

REPORT TO THE CONGRESS



*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

X General Services Administration's Practices In Awarding And Administering Leases Could Be Improved

The General Services Administration leases 90.5 million square feet of space at an annual rent of about \$400 million. GAO found various deficiencies in the agency's practices for awarding and administering leases. These included:

- Not obtaining congressional authorization for two major leases.
- Obtaining only limited competition.
- Negotiating uneconomical rental adjustments which benefited lessors more than the Government.
- Paying for electricity and other utilities used by non-Government tenants.

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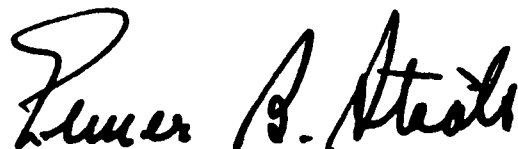
To the President of the Senate and the
Speaker of the House of Representatives

This report describes various deficiencies in the General Services Administration's practices for awarding and administering leases and suggests ways to improve such practices.

We made this review because of a sizable increase in leasing costs in recent years attributable primarily to the additional space leased by the Government and rental increases on lease renewals. Annual rents increased by 167 percent in the last 10 years and now account for about 37 percent of the Federal Buildings Fund expenditures.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Acting Director, Office of Management and Budget, and to the Administrator of General Services.


Comptroller General
of the United States

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ACQUISITIONS

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

GENERAL SERVICES ADMINISTRATION'S
PRACTICES IN AWARDING AND
ADMINISTERING LEASES
COULD BE IMPROVED

D I G E S T

The General Services Administration leases 90.5 million square feet of space at an annual rent of about \$400 million to accommodate Federal departments and agencies. Total commitments for current leases total about \$2.1 billion.

GAO found various deficiencies in General Services Administration practices in awarding and administering leases. These deficiencies involved some of the major functions General Services performs in acquiring and administering leased space.

By law General Services must obtain congressional approval of proposed leases having annual rents over \$500,000 because the Congress wanted some control over leasing. However, GAO found that General Services split space requirements on two leases by not obtaining congressional review.

In the first case, office space for the Veterans Administration was leased in December 1974 at an annual rent of \$434,000. Within approximately 4 months, additional space in the same building was leased for the Veterans Administration, raising the annual rent to \$688,000. The second case involved the leasing in January 1976 of most of a warehouse for the Library of Congress at an annual rent of \$477,000. The rest of the warehouse was leased for the Library about 6 months later, increasing the annual rent to \$533,000. In both cases, it is obvious that General Services and the agencies should have obtained congressional approval. (See pp. 3 to 9.)

Although General Services' policy and procedures stress the importance of competitive negotiations, frequently competition is limited on lease awards. GAO reviewed 65 recent lease awards and 43 recent follow-on lease actions and found that General Services negotiated with only one offeror on 55 percent of the new lease awards and 95 percent of the follow-on leases. The negotiated rent exceeded the appraised fair annual rent in 33 percent of new lease awards and 20 percent of the follow-on lease actions involving only one offeror. When multiple offers are received, General Services has a better negotiating position. Offering all qualified individuals an opportunity to compete for leases discourages favoritism and increases the probability that acceptable space will be obtained at the most economical rent. (See pp. 12 to 15.)

In recent years, the General Services Administration has amended some major leases for the benefit of the lessor without receiving adequate compensation for contract rights relinquished. Rent reduction obtained on four leases in exchange for Government assumption of utilities and services costs were much less than the cost assumed by the Government.

For example, the estimated cost assumed by the Government on one of these leases will exceed the rent reduction by about \$9 million. In amending another lease General Services relinquished an entire floor in a leased building for the convenience of the lessor. In this case, the reduction in rent for space given up was less than the market value of the space at the time of lease amendment. The lessor then leased the same space to a commercial tenant at an annual rent of almost two and one-half times the rent reduction obtained. (See pp. 28 to 34.)

In 13 leased buildings non-Government tenants have been provided electricity and, in some cases, other utilities at Government expense. (See pp. 34 to 36.)

RECOMMENDATIONS

The Administrator of General Services should:

- Require periodic reviews of the leasing program to help insure that existing procedures for obtaining congressional approval are met. (See p. 25.)
- Require review and clarification of procedures and forms used to determine compliance with the Economy Act and oversee and evaluate regional efforts periodically in carrying out the requirements of the act. (See p. 25.)
- Insure that competition is obtained to the maximum practical extent for new leases and follow-on leases. This includes improving the planning for probable follow-on leases to allow sufficient time, prior to lease expiration, for developing an alternative space plan. (See p. 25.)
- Require adequate consideration of all offers during preaward evaluations and negotiations and solicitation of space within delineated geographical areas of sufficient size to allow more offerors to participate in solicitations. (See p. 25.)
- Insure that alteration work is supervised and coordinated properly and alterations are completed by the occupancy date. (See p. 25.)
- Require reviews of pending lease actions to assure that leased space to be acquired does not significantly exceed firm agency requirements. (See p. 25.)
- Insure that the Government receives adequate rent reductions or other compensation when leases are amended to provide for Government assumption of utilities or

services costs or when the Government relinquishes leased space for a lessor's convenience. (See p. 37.)

- Require separate metering of non-Government space in Government-leased buildings wherever possible. When separate metering is not feasible, steps should be taken to assure that the Government receives adequate reimbursement for utilities consumed in non-Government space. (See p. 37.)
- Require periodic inspection of leased buildings to make sure private tenants are not receiving utilities at Government expense. (See p. 37.)

AGENCY COMMENTS

General Services did not comment specifically on each of the report recommendations. According to General Services, the report findings represent limited situations resulting from not following existing procedures, which the agency believes are sound. General Services said that emphasis is being placed on adequate management review to insure adherence to prescribed procedures, and deficiencies noted in the GAO report are being corrected.

GAO believes that existing General Services leasing procedures are generally adequate. The report findings relate primarily to situations in which established procedures were not followed. Others relate to instances in which leasing procedures should be clarified or re-emphasized.

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ABBREVIATIONS

DOL	Department of Labor
DPC	Data Processing Center
FSS	Federal Supply Service
GAO	General Accounting Office
GSA	General Services Administration
NCS	National Cemetery System
PBS	Public Buildings Service
SFO	solicitation for offers
SSA	Social Security Administration
VA	Veterans Administration
VBO	Veterans Benefit Office

CHAPTER 1

INTRODUCTION

The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490), and Executive orders issued pursuant to the act direct the Administrator of General Services to initiate and maintain plans and programs for effective and efficient acquisition and use of federally owned and leased buildings. The act authorizes the Administrator to enter into leases, not to exceed 20 years, for accommodating Federal agencies in existing buildings or those to be erected by lessors.

In fiscal year 1963 a lease-authorization procedure was established by law which required the General Services Administration (GSA) to obtain prospectus approval of the Public Works Committees 1/ of the Congress for leasing of buildings for Federal agencies when estimated construction costs exceed \$200,000. The lease-authorization procedure was inserted in the law because the Congress wanted to exercise some control over leasing and to encourage construction rather than leasing of buildings. In 1972 the law was amended to require prospectus approval of all leases having an annual rent in excess of \$500,000. A prospectus contains information about the need for a project, estimated rental cost and other data.

The House and Senate Committees on Appropriations and Public Works have on several occasions expressed concern about the increasing amount and cost of leased space and have advocated Federal construction as the most economical way to provide accommodations for Federal agencies. However, Government-leased space under GSA's control continues to increase. Between fiscal years 1968 and 1977, leased space increased from 49 million to 90.5 million square feet or 85 percent. Annual rents increased from about \$150 million to about \$400 million 2/ or 167 percent. The total commitment for all leases currently in effect until expiration is about \$2.1 billion.

1/The names of the committees have been changed to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

2/The amount for space leasing included in the fiscal year 1978 appropriation for the Federal Buildings Fund was \$487 million. This amount included the annual space rental, one-time cost of renovating space, and payments to the U.S. Postal Service for space occupied by Federal agencies.

GSA's leasing operations are carried out in 10 regional offices under policy and procedural direction from the GSA Central Office in Washington, D.C. The GSA Central Office organizational unit which was responsible for some of the lease actions discussed in this report has been abolished, and its functions were assumed by a GSA Region 3 organizational unit.

SCOPE OF REVIEW

Our review was directed toward ascertaining the adequacy of GSA's practices and procedures for awarding and administering leases. This included reviewing (1) agency space requests, (2) solicitations of lease offers, (3) pre-award evaluations of offers and negotiations, (4) findings and determinations on lease awards, and (5) lease amendments.

The review was made at GSA Central Office; Region 3, Washington, D.C., and Philadelphia, Pennsylvania, Branch Office; Region 4, Atlanta, Georgia; Region 6, Kansas City, Missouri; and Region 10, Auburn, Washington. As of June 30, 1976, these four regions accounted for 2,722 leases (39 percent of all GSA leases) with annual rents totaling \$223,538,000 (57 percent of GSA's total annual rent cost). We reviewed 147 of these leases with annual rents totaling \$41,349,000. For 24 of the leases reviewed, the annual rent exceeded \$500,000.

CHAPTER 2

QUESTIONABLE PRACTICES IN AWARDING LEASES

We found deficiencies in GSA's practices for awarding leases. These deficiencies involved some of GSA's major functions in acquiring leased space and included:

- Avoiding the requirement for congressional authorization of major leases.
- Inconsistent methods of calculating rent for determining compliance with the Economy Act limitation.
- Failure to determine compliance with the Economy Act limitation.
- Limited competition obtained in acquiring leased space.
- Inadequate consideration of some offers.
- Leasing space not ready for occupancy.
- Leasing more space than required.

CONGRESSIONAL AUTHORIZATIONS NOT OBTAINED ON SELECTED MAJOR LEASES

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

GSA procedures, which interpret the requirements of section 7 of the 1959 act, state that the "average annual rent" means bare contract rent (net rent) exclusive of the reasonable value of utilities and services. With respect to amending a lease, the procedures provide:

"Amendment of an existing lease, with an average annual rental of less than \$500,000, to cover additional space, which results in an increase in the total average annual rental to an amount in excess of \$500,000, is permissible without prospectus approval provided the action is

fully documented to clearly reflect that it is not deliberately taken to evade the requirement of section 7, as amended."

The Comptroller General's decision of October 26, 1972, 52 Comp. Gen. 230, stated that we had no objection to GSA's interpretation of the term "average annual rental." According to the decision, no legal basis existed for objecting to the proposed treatment of amendments to existing leases. However, we stated that GSA should take necessary precautions to prevent splitting a space requirement to evade the requirements of section 7.

Considering the circumstances at the time of lease award and events leading up to subsequent lease amendment, we believe that GSA should have complied with the section 7 approval requirement for the two leases. Details of these two cases follow.

Union Center Plaza North Building

On March 25, 1974, GSA leased 28,883 square feet in the Union Center Plaza North Building, Washington, D.C., for the Federal Power Commission for a 20-year term to commence September 4, 1974. The annual rent was \$173,298 and included lessor-furnished utilities and services valued by GSA at \$54,011 a year, making the net annual rent \$119,287. Subsequently, GSA amended the lease to acquire large blocks of additional space in the building to provide space for the Veterans Administration (VA).

The VA submitted the following three requests to GSA during 1974:

<u>Date of request</u>	<u>Square feet</u>	<u>To be occupied by</u>
March 7, 1974	19,705	National Cemetery System
July 12, 1974	86,900	Veterans Benefit Office
July 12, 1974	<u>35,750</u>	Data Processing Center
Total	<u>142,355</u>	

If the 142,355 square feet had been leased in one increment, prospectus approval would have been required because the net annual rent on this space would have been over \$500,000. Therefore, GSA split the space requirement and leased only 104,573 square feet at a net annual rent of \$433,839 during 1974. In 1975 GSA leased an additional 63,893 square feet to provide more space for VA. This increased the annual rent to \$1.1 million and the net annual rent to \$905,000 as follows:

<u>Award date</u>	<u>Square feet</u>	<u>Annual rental</u>	<u>Lessor-furnished utilities and services</u>	<u>Net annual rental</u>
Basic lease-				
3/25/74	a/28,883	\$ 173,298.00	\$ 54,011.00	\$119,287.00
Amendment no. 2-				
12/13/74	b/104,573	627,438.00	193,599.00	433,839.00
4/04/75	b/6,847	26,505.75	8,670.00	17,835.75
Amendment no. 4-				
3/14/75	b/28,163	168,978.00	52,665.00	116,313.00
4/17/75	b/28,883	153,331.90	33,504.00	119,827.90
Lease adjust-	-			
ments		c/-18,806.91	d/-116,806.96	98,000.05
	<u>197,349</u>	<u>\$1,130,744.74</u>	<u>\$225,642.04</u>	<u>\$905,102.70</u>

a/Space leased for Federal Power Commission.

b/Space leased for VA.

c/This adjustment reflects several changes in lease terms.

d/This adjustment reflects Government assumption of payment for meterable utilities previously furnished by the lessor.

VA's files showed that on December 13, 1974, when GSA notified the lessor that it would lease at least 104,573 square feet, some GSA and VA staffers knew this amount of space was insufficient for VA's minimum space requirements and that the VA would request additional space in the building. This was indicated by the following.

On December 4, 1974, GSA proposed that the VA occupy Union Center Plaza North to satisfy the Veterans Benefit Office (VBO) and the National Cemetery System (NCS) requests.

A December 12, 1974, VA memo states:

"Because of the \$500,000 limitation, above which Congressional approval is required, our occupancy must be confined to 115,000 sq. ft. of space (115,000 sq. ft. equates to \$500,000). * * * The remaining floors are available to VA within the 115,000 sq. ft. limitation initial assignment. * * * Recommendation: Attempt to make arrangements with GSA. * * * a commitment that the DPC (Data Processing Center) could move to the second floor at a later date when the \$500,000/115,000 sq. ft. limitation is no longer a factor."

On December 12, 1974, a GSA official telephoned VA to advise that GSA was taking lease action for VA on floors 1, 7, 8, and 9 of the Union Center Plaza North Building totaling 104,400 square feet. VA officials concluded that this provided adequate space for VBO and NCS but not DPC. One of the VA officials stated that DPC could be accommodated in 28,500 square feet available on the second floor. The GSA official advised them, however, that leasing an entire additional floor would raise the total beyond the 115,000 square foot limit.

On December 13, 1974, VA's Chief Data Management Director notified VA's Manager of Administrative Services that his division was interested in accepting the entire second floor for the DPC even though it offered less space than requested.

At a meeting on December 19, 1974, between VA officials, GSA officials, and representatives of the lessor, a VA official said that VA would probably be requesting the second floor at Union Center Plaza North for the DPC. A GSA official replied: "Let's get you into the building with VBO and NCS, then [we] will try to work something out."

On January 17, 1975, VA officially requested the second floor. On February 21, 1975, VA wrote to GSA mentioning the possibility of asking for the sixth floor. An official VA request for the sixth floor was sent to GSA on March 11, 1975. GSA notified the lessor on March 14, 1975, that it would lease the second floor and on April 17, 1975, that it would lease the sixth floor.

Thus, GSA increased the lease from an initial net annual rent of \$119,287 to \$905,102.70 without ever submitting a prospectus. Furthermore, the second of the two amendments summarized in the table above, increased the net annual rent for VA space from \$451,674.75 to \$687,815.65.

We believe that a prospectus should have been submitted for space occupied by VA because there was sufficient data available for even GSA and VA to know when the lease was amended as of December 13, 1974, that VA space requirements would result in a net annual rent exceeding \$500,000.

Landover Center Building

On September 9, 1975, the Library of Congress requested 220,500 square feet of warehouse space in the metropolitan Washington, D.C., area. The request specified that 113,500 square feet of this space should be air-conditioned.

On September 19, 1975, a GSA realty officer discussed the request with two officials of the Library of Congress and advised them that the amount of space requested and the requirement for air-conditioning would result in a net annual rent of over \$500,000 and would, therefore, require prospectus approval by the Congress. The realty officer said this could take between 4 and 6 months. One Library of Congress official then said they could not wait for the space approval by the Congress. He asked if they could go back to their earlier request of March 2, 1973, for 150,000 square feet. The GSA realty officer explained that with air-conditioning, even this might exceed the \$500,000 and would not cover the Library's total requirement. The GSA realty officer also said that if GSA issued a solicitation for offers of 150,000 square feet, no assurance existed that GSA could get 100,000 square feet of additional space (at the same location) in 6 months. This was because the solicitation would open bidding to lessors who could provide 150,000 square feet but might have no other space in the area. In addition, the realty officer said this would not support the Library's consolidation efforts and would circumvent the law.

The Library of Congress official then offered to reduce the request to 180,000 square feet without air-conditioning with the provision that the Library would provide funds for air-conditioning after lease award.

Shortly thereafter, the Library of Congress advised GSA by a letter of September 25, 1975, that its total immediate space needs could be reduced by 25,000 square feet to a new total of 195,500.

Subsequently, at a meeting on October 8, 1975, GSA and the Library of Congress agreed that the warehouse space would be acquired on an "as is" basis and that the requirement for air-conditioning would be funded by the Library of Congress with reimbursable work authorizations.

On October 30, 1975, GSA issued a solicitation for offers for 195,000 square feet of warehouse space. On January 21, 1976, GSA leased 206,290 square feet of warehouse space (the entire warehouse except for one bay) in the Landover Center Building, Landover, Maryland, at an annual rent of \$489,000 for a 10-year term beginning January 21, 1976. The value of lessor-furnished maintenance was estimated by GSA at \$12,500 a year, resulting in a net annual rent of \$476,500.

By a lease amendment, of June 1, 1976, GSA agreed to reimburse the lessor with a lump-sum payment of \$150,000 for installing twelve 15-ton air-conditioning units in the warehouse.

On May 12, 1976, the Library of Congress submitted a request for the acquisition and assignment of the last remaining bay at the warehouse. The Library's covering letter to GSA noted: "As you know, our letter of September 9, 1975, fully documented and supported our need for the entire building (220,000 square feet) at Landover, Maryland." This statement clearly indicated that the Library of Congress had intended to obtain the entire building all along, despite its revised request of September 25, 1975.

By a lease amendment, of July 13, 1976, GSA leased the remaining bay beginning July 1, 1976, at an annual rent of \$58,065. As a result, the entire building was now under lease at a total annual rent of \$547,065. The value of lessor-furnished maintenance for the entire building was estimated by GSA at \$14,072.50 a year, resulting in a net annual rent of \$532,992.50.

Although the July 1976 lease amendment increased the net annual rent to over \$500,000, no prospectus was ever submitted for this lease. After consulting with GSA, the Library reduced the request to 195,500 square feet. About

ABOUT 6 months after the basic lease was awarded, GSA amended the lease to obtain the remaining space in the building for the Library of Congress. Thus, GSA amended an existing lease, with a net annual rent of less than \$500,000, to acquire additional space, resulting in an increase in the total net annual rent to an amount exceeding \$500,000 without obtaining prospectus approval.

INCONSISTENT METHODS OF CALCULATING
RENT FOR DETERMINING COMPLIANCE WITH
ECONOMY ACT LIMITATION

We found inconsistencies in GSA's methods for calculating rent subject to the Economy Act limitation. In some cases, contracting officers did not make the required calculation to determine compliance with the limitation.

Section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a), generally limits the annual rental rate that the Government may pay to not more than 15 percent of the appraised fair market value of the rented premises at the date of the lease. The term "rental" as used in the Economy Act applies to the bare use of the premises, that is, "net rent" (gross rent minus the reasonable value of utilities and services furnished by the lessor such as heat, light, and janitorial services). (12 Comp. Gen. 546 and 29 Comp. Gen. 299)

12 Comp. Gen. 546 also states the following:

"In order to separate the rental proper from the value of other services, which separation becomes necessary in view of said section 322 of the Economy Act, the value of such services as distinguished from rental of the premises should be specified in the lease, and there should be submitted for filing with the lease a showing as to the reasonable value of such services. It is primarily for the administrative office to ascertain in each case the fair value of the services in order that such values should not be excessively stated in the lease, thereby including a portion of the rental consideration for the purpose of defeating the proper application of section 322 of the Economy Act."

The GSA contracting officer is responsible for determining that the proposed net annual rent does not exceed the Economy Act limitation. To demonstrate compliance, he calculates the net rent on GSA Form 387, Analysis of Values Statement, and certifies that the rent to be paid is within the limitation. After reviewing the lessor's annual cost estimates shown on GSA Form 1217 and consulting with GSA's appraisal staff and buildings' management staff, the contracting officer determines the reasonable value of utilities and services which may properly be deducted from gross rent in establishing net rent for Economy Act purposes.

In GSA Region 10, management cost was included in costs deducted from the gross rent to arrive at the net rent. The amount deducted for management cost was usually 5 percent of GSA's valuation of lessor-furnished utilities and services. However, in some cases, the amount deducted was between 50 and 75 percent of the estimated management cost classified by GSA as an ownership cost. In Regions 3, 4, and 6, no deduction was made for management cost.

GSA instructions implementing the Economy Act rental limitation are ambiguous. The Lessor's Annual Cost Statement, GSA Form 1217, shows management cost as an ownership cost which is not to be deducted from gross rent. The form shows agency fees, legal fees, auditing and advertising as examples of management costs. GSA Handbook PBS 1600.1 states that general administrative and management expenses are not normally considered in determining net rent. If it can be shown, however, that any part of these expenses are connected with services rendered under the lease, they may be so considered. We found that GSA Region 10 did not adequately demonstrate that the management cost which was deducted in determining net rent was connected with services.

If management cost had not been deducted in the net rent computation for 7 of the 36 leases reviewed in Region 10, the Economy Act limit would have been exceeded as shown below.

<u>Lease no.</u>	<u>Date of lease action</u>	<u>Net rent computed by GSA</u>	<u>Net rent if management cost was not included</u>	<u>Economy Act limit computed by GSA</u>
GS-10B-04371	Oct. 22, 1975	\$321,605.00	\$332,431.00	\$322,500.00
GS-10B-04268	Aug. 15, 1973	268,984.62	272,202.12	270,000.00
GS-10B-04369	Aug. 12, 1975	32,392.83	32,946.73	32,400.00
GS-10B-02726	Dec. 28, 1973	11,241.00	11,613.00	11,250.00
GS-10B-03409	Mar. 21, 1975	22,542.00	22,900.00	22,545.00
GS-10B-04383	Sept. 26, 1975	13,799.99	14,049.44	13,800.00
GS-10B-03906	Apr. 7, 1975	26,358.30	26,934.00	26,700.00

GSA internal audit finding

A GSA Office of Audits report of March 10, 1976, on lease award procedures in GSA Region 9 (San Francisco, California) stated that for three lease awards the documentation in the lease files did not support the determination of compliance with the Economy Act rental limitation. The report took issue with the GSA realty officer's questionable determinations of appraised fair market value and net rent for Economy Act purposes. In its comments on our draft report (see app. I), GSA said that the region has been instructed to take corrective action on the matters cited in the internal audit report and that the requirement for strict procedural compliance has been reemphasized.

FAILURE TO DETERMINE COMPLIANCE WITH ECONOMY ACT LIMITATION

In GSA Region 3's Philadelphia Branch Office, the contracting officer neither prepared a GSA Form 387 nor made the required determination of compliance with the Economy Act rental limitation for 13 of 15 leases we reviewed. Cost statements (GSA Form 1217) were not obtained from lessors for any of the 15 lease actions. For 5 of the 15 leases, no appraisals were made, and for 2 leases, appraisals were not completed until after lease award. Prior to awarding a lease when net annual rent exceeds \$2,000, GSA procedures require an appraisal of (1) the fair annual rent of the premises to be leased as a guide to the contracting officer in negotiating the rental rate and (2) the fair market value of the premises to enable the contracting officer to determine compliance with the Economy Act.

Based on appraisal reports and other data, we determined that the limitation may have been exceeded by about \$1,900 annually on 1 award, was not exceeded for 7 awards, and was not determinable for 5 awards because no appraisals were made.

In commenting on our draft report, GSA conceded that procedural and documentation omissions have occurred in the Philadelphia Office. GSA says, however, that personnel changes have occurred and that a technical survey of the Office in July 1977 indicated compliance with GSA's basic leasing requirements and significant improvement in document preparation.

LIMITED COMPETITION OBTAINED IN ACQUIRING LEASED SPACE

GSA usually acquires leased space by negotiation rather than through advertised sealed bids because true competition--in the sense that bidders are offering the same or substantially the same property--is impossible since no two buildings are alike. GSA policy for leasing requires that competition be obtained to the maximum extent practical among suitable available locations meeting minimum Government requirements. Offering all qualified individuals an opportunity to compete helps to minimize favoritism and provides greater assurance that acceptable space is obtained at the most economical rental.

Only limited competition exists on many GSA lease awards even though GSA procedures state that, under negotiation procedures, it is desirable and practicable to afford the maximum number of offerors opportunity to satisfy the requirements for leased space by the solicitation of offers. When multiple offers occur, GSA is in a better negotiating position.

We reviewed 65 recent new lease awards and 43 recent follow-on lease actions and found that 55 percent of the new lease awards and 95 percent of the follow-on lease actions involved negotiations with only one offeror. When only one offeror was involved, the negotiated rent exceeded the GSA appraisal fair annual rent on 33 percent of the new lease awards and 20 percent of the follow-on lease actions.

New leases

For the 65 new leases reviewed, the following table shows the prevalence of new leases awarded based on a single offer

and the number of instances in which the negotiated rent on single offer awards exceeded the GSA-appraised fair annual rental.

New Lease Awards

<u>GSA Region</u>	<u>Number of awards reviewed (note a)</u>	<u>Number of reviewed awards involving single offers</u>	<u>Number of single offer awards where rent exceeded appraised fair annual rent</u>
3	28	15	3
4	5	2	2
6	12	4	1
10	<u>20</u>	<u>15</u>	<u>6</u>
	<u>65</u>	<u>36</u>	<u>12</u>

a/In GSA Regions 3, 4, and 6, leases awarded during fiscal year 1976 were reviewed. In Region 10, leases awarded during the 6-month period ended Nov. 30, 1975, were reviewed.

In some cases, only one offer was received, although solicitations were sent to several potential lessors. In other cases only one potential lessor was solicited because GSA's market survey failed to identify any other lessor that could satisfy the particular space requirement. Sometimes competition was limited by requiring that offered space be within a restricted delineated area near the requesting agencies' existing location (see pp. 19 to 21) or by other specific requirements, such as space layout or special purpose facilities.

Follow-on leases

Competition is almost nonexistent on follow-on lease actions (succeeding leases, lease extensions, superseding leases, and lease renewals). In almost all cases we reviewed, GSA negotiated only with the present lessor, as shown in the following table.

Follow-on Lease Actions

<u>GSA Region</u>	<u>Number of actions reviewed (note a)</u>	<u>Number of reviewed ac- tions in which no alternative offer was considered</u>	<u>Number of single source actions in which rent exceeded appraised fair annual rent</u>
3	23	22	3
4	7	6	1
6	5	5	1
10	8	8	3
	43	41	8

a/In GSA Regions 3, 4, and 6, follow-on lease actions whose term began in fiscal year 1976 were reviewed. In Region 10, follow-on lease actions whose term began during the 6-month period ended Nov. 30, 1975, were reviewed.

GSA usually justified continued occupancy of existing space on the grounds that a move would involve relocation costs, interruption of agency activities, and alteration costs for the new space when the Government had already spent considerable amounts of money to make existing space compatible with occupying agencies' operational requirements.

In some cases, GSA did not allow sufficient time to identify and solicit other potential lessors prior to lease expiration.

It is obvious that a lessor has an advantageous negotiating position on follow-on leases when he knows the Government is reluctant to move because of relocation and alteration costs or because of lack of an alternative space plan.

Circumstances relating to negotiations for a succeeding lease for the Sills Building, Springfield, Virginia, illustrate the Government's dilemma and the difficulty in obtaining the most economical rental possible in such situations.

The Government initially leased this building for 5 years beginning Aug. 1, 1964, at an annual rent of \$226,500 with a 5-year renewal option (subsequently exercised) at an annual rent of \$240,000. These rental rates were below the Economy Act limit and the GSA-appraised fair annual rent.

The succeeding lease, negotiated for the 3-year period beginning August 1, 1974, provided for an annual rent of

\$334,709. This was the maximum permitted by the Economy Act and exceeded the GSA appraised fair annual rent by almost \$30,000. GSA justified continued occupancy on the grounds that the occupying agency had a continuing need for the space, alternative space was not available in the desired area, and comparable space plus the cost of moving would exceed the rental on the succeeding lease.

We believe the lessor was undoubtedly aware of the Government's position. The Government had already installed a considerable amount of equipment in the building. We were told that relocation of the computer facility and special equipment would have cost about \$200,000. In April 1974, about 3-1/2 months before expiration of the option period on the original lease, GSA contracted with the lessor for additional alterations to the computer facility at a cost of \$64,900. Such a commitment shortly before expiration of the lease was poor strategy and weakened GSA's negotiating position.

Developing an alternative space plan would enhance GSA's position in negotiating a succeeding lease. A GSA Region 3 realty specialist told us that GSA obtained reasonable rents on three recently negotiated succeeding leases because GSA told the lessors it would relocate the occupying agencies to alternative space if the lessors asked for unreasonable rents.

INADEQUATE CONSIDERATION OF SOME OFFERS

GSA policy permits agencies to designate the general area in which space is required. However, delineating the area in which space is to be solicited is GSA's responsibility. Furthermore, no solicitation for offers (SFO) is to be issued until the contracting officer and the representative of the occupying agency agree on the delineated area.

GSA's prescribed procedures state that lease awards shall be made to the offeror whose offer is most advantageous to the Government, price and other factors considered. The procedures provide that, after evaluating the offers received, the lowest negotiated offer responsive to the SFO will be recommended and the requesting agency will be asked to concur in accepting that offer.

In the three lease awards we reviewed, GSA did not adequately consider some offers during preaward evaluations and negotiations. Apparently, GSA was influenced by the requesting agencies in selecting offers for lease award.

In two cases, awards were not made to the offeror who gave the lowest price. Initially, the agencies concurred in the delineated areas specified in the SFO. After offers were received, the agencies expressed preferences for specific buildings offered within the delineated areas, and GSA complied with these preferences.

Meadows East Building
Baltimore, Maryland

Early in the negotiations with the two offerors in this case, GSA was informed that the requesting agency wanted to select the Meadows East Building. GSA's subsequent evaluations and negotiations showed a strong bias in favor of the Meadows East Building even though it was the higher of the two offers received and remained the higher offer until the final round of negotiations some 6 months later when the other offeror suddenly increased his price. We found that during negotiations GSA frustrated the other offeror by:

- Concentrating negotiating efforts on the Meadows East Building offer.
- Failing to promptly notify the other offeror of alleged defects in his offer.
- Making a last minute specification change that affected only the other offer.
- Attempting to disqualify the other offer on minor technicalities rather than substantive objectives.
- Continuing futile negotiations with the other offeror after the Meadows East Building had been selected for lease award.

A summary of pertinent facts in this case follows.

On September 24, 1973, the Social Security Administration (SSA) requested 100,000 square feet of office space near its headquarters complex in Baltimore, Maryland.

GSA then issued SFO #594 on April 1, 1974, requesting offers of 100,000 square feet of office space at one location within 5 miles of SSA headquarters in Baltimore for a 5-year term. Two offers were received in response to the SFO these were:

- (1) Meadows East Building
6300 Security Boulevard
Baltimore, Maryland
- (2) Ambassador Office Center
7144 and 7210 Ambassador Road
Baltimore, Maryland

The Ambassador Office Center proposal was the lower offer.

In June 1974, GSA received a copy of an internal SSA memo to the Department of Health, Education, and Welfare, of June 17, 1974, urging selection and assignment of the Meadows East Building. Among the reasons given in the memo for SSA's rejecting the Ambassador Office Center facility were:

- (1) Distance--The Ambassador Office Center is 2.6 miles from the SSA Main Complex, whereas the Meadows East Building is across the street from it, a distance of not more than 200 yards.
- (2) Two facilities versus one--The Ambassador Office Center offer consisted of two separate buildings about 50 yards apart, whereas the Meadows East Building provided space under one roof.

Despite the fact that SSA had rejected the Ambassador Office Center facility, GSA continued to negotiate with the owner of that property. Believing that he was still a serious contender, the owner of the Ambassador Office Center submitted a revised proposal on June 27, 1974. The Ambassador Office Center was still the lower offer. GSA records show, however, that by that time, an award for the Ambassador Office Center facility was considered problematical due to SSA insistence on the Meadows East Building.

On July 24, 1974, GSA's Deputy Assistant Commissioner, Office of Operating Programs, wrote a memo to GSA's Executive Director, Public Buildings Service, stating that he intended to make the lease award to the Meadows East Building offeror.

On July 29, 1974, GSA officials met with representatives of the Ambassador Office Center's owner. At that meeting (almost 1-1/2 months after GSA had been advised of SSA's rejection of the Ambassador Office Center facility and 5 days after GSA had decided to award the lease to the Meadows East

Building offeror) representatives of the Ambassador Office Center's owners were told for the first time that their proposal was not responsive to GSA's solicitation because the two adjacent buildings offered (50 yards apart) were not considered as "one location." They were also told that GSA had completed negotiations on the other offeror's proposal. This had been done while the owner of the Ambassador Office Center facility apparently was led to believe by GSA that he was still competitive and responsive.

On July 30, 1974, GSA notified both offerors that SFO #594 was canceled. According to GSA, SFO #594 was canceled due to a leasing freeze imposed by GSA because of congressional limitations on GSA's fiscal year 1975 budget. Nevertheless, only 9 days later, on August 8, 1974, GSA issued a new solicitation, SFO #677, for the same SSA space requirement and sent it to the same two offerors. The new solicitation requested 100,000 square feet of office space within 3 miles of SSA headquarters in Baltimore, Maryland, for a 5-year term with an option to renew for an additional 5 years. It specified that offers in blocks of not less than 35,000 square feet would be accepted and that if space was offered in more than one building, the buildings must not be more than two blocks apart. The solicitation stated that the closing date for receipt of offers was August 16, 1974 (only 8 days after issuance). This was an unusually tight deadline considering the amount of space involved. Our review showed that GSA usually allows at least a 2-week response time even on solicitations for small amounts of space.

On August 12, 1974, (only 4 days before the closing date for receipt of offers) GSA sent telegrams to the two offerors advising them that SFO #677 was amended to say that GSA required the space to be at one location. This was in contrast to the requirement in SFO #677, as originally written, which stated that space could be provided in blocks of not less than 35,000 square feet, not more than two blocks apart. This last minute specification change affected only the Ambassador Office Center offer. The owner of the Meadows East Building at 6300 Security Boulevard again offered this facility. The owner of the Ambassador Office Center offered the building at 7210 Ambassador Road which he planned to expand to meet GSA's "one location" requirement. Drawings showing the proposed addition to the building were submitted with the offer. The proposal submitted by the owner of the Ambassador Office Center was again the lower offer.

On September 17, 1974, GSA officials met again with representatives of the Ambassador Office Center's owner to

review their offer. At that meeting, GSA officials stated that in view of the then existing sewer moratorium in the Gwynns Falls area of Baltimore County, they would require the owner of the Ambassador Office Center to furnish GSA documentary evidence that all necessary sewer and other utility permits had been obtained. GSA officials also requested certification from appropriate authorities that no waiver of the sewer moratorium would be required to complete the building. One of the owner's representatives replied that their permit had been granted 7 years before for the entire complex and that they had made three connections to the sewer since the moratorium. He also produced a copy of a letter from the appropriate authorities clarifying the sewer moratorium order. The implication of the letter was that the owner's existing building would not be subject to the sewer moratorium. GSA officials replied that the guidance in the letter did not appear to cover the owner's proposed addition to the building. Therefore, they requested the owner to furnish GSA with a certification that no waiver of the sewer moratorium would be required to complete the proposed addition to the building. Apparently, the owner never furnished GSA with the requested certification.

On October 10, 1974, the owner of the Ambassador Office Center submitted a revised offer, raising his price and changing the lease term from 5 years with a 5-year renewal option (as specified in SFO #677) to 10 years with the right to cancel after 5. As a result of this revised offer, the Ambassador Office Center was no longer the lower offer. On October 25, 1974, GSA awarded the lease to the Meadows East Building owner. GSA's negotiations on the Meadows East Building offer were conclusive, whereas its negotiations on the Ambassador Office Center offer tended to get bogged down in disagreements over minor technical details. Furthermore, GSA continued futile negotiations with the Ambassador Office Center's owner for several months after GSA had already made a de facto decision to select the Meadows East Building for lease award. This was apparently done to maintain the appearance of competition until the Ambassador Office Center could be eliminated based on price or technical grounds.

GSA also failed to promptly notify the Ambassador Office Center's owner of alleged defects in his offer and made a last minute specification change that affected only the Ambassador Office Center offer.

Crystal Square Building No. 5
Arlington, Virginia

On July 14, 1974, GSA's Federal Supply Service (FSS) requested 56,350 square feet of space (36,600 square feet

of office space, 1,500 square feet of storage space, and 18,250 square feet of other space). The FSS request asked that every effort be made to provide space in the Crystal City complex, Arlington, Virginia, because the headquarters offices of FSS were located there in Crystal Mall Building No. 4. FSS stated that if space were provided outside the Crystal City area, communication would be adversely affected and shuttle service would be required between the two buildings, resulting in additional costs.

GSA advertised for listings and subsequently sent SFO #679, of August 16, 1974, to four interested parties. The solicitation requested offers of 54,850 square feet of office space and 1,500 square feet of storage space at one location within a 1-mile radius of Jefferson Davis Highway and 20th Street, Arlington, Virginia, preferably in the Crystal City complex. It requested proposals for a 5-year term with an alternate proposal for 10 years. Offers of space in the following three buildings were received: The Zachary Taylor Building, Martin Van Buren Building, and Crystal Square Building No. 5, all in Arlington.

Although the Zachary Taylor Building was the lowest offer, GSA eliminated it as nonresponsive because the offer was contingent upon the relocation of other tenants from the offered space.

A cost comparison of the two remaining offers prepared by GSA's Public Buildings Service (PBS) concluded that based on the proposed rents and cost of required alterations in the Van Buren Building, the latter would cost about \$37,000 less a year to lease. In anticipation of this favorable comparison for the Van Buren Building, FSS prepared a detailed cost study purporting to show that the costs of moving to the Van Buren Building would exceed those for the Crystal Square Building No. 5 by \$155,600 annually. These additional costs were attributed primarily to the greater travel distance (shuttle service and lost labor hours). The distance between FSS Central Office at Crystal Mall Building No. 4 and the Van Buren Building is about .6 mile, whereas the Crystal Square location is nearby within the Crystal City complex.

PBS then conducted a study which took issue with some of the assumptions and calculations in the FSS study. The PBS study estimated the additional costs at \$75,000 annually or about half the FSS figure. It concluded, however, that leasing space in the Crystal Square building would result in a net annual saving of about \$38,000 (\$75,000 additional cost - \$37,000 saving mentioned above).

On January 30, 1975, GSA awarded the lease to Crystal Square Building No. 5's offeror. GSA's Lease Award Fact Sheet acknowledges that the award was not made to the lowest offeror but states that "it was determined to be in the best interest of the Government to accept the Crystal Square 5 offer because * * * achieving the closest physical proximity of buildings would minimize operational disruption and the Government would save at least \$38,000 annually in the costs of split operations through this consolidation * * *."

In our opinion, the PBS estimate of \$75,000 additional costs to lease space in the Van Buren Building is overstated by about \$43,000, because (1) the reported costs for the Van Buren Building were \$1,357 more than shown on the supporting workpapers, (2) an offsetting adjustment of \$22,321 was not made for similar costs related to leasing the Crystal Square Building, and (3) duplicating services cost of \$19,092 attributed only to the Van Buren Building would also apply to the other locations. Consequently, we believe that the Van Buren Building lease proposal was the more economical offer.

We believe that competition was severely limited by requiring offered space to be within a 1-mile radius of Crystal Mall with preference for a Crystal City location. Even though GSA negotiated with two responsive offerors, it was almost a foregone conclusion that, in accordance with the requesting agency's preference as to location, the award would be made to the offeror providing the space closest to the agency's existing location.

Progress Shopping Center
Harrisburg, Pennsylvania

On August 27, 1975, the Department of Labor (DOL) requested 2,550 square feet of space (1,700 square feet of office space, 150 square feet of file space, 200 square feet of storage space, and 500 square feet of other space) in Harrisburg, Pennsylvania. After advertising for listings and making a market survey, GSA sent SFO #NEG 76-643, October 28, 1975, to 14 potential offerors. The solicitation requested offers of 2,550 square feet of space in Harrisburg, Pennsylvania, for a 3-year term. Four offers ranging in price from \$4.35 to \$8.25 a square foot were received in response to the solicitation.

On November 24, 1975, DOL notified GSA that it had inspected the four space offerings and that it had decided that the space offered at the Progress Shopping Center in Harrisburg was the most suitable to its needs. This space, offered at \$6.00 per square foot, was the second lowest offer.

On January 9, 1976, GSA awarded the lease to the lessor of the Progress Shopping Center. The Statement and Certificate of Award prepared by GSA prior to lease award listed only three of the four offers received and recommended leasing the space offered at the Progress Shopping Center, which it described as the low offer. The Statement and Certificate of Award contains no reference to space offered in the State Street Building, Harrisburg, at \$4.35 per square foot, the lowest offer. This omission violates GSA procedures which require "that where lower bids . . . were received, a statement of reasons for their rejection, together with an abstract of bids received, including all lower than that accepted" be shown on the Statement and Certificate of Award.

We asked the GSA realty specialist who processed this lease award why the lowest offer was not mentioned in the certificate. He replied that his superior told him that it was not necessary to list this offer since it had been rejected because the offered building did not meet GSA fire and safety standards. However, no fire and safety inspection report to document this finding was ever prepared. In any case, this offer and the reason for its rejection should have been disclosed in the certificate.

We believe that GSA was influenced by the requesting agency in its selection, and, as a result, GSA may have accepted an offer that was not the most advantageous to the Government.

LEASING SPACE NOT READY FOR OCCUPANCY

For 9 months, GSA paid rent for about 38,000 square feet of unoccupied space on the 10th floor of the Curtis Building, Philadelphia, Pennsylvania. GSA leased the 10th floor for a 5-year term beginning January 1, 1976, when the Environmental Protection Agency (EPA) was scheduled to move there and vacate about 13,000 square feet on the third floor. However, EPA did not begin to move into the 10th floor space until October 1, 1976, because alterations were not completed until that time.

The lessor was not notified of GSA's alteration requirements until January 12, 1976, and the alteration work was not begun until late June 1976. A GSA official attributed the delay in alterations primarily to GSA's failure to designate a project manager to supervise and coordinate the alteration work.

The unnecessary rental cost incurred for unoccupied space from January 1, 1976, until November 18, 1976, when occupancy of the 11th floor was completed was about \$151,000.

This represents the difference between rent paid for unoccupied space on the 10th floor and the rental value of occupied space on the third floor for which no rent was paid during that 11-1/2 month period.

LEASING MORE SPACE THAN REQUIRED

GSA incurred unnecessary first year rental costs of about \$67,900 for two parking facilities because it leased more space than required.

548 Fourth Avenue Garage

In February 1974, GSA's Motor Equipment Division requested 41,700 square feet of garage space in Pittsburgh, Pennsylvania. GSA leased the 548 Fourth Avenue Garage in Pittsburgh containing 125,180 square feet (about three times the amount of space requested) for a 5-year term beginning October 15, 1975, with a 5-year renewal option. In its justification of the lease award, GSA stated that space not needed by the Motor Equipment Division could be assigned to other authorized vehicles. By October 1976, only 84 of the approximately 224 excess parking spaces had been assigned to other vehicles. About \$63,000 in rental costs were incurred during the first year for unassigned parking spaces. GSA has been encouraging Federal agencies to obtain parking spaces in the garage and believes that eventually most spaces will be used.

Penn Place Parking Lot

To provide parking for official vehicles of various agencies in the building, GSA leased 71 parking spaces at the Penn Place Building, 20 North Pennsylvania Avenue, Wilkes-Barre, Pennsylvania, for a 3-year term, beginning September 15, 1975. At the beginning of the lease term, only 41 spaces had been assigned, and by the end of the first year of the lease, only 45 spaces had been assigned.

GSA incurred about \$4,900 of rental cost during the first year of the lease for unassigned spaces.

CONCLUSIONS

Although GSA procedures caution against taking deliberate actions to evade the prospectus approval requirement, the practices employed by GSA on two leases did not constitute proper implementation of the section 7 lease approval requirement. To avoid the prospectus approval requirement, GSA

initially leased less space than was obviously needed by the tenant agency and leased additional space later. Acquiring space in increments may have excluded lessors who could have provided sufficient space to satisfy the combined requirement but could not offer it in smaller blocks at different time intervals.

The practices followed by GSA did not constitute a proper and consistent application of procedures for determining compliance with the Economy Act rental limitation. The GSA implementing procedures are somewhat ambiguous and subject to different interpretations. To assure proper and consistent application, we believe that all procedures and forms need to be reviewed and revised as necessary. Lease awards should be monitored closely to determine that prescribed requirements are met.

GSA obtained only limited competition on many lease awards. In acquiring space by lease, GSA should obtain maximum competition. Without competition, no assurance exists that the Government obtains the most economical rents possible.

GSA should review proposed lease actions to assure that the delineated area in which space is to be solicited is sufficiently large to enable several potential lessors to submit offers. All agency space requests containing requirements that might limit competition, such as agency-designated location, space layout, or special facilities, should be carefully reviewed to determine whether they are justified in terms of the agency's needs and assigned mission.

GSA should also allow sufficient time prior to lease expiration for developing an alternative space plan. This would strengthen GSA's position in negotiating a follow-on lease for continued occupancy of currently leased space.

GSA did not adequately consider some offers during preaward evaluations and negotiations in three lease actions. Although it negotiated with at least two offerors in each case, GSA concentrated its negotiating efforts on the offers providing the space preferred by the requesting agencies. Thus, nominal participation of at least two offerors gave the appearance but not the substance of competition. This was particularly so in the Meadows East case, in which GSA involved the second offeror in futile and prolonged negotiations after GSA had virtually decided that the award would be made to the Meadows East offeror.

GSA incurred unnecessary rental costs because alterations were not completed by the anticipated occupancy date and because GSA leased more space than required.

RECOMMENDATIONS

The Administrator of General Services should:

- Require periodic reviews of the leasing program to help insure that existing procedures for obtaining congressional approval are met.
- Require review and clarification of the procedures and forms used to determine compliance with the Economy Act and periodically oversee and evaluate regional efforts to implement the requirements of the act.
- Insure that competition is obtained to the maximum extent practical for both new leases and follow-on leases. This includes improving the planning for probable follow-on leases to allow sufficient time, prior to lease expiration, for developing an alternative space plan.
- Require adequate consideration of all offers during preaward evaluations and negotiations, and solicitation of space within delineated geographical areas of sufficient size to allow more offerors to participate in solicitations.
- Take appropriate steps to insure that alteration work is supervised and coordinated properly and alterations are completed by the anticipated occupancy date.
- Require reviews of pending lease actions to assure that the leased space acquired does not significantly exceed firm agency requirements.

AGENCY COMMENTS

Regarding the requirement for congressional approval, GSA contends that actions were taken without the intent to circumvent the section 7 approval requirements of the law and that GSA did not have a deliberate program to avoid legal requirements, which GSA believed the report implied. GSA said that the use of statements in VA records cannot be ascribed to GSA and should not be used to show that the section 7 approval requirements were circumvented.

We did not state or imply in our draft report that GSA had a deliberate program to avoid legal requirements. We did say, however, that during our review of a limited number of leases to which the section 7 requirement was applicable, we found two cases in which GSA did not request congressional

approval. We believe that the statements in VA's records concerning discussions with GSA officials about requirements for congressional approval are pertinent.

GSA stated that it did not agree with our conclusion about Region 10's computation of the Economy Act rental limitation which, according to GSA, infers that the actions violated the law. According to GSA, the Philadelphia Office actions cited in the report again imply violations, whereas the finding only supports procedural infractions and lack of documentation.

We did not state or imply that the actions taken by the Philadelphia Office and Region 10 violated the law. We did report that the contracting officer in the Philadelphia Office did not make the required determination of compliance with the Economy Act rental limitation for 13 of the 15 leases we reviewed and that we found inconsistent methods used by Region 10 to calculate the rent subject to the Economy Act limitation.

In commenting on our finding that many leases were awarded based on a single offer, GSA said that monthly it monitors the relationship of the appraised fair rental value to the contract rent. GSA added that this report (for the quarter ended June 30, 1977) shows that nationwide GSA obtained space at approximately 8 percent below market rates.

The report to which GSA referred shows that the contract rent by region, as a percent of the appraised fair rental value, varied widely. It varied from 83.92 to 165.66 percent. The nationwide average was 92.24 percent. This report does not show the extent of competition, the number of leases awarded based on a single offer, or the instances in which the negotiated rental of single offer awards exceeded the appraised fair rental value. We believe that, while the appraised fair rental value is a measure of reasonableness, in the absence of competition, no assurance exists that the most economical rental rates are obtained. In our review, we found that many leases were negotiated based on a single offer, and in some cases, the contract rental exceeded the appraised fair rental value.

GSA said that it is not surprising that 95 percent of the succeeding leases were sole source (single offer), as it is GSA's lease operating policy to enter into succeeding leases because this avoids disrupting agency actions and also takes maximum advantage of expenditures made for the

space under lease. GSA usually used the above cited justification for continued occupancy of existing space. It did not, in some cases, allow sufficient time to identify and solicit other lessors prior to lease expiration.

We believe that developing an alternative space plan would enhance GSA's hand in negotiating follow-on leases. A lessor will have an advantageous position in negotiating a follow-on lease when he knows the Government has not developed an alternative space plan.

The PBS Commissioner recognized this problem in a memo of March 16, 1976, in which he said that past submissions of prospectuses (for succeeding leases) indicated insufficient staff work to support the action proposed, and that short time frames did not allow consideration of alternatives. He said that a succeeding lease or lease supplement must be fully justified. He also said that proposals to enter into succeeding leases or renewal options will no longer be permitted without evidence that the proposed rent is advantageous as compared to current market rates or that the proposed rent is the lowest responsive offer received as the result of the solicitation and receipt of competitive offers.

After we sent our draft report to GSA for comment, the PBS Commissioner instructed the regions by a memo of September 8, 1977, to obtain Central Office approval for follow-on lease actions of 50,000 or more square feet. To obtain approval, the proposed actions have to be justified and alternatives fully discussed.

Concerning inadequate consideration of some offers, GSA's view is that contracting officers did not act capriciously but that actions should have been more carefully documented. GSA contended that the draft report does not support the finding that the PBS study, made in connection with the lease award for Crystal Square No. 5, overstated the cost for a competing offer by \$43,000.

We believe that GSA did not adequately consider all offers received in the three cited cases. GSA concentrated its negotiating efforts on the offers providing the space preferred by the requesting agencies. In two cases, awards were not made to the offerors with the lowest price. In one case, the lowest offer received was not even included in GSA's evaluation. In the absence of such an evaluation, it was not clear whether GSA accepted the most advantageous offer. The supporting details for the \$43,000 overstatement have been added to the report.

CHAPTER 3

UNNECESSARY COSTS INCURRED IN ADMINISTERING LEASES

We found that GSA negotiated uneconomical rental adjustments for Government assumption of the utilities and services cost previously furnished by the lessors and for vacating leased space.

We also found that the Government was paying for utilities used by commercial tenants in Government-leased buildings.

UNECONOMICAL RENTAL ADJUSTMENTS NEGOTIATED FOR UTILITIES AND SERVICES AND FOR VACATING LEASED SPACE

GSA has amended some major leases to provide for Government payment of utilities and services previously furnished by the lessors in return for rent reductions which usually were much less than costs assumed by the Government.

We believe that in the four examples discussed below, GSA did not negotiate adequate rent reductions in exchange for assuming the cost of utilities and services. In two cases, the annual rent reduction obtained for Government assumption of electricity cost was less than the lessor's estimate of annual electricity cost submitted as part of his lease proposal when the basic lease was negotiated.

In another case, GSA amended a lease to relinquish an entire floor in a leased building for the benefit of the lessor without receiving adequate rent reduction. The rent reduction obtained was substantially less than the market value of the relinquished space at the time of lease amendment. The lessor then leased the vacated floor to a non-Government tenant at an annual rental rate which was more than twice the rent reduction obtained by the Government.

Parklawn Office Building

In December 1967, GSA leased 525,000 square feet of office space in the Parklawn Office Building, Rockville, Maryland, for a 20-year term at an annual rent of \$2,151,250 for the first 10 years, including all utilities and services and \$1,901,250 for the second 10 years, including all utilities and services except janitorial services. In June 1968, GSA exercised an option to lease an additional 500,000 square feet in the building at an annual rent of \$2,120,000 for the

first 10 years, including all utilities and services and \$1,870,000 for the second 10 years, including the same utilities and services except janitorial services. This made the total annual rent \$4,271,250 during the first 10 years and \$3,771,250 during the second. The 20-year lease for the 1,025,000 square feet was established to begin August 1, 1970.

Shortly after occupancy of the building, GSA found that the lessor did not provide adequate cleaning services. In the early years of the lease, the lessor had three different cleaning contractors all of whom failed to meet the minimum cleaning standards required by the lease.

On June 21, 1973, the lessor proposed that the Government assume payment for utilities and janitorial services. In return, the lessor offered an annual rent reduction of \$840,000 during the first year, and slightly increasing rent reductions in subsequent years with a maximum annual rent reduction of \$900,000 in 1979 for the remaining lease term. The acting chief of GSA's Maintenance and Utilities Branch concluded that the proposal was not in the Government's best interests. He stated that the annual cost to the Government for utilities and the level of cleaning required in the Parklawn Office Building would be \$1,723,640, more than double the proposed rent reduction. GSA then negotiated with the lessor for about a year, finally reaching agreement on an annual rent reduction of \$929,993.08 in return for the Government's paying for all utilities and janitorial services.

The lease was amended accordingly on July 2, 1974, retroactive to June 6 for utilities and July 1 for janitorial services. This amendment also deleted a provision of a prior amendment that the lessor be paid an additional \$63,000 a year from January 1, 1973, for extra electricity for the building's computer room operations. Thus, the total annual rent reduction obtained through Government assumption of utility and janitorial costs was established by GSA at \$992,932.08. 1/

The actual cost of utilities and janitorial services for the 12-month period immediately following the Government assumption of these costs was about \$1.7 million, or about \$700,000 more than the annual rent reduction. At this rate, the additional costs to the Government for utilities and janitorial services will be about \$5.1 million for the last

1/This total indicates an unexplained discrepancy of \$61 (\$929,993.08 + \$63,000 = \$992,993.08).

6 years of the first 10 years of the lease term and about \$3.9 million for utilities during the second 10 years of the lease term. 1/ We believe that amending this lease benefited the lessor but was not in the best interest of the Government.

1800 G Street, N.W.

In October 1964, GSA leased 406,234 square feet at 1800 G Street, N.W., Washington, D.C., for a 10-year term, beginning May 16, 1965, at an annual rent of \$1,974,000, including all utilities and services.

On October 3, 1973, the lessor proposed that the Government assume payment for all electricity, gas, fuel oil, sewer, and water costs. In return, the lessor offered to reduce the annual rent by \$135,000. The Acting Chief of GSA's Maintenance and Utilities Branch stated that the past year's electric bills for the building showed the average monthly charge was \$23,423, more than double the \$11,250 a month rental reduction proposed by the lessor to compensate for Government assumption of all utility costs.

In June 1974, GSA computed utilities' costs at 1800 G Street, N.W., for calendar year 1973 at \$333,819.50. Of this amount \$76,557.60 was estimated as the cost of extra electricity for added electrical equipment for which the lessor received separate reimbursements. Thus, GSA estimated the net cost of utilities in 1973 covered by the lease was \$257,261.90. GSA agreed to an annual rent reduction of \$257,281.90 2/ for Government assumption of all utility costs for the entire building. The lease was amended accordingly effective June 1, 1974, for the remaining 11-1/2 months of the lease term. This amendment also canceled a provision in a prior amendment whereby the lessor was paid an additional \$8,824.68 a year from September 1, 1966, for extra electricity consumed. By an amendment of July 25, 1974, GSA agreed to further compensate the lessor with a retroactive lump sum payment of \$222,249 for extra electricity consumed from September 1, 1966, to May 31, 1974, not covered by previous payments. Thus, the actual rent reduction received for this 11-1/2 month period was \$382,788.31, consisting of the following:

1/We considered a June 1975 electricity rate increase and janitorial cost increases for 1976 and 1977 as provided by GSA's existing cleaning contract. We did not include any estimated amounts for future cost increases.

2/This amount, for unexplained reasons, is \$20 more than the \$257,261.90 estimated by GSA.

	<u>Annual amount</u>	<u>11-1/2 months prorated amount</u>
Reduction in annual rent per Supplemental Lease Agreement No. 13, May 17, 1974:		
for Government assumption of all utility costs	\$257,281.90	
for discontinuing additional compensation to the lessor for extra electricity consumed	<u>8,824.68</u>	
	<u>\$266,106.58</u>	\$255,018.82
Discontinuing other additional compensation to the lessor for extra electricity consumed (note a)		<u>127,769.49</u>
Total rent reduction		<u>\$382,788.31</u>

a/This pertains to additional payments to the lessor that would have been required for the remaining 11-1/2 months of the lease if GSA had not assumed the electricity cost. The above estimated amount is based on rates used in GSA's computation of the lump sum payment agreed to in Supplemental Lease Agreement No. 15, July 25, 1974.

The actual cost of utilities borne by the Government during the remaining 11-1/2 months of the lease was about \$425,800, approximately \$43,000 more than the rent reduction obtained for this period. Upon expiration of this lease, GSA signed a succeeding lease for a 20-year term, beginning May 16, 1975, at an annual rent of \$2,400,000, excluding meterable utilities.

Melpar Building

In December 1970, GSA leased 72,522 square feet of space in the Melpar Building, Falls Church, Virginia, for a 5-year term beginning April 5, 1971. The annual rent was \$326,349, with an option to renew for an additional 5 years at the same rental. GSA subsequently exercised the renewal option. The lease required the lessor to provide all utilities and services. By a 1972 lease amendment, GSA rented an additional 15,810 square feet in the building at an annual rent increase of \$71,145.

The lease was amended, effective August 15, 1971, to increase the annual rent by \$17,514.96 for additional electricity consumption in the building's computer facility. Subsequently, the tenant agency installed additional computers in the building, further increasing electricity consumption. After failing to reach an agreement with GSA on additional reimbursement for electricity, the lessor offered GSA a rent credit of 26 cents per square foot if the Government would assume the cost of electricity. GSA accepted this offer, and the lease was amended effective February 1, 1973, to reduce the annual rent by \$23,819.12 for Government assumption of electricity cost. The amendment also discontinued additional compensation of \$17,514.96 a year for extra electricity consumption, which the lessor had been receiving since August 15, 1971. Thus, the total annual rent reduction obtained was \$41,334.08, consisting of the following:

Credit for 88,332 square feet of Government-occupied space at 26 cents per square foot	\$22,966.32
Credit for 3,280 square feet of lessor-occupied space at 26 cents per square foot	<u>852.80</u>
	<u>23,819.12</u>
Discontinuing additional compensation for extra electricity consumption	<u>17,514.96</u>
Total annual rent reduction	<u>\$41,334.08</u>

The annual rent credit of \$23,819.12 was \$15,574.04 less than the lessor's estimate of annual electricity cost submitted as part of his lease proposal in 1970. The lessor's annual cost statement of November 30, 1970, shows estimated annual electricity cost for the 70,000 square feet offered at \$30,100 (43 cents per square foot). Presumably, this is the amount the lessor included in the annual rent for electricity. Since the rent reduction obtained was based on 91,612 square feet (88,332 square feet of Government occupied space + 3,280 square feet of lessor occupied space) the equivalent lessor estimate of annual electricity cost in 1970 would amount to \$39,393.16. We believe that GSA should have negotiated a credit for Government assumption of electricity cost based on the lessor's cost estimate.

Matomic Building

GSA first leased space in the Matomic Building, Washington, D.C., in 1955. The original lease was for 1 year and was extended annually until 1960. During the first year of the lease, the space leased by GSA was increased from 158,039 to 273,678 square feet, virtually the entire building.

In September 1960, GSA signed a succeeding lease for a 5-year term, beginning August 2, 1960, at an annual rent of \$1,406,993.04, including all utilities and services. In 1963, the lease was extended by amendment for an additional 10 years ended August 1, 1975, at an annual rent of \$1,270,154.04.

On October 30, 1964, the Chief of GSA's Building Management Division recommended the lease be amended to provide for Government payment of electrical utilities. A fair and equitable annual deduction from the rent for electrical utility costs was determined as \$60,000. The lease was amended effective June 1, 1965, to provide for Government assumption of electricity cost and an annual rent reduction of \$60,000. Upon expiration of the lease in 1975, GSA extended the lease by amendment for 5 more years until August 1, 1980. The annual rent was \$1,695,187.70, including all utilities and services except electricity. The lessor's annual cost statement of August 18, 1960, submitted as part of his lease proposal for the 1960 succeeding lease, shows the lessor-estimated annual electricity cost for the building at \$69,500. Presumably, the lessor included this in the annual rent for furnishing electricity. Thus, the amendment providing for Government assumption of electricity cost in return for an annual rent reduction of \$60,000, is in effect a renegotiation of the lease granting the lessor an annual rent increase of \$9,500 for 10 years. We believe the minimum annual rent reduction for Government assumption of electricity cost should have been at least \$69,500.

Logan Building

In January 1966, GSA leased 69,200 square feet in the Logan Building, Washington, D.C., for a 10-year term, beginning April 22, 1966, at an annual rent of \$339,999.96, including all services and utilities.

On July 1, 1974, the lessor wrote GSA of his understanding that some portions of this building were presently unoccupied. Prior to GSA backfilling this space, the lessor

wanted to notify GSA that the American Broadcasting Company was interested in leasing the entire second floor. GSA agreed to relinquish that floor and amended the lease, decreasing the Government's space in the building by 9,886 square feet and annual rent by \$48,768.22 effective July 15, 1974.

The 1974 rent reduction of \$48,768.22 was based on the negotiated rental rate in the 1966 lease. It did not represent the market value 8 years later when the space was relinquished. According to a GSA appraisal report, the American Broadcasting Company leased the second floor of the Logan Building for 7 years and 3 months beginning October 1, 1974, at an annual rent of \$117,000. The GSA leasing handbook covers the disposition of surplus leasehold interests, and it requires that any such disposition be at the then going market rates.

We believe that in this case, GSA relinquished a contract right without receiving adequate compensation. The lease amendment benefited the lessor. In our opinion, GSA should have negotiated a rent reduction more closely approximating the 1974 value of the relinquished space, and GSA agrees with this position.

GOVERNMENT PAYING FOR UTILITIES USED BY NON-GOVERNMENT TENANTS

Non-Government tenants in 13 buildings leased by GSA in the Washington, D.C., area received electricity and, in some cases, other utilities at Government expense. Under the terms of these leases, the Government pays for electricity or all meterable utilities. In commenting on our draft report, GSA stated, in a letter of October 21, 1977, that adjustments in rents either have been or are being made to compensate the Government for utilities' costs in nonleased areas.

Matomic Building

The Government has been paying for electricity in the Matomic Building since June 1, 1965, when the Government assumed that cost by lease amendment. (See p. 33.)

In July 1965, the responsible GSA buildings manager notified GSA Region 3's Acquisition Branch that a survey of the building's electrical system showed that 558 kilowatt hours were consumed daily by light bulbs in the basement garage, a commercial parking facility for which proper deduction should be made from GSA's rental payments. Apparently, GSA never followed up on this report, and no further action was taken.

Based on the GSA buildings manager's report and additional information from the Potomac Electric Power Company, we estimate that the Government paid about \$39,000 for electricity to light the building's garage between June 1, 1965, and December 31, 1976.

Columbia Plaza Office Building

In September 1971, the Government leased the Columbia Plaza Office Building, Washington, D.C., exclusive of the building's garage. Under the lease terms, the Government pays for meterable utilities for the entire office building.

At our request the GSA buildings manager inspected the building to determine if the garage was separately metered. He found no separate meter and determined that the Government had been paying for electricity in the garage since the building was first occupied in 1974. GSA then wrote to the lessor's agent requesting a separate meter for the garage and fair reimbursement to the Government for past electric payments. By letter of February 14, 1977, the lessor's agent agreed to correct this situation and arranged for reimbursement to the Government.

Union Center Plaza South Building

In September 1971, the Government leased the Union Center Plaza South Building, Washington, D.C. According to the lease terms, the Government pays for meterable utilities. In September 1973, a GSA official determined that the Government was paying for electricity for commercial facilities in the building and should be reimbursed for these costs. In 1974 the lease was amended to provide credit of \$10,072 for electricity furnished to commercial tenants from May 15, 1973, to April 1, 1974, and an annual rental reduction of \$12,951 for April 2, 1974, to April 1, 1975, with the rental reductions for subsequent years subject to annual review. These adjustments pertained only to electricity consumed by three commercial tenants on the first floor and did not include electricity consumed in the garage.

We found that the building's lower level garage, which was not leased by the Government, had been receiving electricity through the Government's meter. According to a GSA memo, air-conditioning units for first floor tenants also receive electricity through the Government meter without reimbursement. We informed the appropriate GSA official who said that the lessor will be contacted to arrange for reimbursement to the Government.

Buildings identified during GSA survey
in which GSA pays utilities in
non-Government areas

At our request, the GSA Region 3 buildings managers surveyed leased buildings to identify additional buildings in which the Government paid utilities, but was not reimbursed for utilities consumed in non-Government areas. The following 10 additional such buildings were identified in this survey.

Crystal Mall Building No. 2, 3, and 4, Arlington, Virginia--These are total electric buildings, and GSA pays the electric bill. The commercial garages and mechanical shops are connected to the Government's meters. GSA has contacted the lessor concerning proposed rental deductions to compensate the Government.

Ames Center Building, Arlington, Virginia--The entire building is rented by GSA except for the garage and engineer's office. GSA pays utilities for the entire building. The lease does not include reimbursement for utilities used in non-Government space.

Hoffman Buildings I and II, Alexandria, Virginia--Commercial tenants received utilities through the Government's meter. In 1970 GSA negotiated an annual rental reduction of \$7,378 to compensate the Government for utilities consumed by commercial tenants. Subsequently, utilities' use by commercial tenants increased substantially, indicating the rent reduction of 1970 was no longer adequate. Commercial tenants include a cafeteria and cocktail lounge, a bank, a dry cleaner, and a barber shop. Part of the cafeteria is used as a discotheque.

Capitol Mall North Building, Washington, D.C.--The garage is connected to the Government's meter.

Page II Building, Washington, D.C.--Fifteen hundred square feet of office space occupied by the lessor is connected to the Government's meter.

Gramax Building, Silver Spring, Maryland--The garage is connected to the Government's meter.

ACF Complex, Riverdale, Maryland--Six hundred square feet of non-Government office space used by the lessor's maintenance contractors is connected to the Government's meter.

CONCLUSIONS

When leases are amended to provide for Government assumption of utilities or services costs or other contract changes benefiting the lessor, GSA should obtain adequate compensation. In addition to rent reduction, compensation could be rent free occupancy for a specified period, extended lease terms, an option to renew, free overtime services, free parking space, or other benefits.

Separate meters should be installed for the non-Government space whenever possible, and when separate metering is not feasible, estimates of utility consumption in these areas should be developed and action initiated to obtain reimbursement from the lessor. Because building tenants may change, GSA should inspect periodically to determine if utilities are being provided to non-Government tenants on the Government's meters.

RECOMMENDATIONS

The Administrator of General Services should:

- Insure that the Government receives adequate rent reductions or other compensation when leases are amended to provide for Government assumption of utilities or services costs or when the Government relinquishes leased space for the lessor's convenience.
- Require separate metering of non-Government space in Government-leased buildings wherever possible. When separate metering is not feasible, appropriate steps should be taken to assure that the Government receives adequate reimbursement for utilities consumed in non-Government space.
- Require periodic inspection of leased buildings to make sure private tenants are not receiving utilities at Government expense.

AGENCY COMMENTS

Regarding uneconomical rental adjustments negotiated for utilities and services, GSA contends that the report does not reflect the effect of rising prices on the level of services provided and the possibility that the Government might be confronted with a foreclosure or bankruptcy proceeding. GSA also stated its belief that the level of services in the Parklawn Building provided under the lease contract was inadequate from the occupying agency's viewpoint.

We found no evidence that rental adjustments for utilities and services for the four leases cited in the report, including the Parklawn Building, were justified based on the lessors being faced with foreclosure or bankruptcy. The level of cleaning services specified in the Parklawn lease was higher than that provided in Government-owned buildings operated by GSA, but as stated previously, the lessor failed to provide adequate service as required by the lease. Therefore, it was incumbent on GSA to enforce the lease terms.

CHAPTER 4

AGENCY COMMENTS AND OUR EVALUATION

Comments by GSA, of October 21, 1977, on a draft of this report are included as appendix I. Some pertinent comments are included in the body of the report while comments requiring clarification are discussed below.

GSA did not comment specifically on each report recommendation. According to GSA, the report findings represent limited situations resulting from not following existing procedures which GSA believes are sound. The agency said that emphasis is being placed on adequate management overview to insure adherence to prescribed procedures, and any noted deficiencies in the report draft are being corrected.

We believe that GSA's existing leasing procedures are generally adequate. We agree that many of the report findings relate to situations in which established procedures were not followed, but some findings relate to instances in which leasing procedures should be clarified or reemphasized.

GSA suggested that the general recommendation to improve or change existing procedures should be eliminated in the report. We did not make such a general recommendation in the draft report although GSA may have inferred the recommendation from the report title which has since been revised.



General
Services
Administration Washington, DC 20405

October 21, 1977

Honorable Elmer B. Staats
Comptroller General
United States General Accounting Office
Washington, DC 20548

Dear Mr. Staats:

As requested in Mr. F. J. Shafer's letter of July 28, we have reviewed the draft report entitled, "Improved Procedures Needed in Awarding and Administering Leases." Our comments are attached.

As our comments indicate, the General Accounting Office (GAO) has been selective with the facts in many of the cases reviewed, and we have attempted to present a more complete explanation. We do not believe GAO has sufficiently made the case for a need to modify procedures in awarding and administering leases. The findings basically are limited situations resulting from inadvertently not following existing procedures, which we believe are sound. Emphasis is being placed upon adequate management overview to insure adherence to prescribed procedures and any noted deficiencies in the report are being corrected.

We recommend the draft report be amended to indicate the time frame of cases reviewed and to note that they were undertaken under a completely different organization, the Office of Operating Programs, which no longer exists. Accordingly, the general recommendation for a need to improve or change existing procedures should be eliminated in the report. If you feel it is necessary, we would be happy to meet with you to discuss the matter further.

Sincerely,

A handwritten signature in black ink, reading 'Robert T. Griffin'. The signature is written in a cursive, flowing style.

Robert T. Griffin
Acting Administrator

Enclosures

COMMENTS OF THE GENERAL SERVICES ADMINISTRATION ON GAO DRAFT
REPORT LCD-77-354 ENTITLED IMPROVED PROCEDURES NEEDED IN
AWARDING AND ADMINISTERING LEASES

Chapter 1

Comments

1/

The enclosed report of the GSA Region 3 office is submitted to present the facts as viewed by that office for consideration by GAO as appropriate. GSA Central Office comments as related to that report on specific matters are presented hereinafter.

On page 2 of the GAO report, the following changes should be made to accurately reflect the data presented:

48.2 million square feet should be 49 and 90.5 million square feet or 88 percent should be 84 and 70 respectively.

Chapter 2

1. Avoiding requirement for Congressional authorization of major leases.

Comments

The circumstances related to the acquisition of space at Union Center Plaza North Building and the Landover Center Building are outlined in detail in the report furnished by GSA's Region 3.

It is our view that these actions were taken without the intent to circumvent Section 7 requirements of the Public Buildings Amendments, if in fact, prospectuses were required. Since enactment of the Public Buildings Amendments of 1972, GSA submitted and received Congressional approval of 45 prospectuses, 26 of which were submitted by Region 3. Considering the number submitted in relation to the finding, it does not appear from the record that GSA had a deliberate program to avoid legal requirements, as the report tends to imply. On the contrary, the opposite is true and, therefore, we believe the finding is overstated and there is not conclusive supporting evidence to indicate that prospectuses were in fact required in the cited cases. For example, our examination of the documents related to the VA-DPC relocation leads us to an opposite conclusion than that in the report. A statement in an internal VA memorandum under recommendations therein cannot and should not be ascribed to GSA; whereas in fact, four months earlier, GSA returned the request for relocating DPC activities.

1/GAO note: The essence of the region's comments are included in GSA Central Office comments.

Further, the quotation on page 8 of the report concerning the prospects of any future lease action for DPC found in a VA memorandum to the record should not and cannot be construed as an intent to circumvent the requirements of Section 7.

Nevertheless, in addition to the provision of the leasing handbook requiring the submission of prospectuses to this office, a memorandum was issued in March 1976, to all regional offices emphasizing the requirements for preparation and submission of lease prospectuses. This memorandum is currently being incorporated in a revision to the leasing handbook.

2. Inconsistent methods of calculating rent for determining compliance with Economy Act Limitations.

Comments

We do not agree with your conclusion about Region 10, which infers that the listed actions violated the law. Management expenses, as provided in paragraph 6a(2), Chapter 7, of PBS P 1600.1, can be deducted and unless it is shown that this was improperly done in Region 10, it is our view that the final report should delete the actions listed. Further, Section II, Estimated Annual Costs of Ownership exclusive of Capital Charges, on GSA Form 1217, as explained in paragraph 31 of instructions thereof, supports the above-cited provision of the handbook as examples of nondeductible items in computation of the Economy Act Limitation.

As to the reference of the violations in Region 9, the region has been instructed to take corrective action for those violations cited in an internal audit. The requirement for strict procedural compliance on this matter has been reemphasized.

The actions cited in the Philadelphia Office of GSA again imply violations of the law; whereas, the finding only supports procedural infractions and lack of documentation. Therefore, we believe the report should reflect the facts and not infer a conclusion. It is conceded that there have been procedural and documentation omissions in the Philadelphia office; however, there has been a change in personnel and a recent technical survey of the office conducted in July 1977 indicated that there is compliance with GSA's basic leasing requirements. Since the last central office survey in November 1975, there has been a significant improvement in documentation prepared by that office.

3. Limited competition obtained in acquiring leased space.

Comments

Optimum competition in the negotiated procurement is stressed by the Central Office and regional performance is monitored on a monthly basis to ascertain the contract rental in relation to the appraised fair rental value (AFRV). This report shows GSA nationwide obtains space at approximately 8 percent below market rates. While it appears that the number of cases cited in the report appears to be high for new leases by sole source negotiations (although the report is not clear on this point), it is, nevertheless, significant to indicate in the report at what price this space was contracted for in relation to the AFRV. While the GSA Central Office stresses competition, it is not the sole method of acquiring suitable space at good prices. It is our view that a thorough market survey and meaningful negotiations are as significant, if not more so, than paper competition of going through the "sealed bid" competitive process. It must be recognized that real property is unique and that professionally qualified people are performing the leasing function.

It is not surprising that 95 percent of the succeeding leases were sole source, as it is GSA's lease operating policy to enter into succeeding leases, all other things being equal. This avoids disruption of agency actions and also takes maximum advantage of expenditures made to the space under lease.

While we appreciate the thrust of specific finding in the report, it is our view that the report makes a broad generalization, which reflects on the entire leasing program. We believe that this is an erroneous picture of the nationwide leasing program and that the report should be modified accordingly.

We consider the lease procurement process a continuing ongoing program that requires constant monitoring and overview by the Central Office and modification to the procedures and requirements are made as the situation warrants. Examples of Central Office activity in this area are represented by the attached memorandums of March 16, 1976, and September 8, 1977. The report should reflect GSA's Central Office overview of this aspect of the program.

4. Inadequate consideration of some offers.

Comments

See Region 3's report for the cited transactions and the circumstances of each. We concur in their views on the cost analysis on Crystal Square #5, particularly as to the report's unsupported conclusion

that the region overstated the cost by \$43,000. All throughout this portion of the report there is the inference that the region acted arbitrarily; whereas it may be more appropriate to perhaps indicate that the action should have been more carefully documented to reflect the actions taken. While we do recognize the thrust of the findings, it must be remembered that the intent of the negotiated procurement process is to screen properties and eliminate those that cannot meet basic requirements and concentrate on those that do. This, of course, does not mean that the contracting officers should act capriciously. This position requires judgment and this means consideration as to price and other factors as well as the views of the agency and the impact his decision will have on the agency's mission. It is our view that doubtful situations that do not clearly show arbitrary and capricious actions should be resolved in favor of the contracting officers. However, we have and continue to stress the need for reasonable documentation to support all actions taken. For these reasons, we take exception to the speculative conclusion in the report that the most advantageous offers may not have been accepted.

5. Leasing space not ready for occupancy and leasing more space than required.

Comments

The facts recited are substantially correct, as indicated in the regional report. There is no justification for the actions as they are contrary to established procedures. Program emphasis will stress compliance with procedure. However, while we do not condone these actions, the two cited actions do not demonstrate the ineffectiveness of a program with an inventory of approximately 7,000 leases and, therefore, it is suggested that the report place the cases in proper perspective.

Chapter 3

1. Uneconomical rental adjustments negotiated for utilities and services and for vacating leased space.

Comments

Reference is made to the regional report for the circumstances relating to adjustments and the vacation of leased space. GAO's report cites the cases in an environment of absolutism, which is obviously not the realities confronting the contracting officer in administering leases. For example, the regional reports attempt to present the mitigating circumstances in taking over services and utilities and the rates agreed upon for reducing the rental; whereas, the root of the problem

and the necessity to do so are barely mentioned in the report and these are most likely the real cause for the action. The report also neglects the fact that the "services" to be provided under the contract, i.e., the level of such services is not necessarily what was being demanded of the lessor by the tenant agency in performance of the contract.

For example, in the Parklawn Building, the level of services under the contract were inadequate from the agency's viewpoint because of the nature and extent to which the space was utilized by the occupants.

While we agree that any reduction should not be less than the de facto amount of contractual obligation, this does not necessarily mean that it should be the amount stated by the lessor as he may have indicated on the GSA Form 1217. This would, of course, be one of the factors to be considered, but not necessarily the actual amount of reduction in the rent. We, therefore, do not agree with the report in that respect.

The quid pro quo must, of course, be tempered by judgment of the contracting officer in terms of contract enforcement that compromises the integrity of an ongoing agency operation and the various possibilities the Government might be confronted with a foreclosure or bankruptcy proceeding. This is a particularly difficult area to contend with in those older long term leases and today's escalated costs, which can in some cases be akin to a force majeure. These situations are recognized by the Congress, which has had several bills pending to lend aid to lessors in similar situations. GSA has generally opposed such legislation and resists opening the door to general contract reformation and has stressed lease contract enforcement as indicated by the attached memorandum of March 17, 1977.

The leasing handbook covers the disposition of surplus leasehold interests and it requires that any such disposition be at the then going market rates and backfilled potential is not the answer to the point made in the draft report. Again, the Logan Building action is an isolated case and does not accurately reflect the total program. Nevertheless, the regional office is cognizant of the cited cases and has been cautioned to adhere to the basic principle of sound lease administration.

2. Government paying for utilities used by non-Government tenants.

Comments

See the regional report, and as indicated, the garage space in one of the 16 buildings is leased by the Government. Adjustments in rentals either have been or are being made to compensate the Government for the cost of utilities in the nonleased area.

In those situations where separate meters are not feasible, the regional office has been instructed to emphasize the need for initial and periodic inspection to insure that the Government is reimbursed by non-Government tenants obtaining utilities through meters billed to the Government. It is, however, GSA's policy to provide separate meters whenever possible in multiple-tenant buildings.

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

		<u>Tenure of office</u>	
		<u>From</u>	<u>To</u>
ADMINISTRATOR OF GENERAL SERVICES:			
Joel W. Solomon	May 1977	Present	
Robert T. Griffin (acting)	Feb. 1977	Apr. 1977	
Jack Eckerd	Nov. 1975	Feb. 1977	
Arthur F. Sampson	June 1973	Oct. 1975	
Arthur F. Sampson (acting)	June 1972	June 1973	
Rod Kreger (acting)	Jan. 1972	June 1972	
Robert L. Kunzig	Mar. 1969	Jan. 1972	
COMMISSIONER, PUBLIC BUILDINGS SERVICE:			
James B. Shea, Jr.	June 1977	Present	
Tom L. Peyton (acting)	May 1977	June 1977	
Nicholas A. Panuzio	Sept. 1975	Apr. 1977	
Walter Meisen (acting)	Oct. 1974	Sept. 1975	
Larry F. Roush	Aug. 1973	Oct. 1974	
Larry F. Roush (acting)	Jan. 1973	Aug. 1973	
John F. Galuardi (acting)	July 1972	Jan. 1973	
Arthur F. Sampson	Mar. 1970	June 1972	

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