.</li> <li>● Seller complied.</li> </ul>

## Figure I.15: Building I Concerns and Deficiencies

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### DEFICIENCY

#### Mechanical (8 items)

- air ventilation, partitions block plenum, undersized cooling towers
- heating capacity, air-conditioning coils, ducts not insulated
- air-conditioning not for high-tech building, slab-to-slab height

#### Electrical (5 items)

- limited expansion capability
- aluminum feeder wiring, ground conductors, buses need glyptal paint, faulty main grounding system

#### Elevators (19)

- no freight elevator
- handicapped symbols, handrails, pad hooks, etc.
- slow speed, moving equipment into machine room
- ventilation

### DISPOSITION

- GSA acknowledged these issues were not deficiencies.
- Sellers explanation accepted.
- High-tech use not expected.
- Seller's explanation accepted.
- Seller agreed to comply.
- GSA accepted building as is.
- Seller agreed to comply.
- Seller's explanation accepted.
- Building found in compliance.

## Figure I.16: Building I Concerns and Deficiencies

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Not all items were deficiencies. For example, five were the inspector's personal preference.

The seller corrected or agreed to correct 36 of the 62 items. No action was taken on the remaining 26 items for the following reasons:

	Items
● Seller provided explanations that GSA accepted.	7
● GSA had made computational errors.	3
● Observations required no action.	6
● Inspection based on incomplete work, later completed.	8
● Deficiency caused by oversight by GSA inspector.	1
● GSA accepted deficiency.	1
Total	<u>26</u>

GSA's architects/engineers said they were satisfied with the disposition of all 62 items.

GAO believes that the resolution/disposition of seven items could prove to be troublesome inconveniences for tenants. Resolving four of the seven items will depend on the building's use.



## **Figure I.17: Building I Concerns and Deficiencies**

Depending upon future use, the following four items may be of possible concern:

- floor live loads,
- slab-to-slab vertical height,
- air-conditioning capacity, and
- electrical power capacity.

## Figure I.18: Building I Concerns and Deficiencies

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### THREE ITEMS OF GENERAL CONCERN

#### Loading dock

- Seller agreed to add a loading dock.
- It will be located in front/side of building near pedestrian steps.
- Freight will be unloaded into the first floor lobby.
- Windows will have blinds.

#### Freight elevator

- Building has 4 small passenger elevators each rated at 2,500 pounds.
- According to GSA, moving trash or furniture/equipment will be inconvenient.

#### Line-of-sight in restrooms

- Seller will add a second door to create a vestibule.
- Looking directly into the commode areas is still possible.

OPTIONS TO LEASE OR PURCHASE

On February 17, 1987, GSA purchased the Silver Spring Metro Center building I (phase I) under contract GS-11-P-8701 for \$21,870,000. The contract included options to lease, with further options to purchase, four additional buildings to be constructed in phases II, III, IV, and V. The contract requires the lease option for each building to be exercised before the purchase option can be exercised. No credit is given against the purchase price for lease payments that have been made.

The contract and the prospectus which was subsequently submitted to the Public Works Committees listed by phases the amount of space to be leased by GSA, the dates the options had to be exercised, and the proposed delivery dates. The leases are to be for a 20-year fixed term period. The option to lease dates for phases II, III, and IV, originally set for June 30, 1987, were extended to August 1, 1987. The phase V option date of December 1, 1987, did not change.

The contract provides GSA with the option to purchase each building at three different times--upon completion of construction, at the end of the fifth year of leasing, or at the end of the tenth year of leasing. The initial purchase price for each building is set forth in the contract, and the contract contains a methodology for increasing the initial prices based on the date when the purchase option is exercised. The fifth year purchase price is based on the purchase price for building I increased by 2.5 percent compounded annually for the period beginning when the building I contract was executed and ending when the government occupied 50 percent of the building being purchased. The tenth year price is based on the fifth year purchase price increased by the full consumer price index compounded annually for lease years 6 through 10.

If GSA exercises the option to purchase the four additional buildings at the end of construction, the acquisition cost of the SSMC complex (including building I) will be about \$240 million. This does not include the cost of a parking garage that GSA will be required to purchase in order to obtain fee simple title to the land for buildings III and IV or any modifications to the buildings that GSA directs.

## **Figure I.19: Options to Lease or Purchase and GSA's Prospectus**

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### **GSA PURCHASE CONTRACT**

- Purchase Contract GS-11-P-8701 was dated February 17, 1987.
- One building was purchased for \$21,870,000 (Phase I) with options to lease, with further options to purchase, four additional buildings to be constructed during phases II, III, IV, and V.
- Silver Spring Metro Center Limited Partnership c/o Foulger-Pratt Development, Inc., Foulger Investments, Inc. General Partner signed contract.

## Figure I.20: Options to Lease or Purchase and GSA's Prospectus

Lease option <sup>a</sup> phase	Stories	Leasable space (sq. ft.)	Date	Delivery
II	18	288,250	08/01/87	07/31/89
III	10	190,900	08/01/87	02/28/90
IV	10	190,900	08/01/87	08/31/90
V	13	494,000	12/01/87	01/31/91

<sup>a</sup>All lease options are for a 20-year fixed term.

## Figure I.21: Options to Lease or Purchase and GSA's Prospectus

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Purchase options are available at the following three times:

- upon completion of construction of each phase,
- at end of fifth lease year, or
- at end of tenth lease year.

Initial purchase prices for each phase are as follows:

Phase	Price per square foot	Contract purchase price
I	\$154.98	\$21,870,000
II	178.22	51,371,000
III	190.28	36,325,116
IV	191.46	36,550,110
V	189.97	93,845,000
		Total \$239,961,226

Fifth year purchase price based on adjusted base phase I value increased by 2.5% to be compounded annually.

Tenth year purchase price based on increasing fifth year purchase price by full consumer price index factor compounded annually for lease years 6-10.

SPECIAL LEASE/PURCHASE CONDITIONS

The contract provides for special conditions regarding buildings III and IV in that these two buildings must be leased or purchased together. If GSA wishes to exercise the purchase option, GSA officials said that GSA will probably purchase the land and a yet to be constructed parking garage. The buildings are to be constructed in the air space above the garage. The contract provides that the purchase price for the parking garage shall be the sum of its then outstanding principal balance. If GSA leases these two buildings, it does not have to lease the parking garage. We noted that the solicitation for offers contained no requirement for a parking garage, nor was any cost mentioned in the purchase options shown in the prospectus.

Regarding the options on buildings III and IV, the developer does not have a binding contract with Montgomery County for the land or for constructing a parking garage. The developer has a Memorandum Of Understanding (MOU) with the County to build the parking garage and construct the buildings over it. The MOU expires in August 1987 and states that it is not legally binding on the parties. The contract provides that if GSA exercises its option to purchase buildings III and IV, it will purchase the two buildings, the land, and the garage. Of course, this assumes that the developer will have a lease with the option to purchase the land and parking garage from the County and that the lease will contain a right of assignment so the developer can assign the purchase option to GSA. In short, a complicated set of circumstances must fall into place in order to consolidate NOAA at SSMC. Much rests on the actions of Montgomery County, which is not a party to this contract and apparently, not legally bound to the developer.

Furthermore, if the terms of the MOU are made binding, the developer will have the option to lease the ground, and within 3 years, buy the land and air rights or lease the air rights to the land. The MOU, however, sets forth the intent of the parties that should the developer opt to purchase the land and its air rights, a covenant would exist at the discretion of the County, assuring the existence of a County parking garage.

## **Figure I.22: Options to Lease or Purchase and GSA's Prospectus**

### **SPECIAL LEASE OR PURCHASE CONDITIONS**

- The government's election to lease or purchase phases III and IV is dependent and must be exercised concurrently.
- A condition to closing any purchase of phases III and IV shall be that the government close on the purchase of the County parking garage to be erected on phases III and IV.
- The purchase price for the parking garage shall be the sum of the then outstanding principal balance of the County parking garage.



LEASE PROSPECTUS

GSA submitted a lease prospectus to the House and Senate Public Works Committees dated May 1, 1987, seeking authority to lease approximately one million square feet of space in four buildings the developer proposed to construct. The prospectus, as previously noted, contained data on specific dates on which GSA had to exercise its lease options, lease costs, and information on proposed purchase options. GSA proposed to consolidate the National Oceanic and Atmospheric Administration (NOAA) and relocate the National Science Foundation at SSMC. According to GSA officials, the National Science Foundation has not yet agreed to relocate to SSMC. About 25 percent, or approximately 217,000 square feet, of the proposed 874,000 square feet of space for NOAA was to be special purpose space, some of which would be for monitoring and telemetry equipment. The special purpose space needs would be filled through changes to proposed design plans for space which is now intended to be constructed to commercial office space standards.

GSA's economic analysis in the prospectus shows that federal construction would be less costly than (1) leasing space elsewhere, (2) leasing the four buildings, or (3) leasing the four buildings for 5 years then purchasing them. The prospectus did not compare the costs for exercising the purchase options either when built or after 10 years of leasing. The purchase price options are lowest if the buildings are purchased when constructed. GSA officials said the purpose of the prospectus is to secure authority only to enter into these 20-year leases. GSA recommends in the prospectus that the purchase options should be exercised after the first 5 years of leasing.

## **Figure I.23: Options to Lease or Purchase and GSA's Prospectus**

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### LEASE PROSPECTUS

- GSA's lease prospectus dated May 1, 1987, is required to exercise the lease options.
- Lease approximately 1,047,000 square feet to consolidate National Oceanic and Atmospheric Administration (NOAA) headquarters and relocate National Science Foundation at Silver Spring Metro Center.
- Proposed housing plan provides for increased general space for NOAA, which requires additional monitoring and telemetry equipment, and shows that about 25 percent (about 217,000 square feet) of the proposed 874,000 square feet of space for NOAA is proposed for special space.
- GSA prospectus recommends exercising the purchase option after the first 5 years of consolidated leasing.
- Prospectus does not include the cost of exercising the initial purchase option, nor does it include the 10-year option.
- Prospectus economic analysis shows federal construction to be the most economical alternative.

POTENTIAL PROBLEMS WITH FUTURE BUILDINGS

The purchase contract for building I provides that the four other buildings to be leased and/or purchased will be constructed on a basis equivalent to building I. The contract also provides GSA with the right to direct modifications to any of the four other buildings to meet specific tenant agency needs at the government's expense.

GSA has not yet established specific special space requirements for NOAA and does not have design plans and specifications for buildings II-V. The May 1, 1987, prospectus estimates, however, that 25 percent of NOAA's proposed space at SSMC will be for special space. GSA officials said NOAA had submitted a request for space only for building I and that the National Science Foundation, which it had proposed to occupy building V, had not yet agreed to relocate to SSMC.

NOAA informed us that it is working with a consultant to identify the special space requirements at SSMC and that this work would not be completed for at least 3 months. The NOAA official also said that preliminary plans are to use about 162,000 square feet of space in building II for nine computer systems.

Some of the concerns raised by the GSA inspection report for building I--floor live loads, slab-to-slab vertical height, and air conditioning and electrical power capacity--will result in the need to modify buildings II-V if these buildings are used for more demanding purposes than normal office space. This building was not designed for the load bearing, power, or cooling demands associated with mainframe computers or other specialized kinds of equipment. Because the specific needs for special space have not yet been identified, it is not yet possible to estimate what such modifications will cost. The purchase contract does not set forth how the cost of such modifications will be determined. GSA said that they would have to negotiate such changes with the developer.

## Figure I.24: Potential Problems With Future Buildings

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### CONTRACT PROVISIONS

- Outyear buildings will be constructed on a basis equivalent to the first building.
- The contracting officer must approve any design changes from the design of phase 1.
- First building will have marble floors and walls in upper-level elevator lobbies, but the outyear buildings will not.
- GSA has not established specific tenant agency needs.
- Specific tenant agency needs in excess of contract specifications will require modification of outyear buildings at the government's expense.
- GSA reserves the right to modify any outyear building to meet its specific tenant agency needs, and if any agency has special floor load requirements, the design for that specific portion of the outyear building may be modified accordingly.
- GSA stated that since all of the outyear buildings will be considerably larger, freight elevators have been negotiated for all future buildings.

## Figure I.25: Potential Problems With Future Buildings

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### STATUS

- GSA does not have plans and specifications for buildings II-V.
- Prospectus shows that 25% of NOAA's proposed space at Silver Spring Metro Center will be special space.
- Request for space has been received for building I but not for other buildings.
- No request for space has been received from National Science Foundation (building V).
- The following concerns raised by the GSA engineers for building I could be more applicable to buildings II-V:
  - floor live loads,
  - slab-to-slab vertical height,
  - air-conditioning capacity, and
  - electrical power capacity.

CONTRACTING OFFICER'S AUTHORITY

The Federal Acquisition Regulation (FAR) and the GSA Acquisition Regulation (GSAR) have qualification requirements for government personnel who sign contracts but do not place specific qualification requirements on personnel who negotiate contracts for the government.

FAR subpart 1.6 provides that contracts may be signed only by contracting officers, who shall be appointed in writing. It requires agencies to establish systems to select and appoint contracting officers. In selecting contracting officers, according to the FAR, agencies should consider the complexity and dollar value of the contracts to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation.

GSAR subpart 501.6 is more specific in its requirements. The GSAR provides that contracting officers be warranted based on statements of fact presented by their supervisors to a warrant board, covering the knowledge and abilities of candidates. It also requires contracting officer candidates to have different levels of experience depending upon the dollar value of contracts they sign and provides mandatory training requirements that candidates must meet. However, the GSAR also provides that individuals who do not meet the minimum qualifications may be appointed on an interim basis if warrant boards consider their experience and past performance sufficient.

The contracting officer who signed the February 17, 1987, contract to purchase building I had completed (as of November 5, 1986) two of the four required courses for realty leasing personnel to be considered for contracting officers. He had worked for GSA since January 1981 as a realty specialist and acting chief of the marketing unit, where, among other things, he negotiated contracts, and prepared and administered leases.

On December 23, 1986, he received an interim warrant to award and administer leases and acquire sites, not to exceed \$100,000. A second interim warrant was issued to him on February 5, 1987, to award and administer leases and acquire sites and/or buildings, without dollar limitation. This warrant was to expire December 23, 1987, and would only be extended if he completed two required courses prior to the expiration date.

## **Figure I.26: Contracting Officer's Authority**

- The Federal Acquisition Regulation (FAR) and the GSA Acquisition Regulation (GSAR) contain qualification requirements for personnel who sign contracts for the government but no explicit requirements for personnel who negotiate contracts.
- Initial interim warrant was issued on December 23, 1986.
- Second interim warrant was issued on February 5, 1987.

CONFLICT OF INTEREST ALLEGATION

We attempted to determine if there were any apparent conflicts of interest by the Administrator of General Services in the purchase of SSMC. Our work did not reveal that there was any relationship between the Administrator and the owners and partners of SSMC, but since our review was limited it cannot be considered to be conclusive.

We contacted the newspaper reporter who wrote an article on possible conflicts of interest by the Administrator and asked if he had any information other than what he reported. He did not provide us with any further information. The article itself did not directly allege a conflict of interest on the SSMC purchase.

We reviewed the Administrator's financial disclosure statement. None of the Administrator's partnerships as listed on the disclosure statement coincided with the partnerships involved with the land and buildings for SSMC.

We also asked for a listing of the Administrator's individual business partners, because the financial disclosure statement shows partnerships without showing the individual partners. The Administrator's office denied our access to this listing on the grounds that it was not a public document.

We then provided the Administrator's Chief of Staff a listing of the owners and partners for SSMC buildings I-V to compare to the Administrator's listing of partners. She advised us that there was no match of names between the two lists. We were not, however, permitted to verify this ourselves.



## Figure I.27: Conflict of Interest Allegation

### WHAT GAO DID

Asked reporter if he had any information other than the allegations.

Reviewed financial disclosure statement of the Administrator of General Services.

Asked for listing of Administrator's business partners (individuals).

Provided Administrator's Chief of Staff the owners/partners for Silver Spring Metro Center (buildings I-V) to compare to Administrator's list.

### RESULTS

No information provided.

Did not list any partnerships involved with the land and improvements for Silver Spring Metro Center (buildings I-V).

GAO was denied access.

Chief of Staff advised GAO that no names matched.

REASONABLENESS OF PRICES

The Deputy Administrator of GSA said GSA's purchase of building I and the options to lease and subsequently purchase the other four buildings represented an "outstanding buy" for the government. Because of this statement and a newspaper article that alleged GSA's purchase price for another unrelated building was too high, we attempted to evaluate the reasonableness of prices for SSMC.

Due to time constraints of our review and lack of comparative data, we limited our work to a comparison of the purchase contract price for building I to GSA's appraisal for building I. We also compared the base leasing prices for all buildings to the asking prices for 10-year leases we received from a commercial real estate firm located in Montgomery County, Maryland.

GSA paid \$21,870,000 for building I. The appraised value was \$22,000,000. Purchase price data for similar buildings were not available from the commercial real estate firm we contacted.

GSA's purchase contract for building I also included lease prices for the lease options. These prices have an annual escalation with a base cost of \$23.00 per square foot (SF). The appraisal value for the base was \$23.65 per SF. Both the contract and appraisal amounts are for a 20-year lease. The real estate firm did not have 20-year lease values because its representative said they are uncommon in the commercial market. The firm did provide a 10-year lease asking price range for buildings in close proximity to SSMC of \$21.25 to \$25.00 per SF.

GSA's purchase contract includes specified costs for the initial purchase, year 5 purchase, and year 10 purchase for buildings II-V. Because comparable data was not available from GSA's appraisal of building I or the commercial firm we contacted, we were not able to obtain even an impression of the reasonableness of the purchase prices for buildings II-V.

Our limited review showed that the purchase price for building I and the base lease price were comparable to estimates of real estate near the SSMC complex. Whether the future options represent an "outstanding buy" depends on future real estate market prices.

## Figure I.28: Reasonableness of Prices

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### METHODOLOGY

- Compared contract prices to GSA's appraisal and prices received from Montgomery County commercial real estate services firm.
- For purchase, used the actual price for building I and the contract base price for buildings II-V.
- For lease, used contract base price for all buildings.
- Used Washington Board of Realtor's definition of square footage.

## Figure I.29: Reasonableness of Prices

### PURCHASE OF BUILDING I

- GSA cost was \$21,870,000 (\$154.98 per square foot).
- Appraisal was \$22,000,000 (\$157.28 per square foot).
- No price data was available from real estate services firm.

### LEASES

- GSA cost base is \$23.00 per square foot with annual escalation.
- Appraisal was \$23.65 per square foot.
- Real estate services firm offered range of \$21.25 per square foot to \$25.00 per square foot (10-year lease).
- 20-year leases not generally offered.

### PURCHASE OF BUILDINGS II-V

- GSA costs are specified in contract for initial purchase, year 5, and year 10.
- No appraisal data was available.
- No price data was available from real estate services firm.

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