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General Government Division

B-283789

October 18, 1999

The Honorable Fred Thompson
Chairman, Senate Committee on
Governmental Affairs
United States Senate

Subject: Federal Statutes and Executive Orders Applicable to the Public Buildings Service's Leasing Program

Dear Mr. Chairman:

The General Services Administration (GSA), through its Public Buildings Service (PBS), is responsible for leasing space for federal agencies. As you requested, this letter identifies the legislative and administrative requirements that apply to PBS' leasing program and provides information on the mechanisms that PBS has established to implement and comply with these federal statutes and executive orders. The enclosure lists and provides a brief explanation of each of the federal statutes and executive orders that are applicable to PBS' leasing program.

Results

In our review we identified one statute that established GSA's basic authority to lease space for federal agencies for periods up to 20 years and another statute that established congressional oversight of large lease projects. We identified another 27 statutes and 7 executive orders that currently govern PBS' leasing process. Some of these statutes and executive orders apply to every lease, and others apply only under certain circumstances. The provisions of these statutes and executive orders deal with issues ranging from health and safety matters, such as fire safety and seismic standards, to the prohibition against kickbacks and payments to influence the award of leases. Some of the statutes address requirements of contractors in relationship to their subcontractors—such as use of small and disadvantaged businesses and payment of fair wages.

PBS uses several different mechanisms to implement and comply with various requirements imposed by statutes and executive orders. PBS implements most of the requirements through clauses in its solicitation for offers (SFO) and the general-clauses form, which are part of the official lease. PBS also uses orders, the General Services Administration Regulation (GSAR),

and certifications and representations by the lessors to implement and comply with legislative and administrative requirements.

Scope and Methodology

We verified a list of federal statutes and executive orders that are applicable to PBS's leasing program that was developed by GSA. In verifying this list we reviewed federal statutes and executive orders, GSA documents, and our issued reports. We also discussed this list with GSA officials.

To identify the mechanisms that PBS has established to implement and comply with these statutes and executive orders, we spoke with cognizant officials in PBS's National Office. We also reviewed the mechanisms identified by PBS officials to provide more information on them and determine if they addressed the requirements of the federal statutes and executive orders. These mechanisms included GSA's standard SFO and its general-clauses form, representations and certifications form that the lessors must sign, regulations, orders, and desk guides. We did not evaluate the effectiveness of these mechanisms for ensuring compliance with federal statutes and executive orders.

We did our work between May and October 1999 in accordance with generally accepted government auditing standards. We requested comments on a draft of this letter from the Administrator of GSA. GSA's comments are discussed at the end of this letter.

GSA's Basic Authority to Lease Space and Congressional Oversight

GSA's basic authority to lease space for federal agencies, which is exercised by PBS, is contained in section 210 (h) of the Federal Property and Administrative Services Act of 1949, as amended. The Federal Property and Administrative Services Act of 1949 created GSA as an independent agency in the executive branch. The 1949 Act gave the Administrator of General Services broad authority in managing real property, including authority to (1) prescribe regulations governing real property management and leasing, (2) lease real property for periods up to 5 years, and (3) delegate lease authority to the head of any federal agency. In 1958, the act was amended to give GSA the authority to enter into leases for up to 10 years. The act, 40 U.S.C. 490 (h), was amended again in 1959 to increase the maximum allowable term of leases to the current 20-year period. One reason for this change was to provide greater flexibility in obtaining leased space, which was expected to result in a lesser annual cost to the government. In 1989, another amendment to the act gave GSA the authority to lease space in buildings erected on land owned by the United States for periods not to exceed 30 years.

Section 7(a) of the Public Buildings Act of 1959, 40 U.S.C. 606(a), provided for GSA to submit prospectuses to its Senate and House authorizing committees for projects for the construction, acquisition, and alteration of public buildings over a certain dollar amount. In 1972, Congress increased congressional control over large lease projects by amending section 7(a) of the Public Buildings Act of 1959 to include leases and lease alteration projects that

exceeded a certain dollar amount. The dollar threshold for the submission of the prospectus is adjusted annually by PBS, as authorized by the act, to reflect changes in costs during the preceding year.¹

PBS Uses Clauses in Its Leases to Implement Most Legislative and Administrative Requirements

PBS uses clauses in its SFO and a general-clauses form to address 19 federal statutes and 4 executive orders that relate to the leasing of buildings for the federal government's use. According to PBS officials, the SFO and general-clauses form generally contain language similar to the statutory language and are part of the leasing agreement signed between the lessor and PBS. The contracting officer has flexibility to modify some of the clauses within the SFO; however, according to the instructions for the SFO, new clauses should contain "substantially the same information" as the original clauses. According to a PBS official, the language in the general-clauses form, which are prescribed by statute or executive order, may also be changed provided the change does not violate the intent of the underlying statute or executive order.

PBS' standard SFO has certain clauses that are mandated by law. These clauses address issues such as fire safety, seismic standards, accessibility, and overall building safety in response to specific federal statutes that establish requirements in these areas. Other federal statutes are not applicable to all leases and are addressed through clauses in the SFO that can be deleted or modified as appropriate. Many of these federal statutes address issues that typically arise during the construction of a building; and thus, they pertain to GSA leases when a building is being specifically built for the government to lease. For example, the requirement for the payment of fair wages applies to construction contractors and the requirement for payment of relocation benefits may apply to persons displaced due to lease construction projects. There is also a clause in the SFO to cover the executive order on seismic standards for new buildings, including those constructed for lease by the government.

Several other federal statutes and executive orders are also addressed through specific clauses in PBS' SFO and the general-clauses form. The requirements in these statutes include making the building accessible to the handicapped, giving preference to historic properties, conserving energy and water, allocating space for vending facilities to be operated by blind vendors, providing a drug-free workplace, and providing equal employment opportunities. Other federal statutes concerning contract administration issues, such as payments, disputes, and the government's right to examine the contractor's records, are also addressed through specific clauses in the general-clauses form.

On June 3, 1999, the President issued Executive Order 13123 reemphasizing the federal government's commitment to energy and environmental progress in operating its facilities. The order includes preferences for energy-efficient buildings that have the "ENERGY STAR

¹ The dollar threshold for leases and lease alteration projects for fiscal year 2000 was \$1,930,000 and \$965,000, respectively.

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label” in the selection criteria for acquiring leased buildings. The order also requires the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, to develop model lease provisions that incorporate energy efficiency and sustainable design within 180 days of the date of the order. This executive order revokes Executive Order 12902 of March 9, 1994, on Energy Efficiency and Water Conservation.

Following are the 19 federal statutes and 4 executive orders that PBS currently implements through clauses in the SFO and general-clauses form. According to GSA officials, the fifth executive order listed, Executive Order 13123, will be implemented in this same manner after the model lease provisions have been developed:

- Anti-Kickback Act of 1986;
- Assignment of Claims Act of 1940;
- Contract Disputes Act of 1978;
- Contract Work Hours and Safety Standards Act of 1962;
- Copeland Act of 1934;
- Covenant Against Contingent Fees;
- Davis-Bacon Act of 1931;
- Drug-Free Workplace Act of 1988;
- Earthquake Hazards Reduction Act of 1977;
- Energy Policy Act of 1992;
- Examination of Records;
- Fire Administration Authorization Act of 1992;
- Occupational Safety and Health Act of 1970;
- Prompt Payment Act;
- Public Buildings Cooperative Use Act of 1976;
- Randolph-Sheppard Act;
- Small Business Act;
- The Architectural Barriers Act of 1968;
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- Executive Order 11375, Equal Employment Opportunity;
- Executive Order 12699, Seismic Safety of Federally and Federally Assisted or Regulated New Building Construction;
- Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities;²
- Executive Order 13006, Locating Federal Facilities on Historic Properties in Our Nations Central Cities; and
- Executive Order 13123, Greening the Government Through Efficient Energy Management. The enclosure provides a brief explanation of these statutes and executive orders.

² Executive Order 12902 was revoked, as of June 3, 1999, by the issuance of Executive Order 13123, Greening the Government Through Efficient Energy Management.

Regulations, Orders, and Lessor Certifications are Also Used to Implement Requirements

The remaining eight federal statutes and three executive orders that are applicable to PBS' leasing program are addressed through regulations, orders, and lessor certifications. Four of these federal statutes and the three executive orders address the priority given to different locations when determining where to lease a building. For example, if an agency must be located in an urban area, an executive order states that agencies shall give first consideration to locating federal facilities within central business areas. If an agency is not required to be located in an urban area, the Rural Development Act requires that first priority be given to location in a rural area. Also, PBS cannot lease buildings located within floodplains or wetlands unless there are no practicable alternatives; and PBS must assess the environmental impact associated with major federal actions, including leasing. PBS implements these statutes and executive orders through orders setting forth its location policy for leased buildings.

The other four federal statutes relate to the use of full and open competition in acquiring leased space, budget scorekeeping requirements, and the prohibition of payments to influence the award of leases. PBS implements the requirements of these statutes through GSAR, compliance with OMB Circular No. A-11, appendixes A&B, and representations and certifications that lessors must sign. The solicitation and award of leases must be done in compliance with the GSAR, which establishes the policies and practices for the acquisition of leased real property. Also, in the budget process leases must be scored in compliance with OMB Circular No. A-11, appendixes A&B. Lessors are also required to sign a list of representations and certifications that, among other things, states that no appropriated funds have been paid to influence the awarding of the contract.

Following are the eight statutes and three executive orders that PBS implements through regulations, orders, and lessor certifications:

- Competition in Contracting Act of 1984;
- Balanced Budget Act of 1997;
- Intergovernmental Cooperation Act of 1968;
- Rural Development Act of 1972;
- National Historic Preservation Act of 1966;
- Officials Not to Benefit;
- Prohibition on Use of Appropriated Funds to Influence Federal Contracting;
- The National Environmental Policy Act of 1969;
- Executive Order 11988, Floodplain Management;
- Executive Order 11990, Protection of Wetlands; and
- Executive Order 12072, Federal Space Management.

The enclosure provides a brief explanation of the provisions of these statutes and executive orders.

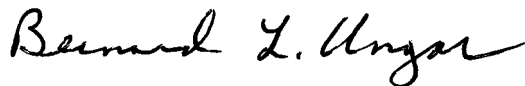
Agency Comments

We requested comments on a draft of this letter from the Administrator of GSA. On October 13 and 15, 1999, we obtained oral comments from PBS' Assistant Commissioner, Office of Business Performance and the Deputy Associate General Counsel, Real Property Division, Office of General Counsel, respectively. They agreed that the draft letter generally presented the facts accurately; they also provided some technical comments that we have incorporated as appropriate.

We are sending copies of this report to Senator George V. Voinovich, Chairman, and Senator Max S. Baucus, Ranking Minority Member, Subcommittee on Transportation and Infrastructure, Senate Committee on Environment and Public Works; Representative Bob Franks, Chairman, and Representative Robert Wise, Jr., Ranking Democratic Member, Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation, Committee on Transportation and Infrastructure; the Honorable David J. Barram, Administrator, GSA; and to others upon request.

If you have any questions about this letter, please call me or Ron King on (202) 512-8387. Key contributors to this assignment were Maria Edelstein and Susan Michal-Smith.

Sincerely yours,



Bernard L. Ungar
Director, Government Business
Operations Issues

Enclosure

Federal Statutes and Executive Orders Applicable to GSA's Leasing Program

Table 1: Federal Statutes Applicable to the GSA Leasing Program

Statute	Description
Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58)	Prohibits a contractor from soliciting or receiving kickbacks from subcontractors in return for subcontract awards. The requirements of this act are not applicable to contracts below the simplified acquisition threshold for leasing. ^a
Assignment of Claims Act of 1940 (31 U.S.C. §3727)	Allows contractors to assign rights to payment, including rent, to established financing institutions.
Balanced Budget Act of 1997 (20 U.S.C. § 902 note)	Imposes budget scorekeeping requirements for lease-purchases, capital leases, and operating leases. See H.R. Conference Report No. 105-217, at 1007-1014, 1997. See also, H.R. Conference Report No. 101-964, accompanying the Omnibus Budget Reconciliation Act of 1990, Title XIII, The Budget Enforcement Act of 1990, at 1172-1176. The scorekeeping rules can be found in OMB Circular No. A-11, appendices A & B.
Competition in Contracting Act of 1984 (41 U.S.C. § 251 et seq.)	Requires GSA to acquire leased space through the use of full and open competitive procedures.
Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613)	Requires disputes arising from federal contracts to be adjudicated by established procedures.
Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. §§ 327-333)	Imposes 40-hour work week and time and a half overtime requirements on certain contracts. This act is applicable to lease acquisitions when an offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the government. The act does not apply to contracts below the simplified acquisition threshold. ^a
Copeland Act of 1934 (18 U.S.C. § 874; 40 U.S.C. § 276c)	Makes it unlawful for a contractor to force a kickback from any person employed in the construction or repair of a public building or public work. The act also requires contractors and subcontractors to furnish a compliance statement with respect to wages paid to employees. This act is potentially applicable to lease acquisitions when an offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the government.
Covenant Against Contingent Fees (41 U.S.C. § 254(a))	Requires that no individuals other than bona fide employees or established bona fide agents maintained by the contractor have been retained to solicit or obtain a federal contract for a contingent fee. This requirement is not applicable to contracts below the simplified acquisition threshold for leasing. ^a
Davis-Bacon Act of 1931 (40 U.S.C. §§ 276a-276a-7)	Provides for payment of prevailing wages to laborers on federal construction projects. This act is potentially applicable to lease acquisitions when an offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the government.

Enclosure**Federal Statutes and Executive Orders Applicable to GSA's Leasing Program**

Statute	Description
Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701-707)	Requires contractors to take actions to reduce the possibility of drug use at the site of the performance of work. The requirements of the act do not apply to contracts below the simplified acquisition threshold for leasing. ^a
Earthquake Hazards Reduction Act of 1977 (42 U.S.C. § 7705b)	Required adoption of standards for assessing the seismic safety of existing buildings constructed for or leased by the government that were designed and constructed without adequate seismic design and construction standards.
Energy Policy Act of 1992 (42 U.S.C. § 8253)	Requires the federal government to meet 20-percent energy reduction targets by the year 2000. This includes federally leased space.
Examination of Records (41 U.S.C. § 254d)	Authorizes the head of an agency to inspect records of federal contractors and requires a contract clause giving similar authority to the Comptroller General. This authority is not applicable to contracts below the simplified acquisition threshold for leasing. ^a
Federal Property and Administrative Services Act of 1949 (40 U.S.C. §§ 486, 490(d)(h), 751)	Created GSA as an independent agency and gave the Administrator of GSA authority to (1) prescribe regulations governing real property management and leasing, (2) lease real property for periods up to 5 years, and (3) delegate lease authority back to the head of any federal agency. Amended in 1959 to provide GSA with 20-year leasing authority. Amended again in 1989 to provide GSA authority to lease space for periods not to exceed 30 years in buildings erected on land owned by the United States.
Fire Administration Authorization Act of 1992 (15 U.S.C. § 2227)	Requires that an entire building have sprinklers or provide an equivalent level of life safety when federal funds are used to lease 35,000 square feet or more of space in a building (under one or more leases) and some portion of the leased space is on or above the 6th floor. Also requires that all government leases contain a provision requiring that all hazardous areas of the building have an automatic sprinkler system.
Intergovernmental Cooperation Act of 1968 (40 U.S.C. §§ 531-535)	Requires GSA to consult with planning agencies and local elected officials and to coordinate federal projects with development plans and programs of the state, region, and locality where the project is to be located.
National Historic Preservation Act of 1966 (16 U.S.C. §§ 470 - 470w-6)	Requires listed historical properties to be protected from harm as a result of federal actions, including leasing.
Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651-678)	Requires GSA to ensure that space leased and assigned to agencies provides safe, healthful working conditions, including building features such as lighting, guard rails, indoor air quality, fire safety features, emergency elevator requirements, etc.
Officials Not to Benefit (41 U.S.C. § 22)	Prohibits any member of Congress from receiving any benefit arising from a federal contract.

Enclosure**Federal Statutes and Executive Orders Applicable to GSA's Leasing Program**

Statute	Description
Prohibitions on Use of Appropriated Funds to Influence Federal Contracting (31 U.S.C. § 1352)	Requires certifications from contractors that appropriated funds have not and will not be paid to any person to influence the award of a federal contract.
Prompt Payment Act (31 U.S.C. §§ 3901-3907)	Requires federal payments to contractors to be made in an expeditious manner, provides penalties for late payment by the government, and requires that the government be entitled to discounts for early payment.
Public Buildings Act of 1959 (40 U.S.C. § 606)	Calls for GSA to submit leases with annual rental, excluding services and utilities, in excess of \$1,930,000 and lease alteration projects in excess of \$965,000 to its Senate and House authorizing committees. The amounts above were applicable for fiscal year 2000 and are to be indexed annually.
Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 601a)	Requires GSA to afford a preference to historic properties in the leasing process.
Randolph-Sheppard Act (20 U.S.C. § 107)	Requires that licensed blind vendors be authorized to operate vending facilities on any federal property, including leased buildings. The act imposes an obligation on GSA to acquire space in buildings that have suitable sites for vending facilities.
Rural Development Act of 1972 (42 U.S.C. § 3122)	Requires federal agencies to give first priority to rural areas in locating facilities. See also Executive Order 12072, regarding the location of federal facilities in urban areas.
The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4152)	Requires that public buildings be made accessible to the physically handicapped.
The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.)	Requires an assessment of the environmental impacts associated with major federal actions, including government leasing.
The Small Business Act (15 U.S.C. §§ 631-647)	Requires a positive effort by federal contractors to place subcontracts with small and small disadvantaged business concerns. The act also requires publication of federal procurement requirements, requires large businesses to submit small business subcontracting plans, and provides for liquidated damages for failure to meet subcontracting plan goals.
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.)	Requires the payment of relocation benefits to persons displaced as a result of federal actions. This act is potentially applicable to persons displaced as a result of GSA lease-construction projects.

Note: For purposes of this table, we have cited only the original act even though many of the statutes cited have been subsequently amended.

*The simplified acquisition threshold is \$100,000.

Source: GSA.

Enclosure**Federal Statutes and Executive Orders Applicable to GSA's Leasing Program**

Table 2: Executive Orders Applicable to the GSA Leasing Program

Executive Order	Description
11375 – Equal Employment Opportunity (Oct. 13, 1967, 32 Fed. Reg. 14303)	Prohibits federal contractors from discriminating against any employee or applicant for employment because of race, color, religion, sex, or national origin.
11988 – Floodplain Management (May 24, 1977, 42 Fed. Reg. 26951)	Precludes GSA from leasing space in buildings located within floodplains unless there are no practicable alternatives.
11990 - Protection of Wetlands (May 24, 1977, 42 Fed. Reg. 26961)	Precludes GSA from leasing space in wetlands unless there are no practical alternatives.
12072 – Federal Space Management (Aug. 16, 1978, 43 Fed. Reg. 36869)	Requires that first consideration be given to locating federal facilities in urban areas within central business areas.
12699 – Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (Jan. 5, 1990, 55 Fed. Reg. 835)	Requires that new buildings constructed for lease to the government are designed and constructed in accord with appropriate seismic design and construction standards.
12902 – Energy Efficiency and Water Conservation at Federal Facilities (Mar. 8, 1994, 59 Fed. Reg. 11463)	Requires that appropriate consideration be given to efficient buildings in the leasing process. Increases federal energy reduction goals to 30 percent by the year 2005. This executive order was revoked June 3, 1999, when Executive Order 13123 was issued.
13006 – Locating Federal Facilities on Historic Properties in Our Nation's Central Cities (May 21, 1996, 61 Fed. Reg. 26071)	Subject to the Rural Development Act and Executive Order 12072, directs that executive agencies give first consideration to locating federal facilities in historic properties within historic districts when operationally appropriate and economically prudent.
13123 - Greening the Government Through Efficient Energy Management (June 3, 1999, 64 Fed. Reg. 30851)	A new executive order that incorporates many provisions of Executive Order 12902, which was revoked. Establishes a goal to reduce energy consumption per gross square foot by 30 percent in 2005 and 35 percent in 2010, compared with 1985. It requires agencies entering into leases, including the renegotiation or extension of existing leases, to incorporate lease provisions that encourage energy and water efficiency wherever life cycle cost-effective. For build-to-suit leases, it requires solicitations to contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies are to include a preference for buildings having the ENERGY STAR® Building label in their selection criteria for acquiring leased buildings.

Source: GSA.

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