



Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Banking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

February 26, 2015

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Economic Development, Public Buildings and
Emergency Management
FROM: Staff, Subcommittee on Economic Development, Public Buildings and
Emergency Management
RE: Subcommittee Hearing on “Saving Taxpayer Dollars by Reducing Federal Office
Space Costs”

PURPOSE

The Subcommittee on Economic Development, Public Buildings, and Emergency Management will hold a hearing on Tuesday, March 1, 2016, at 10:30 a.m., in 2167 Rayburn House Office Building to examine and conduct oversight of major General Services Administration (GSA) construction projects funded or proposed to be funded from the GSA Federal Buildings Fund (FBF), other major projects planned, and GSA’s authorities to carry out real estate transactions for the federal government. The Subcommittee will also explore options for reducing federal office space costs and saving taxpayer dollars by reviewing major GSA projects, including the Federal Bureau of Investigation (FBI) Headquarters Consolidation, and the Federal Courthouse Construction Program.

BACKGROUND

GSA’s Public Buildings Service

GSA’s Public Buildings Service (PBS) acts as the landlord for the federal government and owns or leases over 377 million square feet of space in 9,600 buildings nationwide. More than half of GSA’s inventory is in commercially leased space. In federally-owned buildings, GSA charges a commercially-equivalent rent to the tenant agencies which is deposited in the FBF to fund new construction and acquisitions, ongoing repairs and alterations of the existing building inventory, and PBS’s administrative costs.

Pursuant to law¹, large real estate acquisitions and projects, including new construction, purchases, commercial leases, and repairs and alterations, costing over \$2.85 million annually must be authorized by the House Committee on Transportation and Infrastructure (T&I Committee) and the Senate Environment and Public Works Committee (Senate EPW). This is often referred to as the “prospectus process.”

In addition to Committee authorization, funds deposited into the FBF are subject to appropriation. Given the requirement for both the authorizing and appropriating committees to act, the Administration submits, along with its annual budget, GSA’s Capital Investment and Leasing Program (CILP) each year. The CILP provides more detailed prospectuses for each project proposed. The T&I Committee and Senate EPW authorize proposed projects submitted in the prospectuses through a committee resolution.

For Fiscal Year (FY) 2017, the Administration has requested \$10.18 billion in appropriations from the FBF, a .2% decrease from FY 2016.

Federal Bureau of Investigation (FBI) Headquarters Consolidation

The FBI Headquarters Building, named the J. Edgar Hoover Building (Hoover Building), is located on Pennsylvania Avenue in Northwest Washington, D.C. and occupies over a full city block of prime real estate. In 2011, a new consolidated FBI headquarters was proposed. At that time, elements of the FBI headquarters functions in the National Capital Region occupied more than three million square feet of space, costing \$168 million annually, dispersed over 21 separate locations, including in commercially-leased space. Since 2011, the FBI has taken steps to reduce its space and number of locations. Currently, the FBI headquarters functions are in 14 locations, totaling 2.9 million square feet.

In July of 2011, Senate EPW passed a resolution directing GSA to investigate the feasibility and need to construct or acquire a replacement consolidated headquarters campus for the FBI. The FBI commissioned its own study and in August of 2011, it submitted to Senate EPW and the T&I Committee the results of its commissioned report. In October of 2011, the GSA submitted its proposed response to the Senate EPW request. The GSA’s proposal included a full consolidation of FBI’s scattered headquarters functions in the region and a reduction of overall space to two million square feet. The FBI estimated a consolidated headquarters campus could save the FBI approximately \$50 million annually. At the time, the FBI recommended a Public-Private Partnership (P3) approach and GSA recommended a fully appropriated, new federal construction approach. The Senate EPW approved the FBI P3 approach.

In 2013, GSA announced that it would use its exchange authorities to fund construction of the new consolidated FBI headquarters campus—leveraging the value of the Hoover Building to pay a private developer to construct the new facility. Despite the estimated cost of a new facility ranging from \$2 to \$3 billion and doubts about whether there was enough value in the Hoover Building to fund a fully consolidated headquarters or whether such a strategy would devalue the Hoover site, GSA pursued this strategy.

¹ 40 U.S.C. § 3307

During this time, GSA ran a competition to identify potential locations for the new headquarters and, in 2014, announced a shortlist of three sites: Greenbelt, MD, Landover, MD, and Springfield, VA. Only Springfield, VA is owned by the federal government. All three sites have associated costs if selected for the FBI consolidation.

In late 2015, GSA determined there is not enough value in the Hoover Building to fund a new consolidated FBI headquarters and alerted congressional committees it would be seeking appropriations for federal construction. However, GSA indicated that it would still use the Hoover Building in exchange for covering a portion of the cost.

FBI Headquarters Funding

In Fiscal Year 2016, initial funds were appropriated for the project, including \$315 million in the FBI's budget for design and preconstruction activities and \$75 million in GSA's FBF for construction management and oversight.

For Fiscal Year 2017, \$1.4 billion is requested for the project, split between the FBI and GSA. The Administration's budget request includes \$759 million for GSA's FBF and \$646 million for the FBI. In addition, as required law², GSA submitted to the T&I Committee and Senate EPW a prospectus for the FBI Headquarters Consolidation requesting authorization for the \$759 million requested in the FY2017 Budget. While the prospectus identifies the funding sources for the project, including the FY2016 funding for the FBI and GSA, the requested amounts for FY2017, and the value for the Hoover Building, it does not include the estimated total project cost as is customary in prospectuses.

Federal Courthouse Construction Program

The Committee, on a bi-partisan basis, has conducted ongoing oversight over the years on the federal courthouse construction program. In 2005, Chairman Shuster and Ranking Member Norton as the then-Chairman and Ranking Member of the Subcommittee on Economic Development, Public Buildings, and Emergency Management, requested that the Judicial Conference of the United States study the Judiciary's courtroom usage and report back to the Committee.

In 2008, the Judiciary submitted to the Committee a final report on courtroom usage completed by the Federal Judicial Center (FJC), the education and research agency for the U.S. Courts. The FJC study showed that, on average, a courtroom is *scheduled* to be used 4.1 hours a day for active district judge courtrooms, 2 hours a day for senior judge courtrooms, and 2.6 hours a day for magistrate judge courtrooms.³ In addition, only half of the scheduled courtroom time is actually spent on case-related proceedings. In light of this study, the Committee requested the Government Accountability Office (GAO) review federal courthouse planning and construction.

² *Id.*

³ *Report on the Usage of Federal District Court Courtrooms*, Judicial Conference of the United States, September 16, 2003. See also, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, GAO-10-417, June 2010.

In 2010, the GAO completed a study entitled, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*.⁴ Specifically, the GAO examined 33 courthouses that were constructed during the ten-year period from 2000 to 2010. The GAO found that 3.56 million square feet of *extra* space was built because of the following reasons: (1) the Judiciary overestimated its 10-year projection of future judges assigned to courthouses; (2) new courthouses did not incorporate courtroom sharing; and (3) GSA constructed courthouses above the congressionally-approved size.

Following the GAO study issued in 2010, the Subcommittee on Economic Development, Public Buildings, and Emergency Management submitted a bipartisan letter to President Obama highlighting the concerns raised by the GAO report and indicating that the Committee planned to withhold authorizing new federal courthouse construction until the Committee was satisfied that appropriate reforms to the program were in place. The Committee subsequently requested that the GAO review the Judiciary's 5-Year Plan⁵, which was the focus of a hearing held in 2013.

At the hearing in April of 2013, the GAO released its report on the Judiciary's updated process (Asset Management Planning (AMP) process) for identifying new courthouse construction projects for its 5-Year Plan.⁶ The GAO concluded that the AMP process was an improvement from the Judiciary's previous methodology; however, the GAO recommended that the AMP process could be better aligned with leading capital planning practices. The GAO also highlighted that only two of the 12 projects on the 5-Year Plan at that time had been evaluated using the AMP process and suggested that there be a moratorium on those projects until they were reassessed using the AMP process. As a result of this, the Committee requested the Judiciary apply the AMP process to the courthouses on the 5-Year Plan. The Judiciary agreed and reevaluated the courthouses in the 5-Year Plan using the AMP process and, in September 2015, submitted a revised 5-Year Plan to the Committee.

The Judiciary has taken significant steps to address the GAO recommendations and improve its space utilization to reduce costs to the taxpayer. The Judiciary has adopted courtroom sharing policies for its magistrate, senior and bankruptcy judges; developed the AMP process to better evaluate the need for a new courthouse; recommended less costly repair and alteration projects in lieu of new courthouses; and has taken additional steps to reduce its overall footprint.

Congress included in GSA's Fiscal Year 2016 FBF appropriation \$948 million for new courthouse construction projects as prioritized in the updated 5-Year Plan. The appropriations committees also required GSA to submit a spending plan to Congress which is due in April of 2016. As required by law⁷, GSA must submit prospectuses to the T&I Committee and Senate EPW for approval for the new courthouses. The only prospectus received for a courthouse on the updated 5-Year Plan is for a new courthouse in Nashville, Tennessee.

⁴ GAO-10-417.

⁵ Each year, the Judiciary submits to the Committee a 5-year Courthouse Project Plan approved by the Judicial Conference of the United States. The plan reflects the Judiciary's official list of priority projects over a 5-year period.

⁶ GAO-13-523T

⁷ 40 U.S.C. § 3307

GSA Authorities

Exchange Authority

In recent years, GSA has proposed using its “exchange” authorities to carry out traditional federal construction projects. There are a number of provisions in the *Public Buildings Act* that provide GSA with limited authority to exchange existing federal properties for another property. However, exchanging an existing federal property for construction services is unprecedented particularly on the scale proposed by GSA. Historically, GSA has used its exchange authorities to exchange an existing federal asset with an existing private sector asset – for example, if the private sector asset was in a preferred location for federal purposes. Only once in recent history was the authority used for new construction and that project was for a relatively small parking garage. In addition, GSA maintains that no congressional authorization is required when using its exchange authority even when it is proposing to construct a new building, like the FBI headquarters, valued at \$2 billion. H.R. 4487, the Public Buildings Reform and Savings Act of 2016 authored by Subcommittee Chairman Barletta and Ranking Member Carson, would clarify the requirement for congressional authorization of such projects.

In 2012, GSA issued a Request for Information to redevelop the Federal Triangle South property that houses the Department of Energy (DOE). Replacing the existing DOE Headquarters and selling and allowing for the redevelopment of the site are concepts that have been supported in various bipartisan pieces of legislation. However, instead of proceeding with the redevelopment of the entire site as originally proposed, in 2014, GSA issued a Request for Qualifications to exchange GSA’s Regional Office Building and the Cotton Annex building in Federal Triangle South for services to renovate GSA’s Headquarters Building and up to three historic buildings at the St. Elizabeths campus – the current site of the new DHS Headquarters.

More recently, GSA issued a Notice of Intent to exchange the current Department of Labor headquarters for a site that could accommodate up to 1.4 million square feet and a new headquarters building for the Department of Labor in Washington, D.C.

Court Ruling Related to Committee’s Approval Process

In November of 2015, the U.S. Court of Federal Claims issued a ruling in the case of *Springfield Parcel C, LLC v. United States*. The case was brought as a post-award bid protest from a request for lease proposals (RLP) awarded by GSA for a new headquarters for the Transportation Security Administration (TSA). The lease was awarded to Eisenhower Real Estate Holdings, LLC (Eisenhower) and Springfield Parcel C, LLC sought a permanent injunction of the award to Eisenhower.

Among the issues the Court addressed was whether GSA violated the law by exceeding the square footage authorized by the Committee when it approved the proposed TSA lease. In concluding that GSA had exceeded its authority, the Court also squarely addressed the issue of whether the prospectus process is constitutional. The Court concluded that the Committee’s approval process did not run afoul of the Constitution explaining that the Executive Branch has

no authority to expend funds for public buildings without an authorization.⁸ The Court further explained that the “congressional committees’ approvals precede, not follow, the pertinent appropriation, and any conditions stated in the committees’ approving resolutions flow through to the appropriation.”⁹ The Court noted that because GSA violated the law, there was no appropriation available for the lease and therefore concluded the lease violated the Anti-Deficiency Act (ADA). As a result, the Court ruled the lease was void *ab initio* (from the beginning).

The *Springfield Parcel C, LLC* ruling made it clear that GSA must obtain committee authorization for projects exceeding the threshold in the law¹⁰. Absent authorization, GSA has no authority to obligate funds for these projects. In addition, the case made clear that the parameters typically included in the committee resolutions approving GSA projects, such as limitations on square footage and costs, are binding on GSA.

CONCLUSION

The hearing will focus on GSA’s major projects planned in the near term, including major construction projects, the use of GSA’s exchange authorities and other oversight issues.

WITNESS LIST

The Honorable Steny Hoyer (D-MD)
Democratic Whip
Member of Congress

The Honorable D. Brooks Smith
Chair, Committee on Space and Facilities
Judicial Conference of the United States

Mr. Norman Dong
Commissioner
Public Buildings Service
U.S. General Services Administration

Mr. Richard L. Haley II
Chief Financial Officer/Assistant Director, Facilities and Logistics Services Division
Federal Bureau of Investigation

⁸ *Springfield Parcel C, LLC v. United States*, No. 15-1069C, Fed. Cl. (2015), Letter to the Honorable Silvio O. Conte, B-196854, 1984 WL 262173 (Comp. Gen. Mar. 19, 1984)

⁹ *Springfield Parcel C, LLC v. United States*, No. 15-1069C, Fed. Cl. (2015), page 25, footnote 23.

¹⁰ 40 USC § 3307