

**Statement Of
The Honorable Eleanor Holmes Norton
Subcommittee on Economic Development, Public Buildings, and
Emergency Management
Hearing On
“Evaluating GSA’s First Experience with the National Broker
Contract”
July 15, 2009**

Good morning and welcome to today’s hearing on the National Broker Contracts. Today, we will examine whether the National Broker Contract provides a tool to meet its statutory obligation to procure commercial office space for federal agencies, whether the contract has been of benefit to taxpayers, and we will hear suggestions for improving the contract. We begin with some background concerning GSA’s decision to include private brokers.

Many of the services of the Public Building Service (PBS) within GSA have private sector counterparts, such as leasing, property management, and property maintenance. In response, to President Reagan’s ‘Reform ’88’ the agency contracted out virtually all of its property maintenance operations. GSA has also contracted out its engineering and architectural requirements, as well as interior design and space planning services. During the mid 1990s, GSA engaged Arthur Anderson to conduct an exhaustive analysis of its leasing program to determine the feasibility of contracting out that function. The agency did quite well in the comparative analysis, with only a few administrative leasing functions identified as potential for further review for contracting. The Arthur Anderson report concluded: “Commercial Broker is competitively priced. It would be more costly to privatize and should be retained in-house.”

However, concurrent with the contracting out trend government-wide, OMB reduced full time equivalents (FTE’s) in all agencies. Consequently, as employees retired OMB eliminated these FTE positions. During the late 1980s and early 1990s, PBS lost many of its veteran employees who had come into the government in the 1960s inspired by President Kennedy’s call to public service. Although there was no empirical data to support contracting out leasing, the agency now found itself caught between a requirement to contract out a certain number of positions on one hand, and fewer in-house personnel to conduct leasing activities on the other. Thus in 1997, the agency signed a series of regional broker contracts to provide limited leasing services. These contracts were meant to assist the in-house leasing specialists, not replace them.

In December 2002, the Office of the Inspector General issued a “*Review of PBS’ Use of Brokerage Contracts for Lease Acquisition Services*”. Of special interest to the IG was the use of rebates and “zero dollar” task orders, where payment for leasing services rendered was expected to come from the landlord or property owners signing the lease and not from GSA controlled funds. The IG’s report contained information from the GSA’s Office of General Counsel, which identified two serious issues: (1) The obvious potential for a conflict of interest between the government’s interest in receiving the best value; and (2) the broker’s interest in receiving the highest compensation and the problem of possible illegal augmentation

presented by allowing brokers to be compensated by anyone other than GSA, for services provided.

The GSA general counsel requested an opinion from the Government Accountability Office regarding the compensation issues. GAO issued its opinion on August 25, 2003, and concluded "GSA may enter into proposed contacts with real estate brokers without augmenting its appropriation...." However, GAO acknowledged, "GSA's submission indicates a possible issue of conflict of interest between the government getting best value and the brokers' interest in getting the highest commission." GSA proceeded to put together a national broker contract.

Today, GSA leases 177.5 million rentable square feet of space in almost 7,100 leased properties, now slightly exceeding GSA's owned space. Thus, leasing, along with federal construction, is clearly a core function of GSA. Contracting out this activity through the National Broker Contract has brought about a profound change within the agency and one of the most significant changes since it was established in 1949. This approach raises concerns because the agency has no "fall back reserve position" of realty specialists, and limited recruitment and training funds today for these critical positions, leaving the government with no alternative except to use these national contracts for a core function of the PBS. For this reason, the subcommittee has a special obligation to look closely at the existing experience with Broker contracts to see if improvements are necessary.

The National Broker Contract is a competitively bid contract that augments services provided by PBS and allows PBS to outsource brokers services for leases for federal agencies. In addition, the contract allows brokers to be paid the usual broker fee, instead of being paid by appropriations. The GSA Office of General Counsel further determined that it is permissible for GSA to accept a rebate from the tenant brokers and to credit that amount to the lease.

The original contract was awarded on October 4, 2004, to four companies. The contracts were awarded as one year base contracts, with an option of annual renewal for up to five years. The current contract will expire in March 31, 2010, and GSA is currently preparing the solicitation for the re-issue of this contract. Therefore, it is important that this subcommittee conduct oversight and address the concerns initially presented by the National Broker Contract by the GSA Inspector General and the Government Accountability Office. We must review the GSA's rationale for the decision to place a core GSA Public Building service function, in the private sector. We need to determine if the financial and managerial systems are in place for GSA to properly administer the National Broker Contract. We must scrutinize the assumptions used to justify the agency's decision to contract out leasing services. We must understand how GSA has addressed conflicts of interests with brokers that both own and market buildings to federal agencies.

If GSA believes it is in the best interest not only of the government and the taxpayer to have the private sector solely responsible for providing leased space for the government; GSA must explain and justify its relationship to agency leasing. If GSA is anything more than a bureaucratic middleman between federal agencies and brokers, why should GSA be in the leasing process at all?

There are a myriad of issues that need to be examined in the National Broker Contract process so that this subcommittee can be confident that the contract properly shields

taxpayers from waste and abuse and provides real value to taxpayers that would otherwise not be realized. I look forward to hearing from all concerned parties on this important issue and appreciate their testimony.

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