



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-177610

APR 26 1976

The Honorable Tom Stead, Chairman
Subcommittee on Treasury, Postal Service
and General Government
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

Reference is made to your recent letter concerning the General Services Administration (GSA) use of the purchase contract method of financing for two Federal projects, one in Anchorage, Alaska and the other in Atlanta, Georgia. You request our opinion as to whether such use constitutes a violation of either section 5(g) of the Public Buildings Amendments of 1972, approved June 16, 1972, Pub. L. No. 92-313, 86 Stat. 220, 40 U.S.C. § 602a(g) (Supp. IV, 1974), or section 507 of the Treasury, Postal Service, and General Government Appropriations Act, 1976, approved August 9, 1975, Pub. L. No. 94-91, 89 Stat. 457.

Section 5(g) of Pub. L. No. 92-313, provides:

"No purchase contract shall be entered into under the authority granted under this section after the end of the third fiscal year which begins after the date of enactment of this section."

Since the Act was approved by the President on June 16, 1972, the authority for entering into purchase contracts thereunder ended on June 30, 1975. Section 507 of the Treasury, Postal Service, and General Government Appropriations Act, 1976, provides:

"None of the funds available under this Act shall be available for administrative expenses in connection with the execution of purchase contracts pursuant to section 5 of the Public Buildings Amendments of 1972 (Public Law 92-313) during the period beginning July 1, 1975, and ending September 30, 1976."

The net effect of both of these provisions of law is, therefore, to prohibit the entering into or executing of purchase contracts after June 30, 1975.

Before considering the application to the two projects involved, it is necessary to outline the relevant statutory framework.

I

The "purchase contracts" authorized on a 3-year basis by section 5 of Pub. L. No. 92-313, 40 U.S.C. § 602a (Supp. IV, 1974), constitute a method of initially using private financing, rather than direct Federal funding, for the construction of public buildings. The basic nature and purposes of this method of financing were explained as follows in the House Public Works Committee report accompanying H.R. 10483, 92d Congress:

"The purchase-contract authority contained in the bill would permit GSA to make regular payments over a period of from ten to thirty years to persons who would finance and construct buildings to GSA specifications. At or before the end of the contract term, title to the building would vest in the United States. Until title vests in the United States, a purchase-contract building would remain on the local tax rolls, helping to ease the burdens of the Federal presence upon the local community.

"Since fiscal year 1959 GSA has had appropriated approximately \$115 million per year for new construction across the Nation. At that rate, if GSA were to work exclusively on overcoming the present backlog, giving no attention to new requirements as they arose, it would take 10 years to construct the 63 buildings Congress has already authorized--including some that have been approved as long as nine years without action.

"The three-year purchase-contract authority in H.R. 10483, as reported, is a stop-gap expedient, an attempt to reconcile the urgent need for new Federal facilities with present economic conditions. Congress has repeatedly asserted its insistence upon the direct Federal construction of public buildings required by the Public Buildings Act of 1959.

"Direct Federal construction is the most efficient and economical means of meeting Government building needs. Nevertheless, the futility of seeking a billion dollars for direct Federal construction of the present backlog of 63 buildings in competition with the present spending priorities, together with the urgency of the need for these facilities, makes clear that the best course is to permit GSA to construct the presently authorized buildings over a relatively short term, then return to direct Federal construction through the medium of the public buildings fund authorized in the bill." H.R. Rep. No. 92-989, 1972 U.S.C.C.A.A.N. 2373.

The language in H.R. 10488 regarding purchase contracts was ultimately adopted with a clarifying amendment as section 5 of the Act. See H.R. Rep. No. 92-1697, 1972 U.S.C.C.A.A.N. 2384.

To implement section 5 of Pub. L. No. 92-313, GSA developed the so-called "dual system" of purchase contracting, under which GSA would issue separate invitations for (a) bids for construction of individual projects and (b) bids to finance and sell to the United States a group of such projects. Following competitive bidding, GSA would accept the most favorable construction bid for each project by entering into a "construction contract," and accept the most favorable financing bid to provide the funds for the group of projects as a whole by entering into a "purchase contract" with a trustee. The trustee would obtain the necessary funds through issuance of Participation Certificates to the successful financial bidders. In a decision dated October 19, 1972, 52 Comp. Gen. 226, we reviewed the proposed "dual system" in detail and the relevant provisions of law, and concluded:

"* * * while the purchase contract authority and the contract requirements set out in section 5 of the Public Buildings Amendments of 1972 do not specifically provide for the method of financing construction as provided in the so-called 'dual system,' we find nothing in section 5 that must be considered as prohibiting the use of the proposed plan in carrying out the purposes of that section.

"Accordingly, it is our opinion that the proposed contracting procedure ('dual system') may be considered legally as within the framework of section 5 of the Public Buildings Amendments of 1972." Id. at 239.

Subsequently, in our decision 52 Comp. Gen. 517 (1973), we considered modifications proposed by GSA to the dual system of purchase contracting. Included among the proposed modifications was one under which:

"* * * the Administrator could, in lieu of initially inviting bids for the purchase of a principal amount of Participation Certificates sufficient to cover the maximum estimated costs and expenses for the projects, invite bids initially for only a portion of the estimated maximum, and subsequently from time to time as construction progresses invite bids for additional amounts of Participation Certificates of the same or new series to be issued under the same Purchase Contract, appropriately amended or supplemented each time to reflect the additional issuance. In the case of any such subsequent invitation, the principal amount for which bids are invited would not, however, exceed the amount estimated by GSA, at approximately the time of the invitation,

as the maximum which might be required to cover future costs of construction and other applicable costs and expenses referred to above, after taking into account any available funds at the time remaining with the Trustee." 52 Comp. Gen. at 519.

Upon review, we concluded that:

"* * * nothing in the modifications set forth above which-- from a legal standpoint--would require any change in the conclusions reached in our decision of October 19, 1972. Accordingly, that decision is equally applicable to the program as so modified.

"Inasmuch as the interested committees of the Congress were advised of the original plan by your agency, we suggest you advise the same committees of the instant modifications." Id.

Thus under the modified purchase contract procedure, we recognized that a purchase contract could be entered into providing for the financing of a group of authorized projects; and that under such purchase contract, construction could be conducted in phases with each phase financed separately as construction progressed.

By letter dated October 6, 1972, the Attorney General advised GSA that the "dual system" of purchase contracting was authorized by Pub. L. No. 92-313, and that:

"In my opinion the obligations of the United States to pay the purchase price under the purchase contracts, and the participation certificates evidencing undivided interests in such obligations, constitute an absolute and unconditional general obligation of the United States, for which the full faith and credit of the United States are pledged."

On February 15, 1973, the Attorney General reaffirmed these conclusions with respect to the modified dual system addressed in our 1973 decision, SUPRA.

Also relevant to the instant matter is the relationship between purchase contracting and statutory prospectus approval requirements. "In order to insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings * * *," section 7(a) of the Public Buildings Act of 1959, as amended by Pub. L. No. 92-313, 40 U.S.C. § 606 (Supp. IV, 1974), provides in part that no appropriation shall be made to construct a public building costing more than \$500,000 unless such construction has been approved by resolution

adopted by the Senate and House Committees on Public Works. For the purpose of securing consideration for such approval, GSA is required to submit to the Congress a prospectus of the proposed facility including, among other things, (1) a brief description of the building, (2) its location and estimated cost, and (3) a comprehensive plan for providing space for all Government officers and employees in the locality of the proposed facility. Section 7(b) provides that the estimated maximum cost of any project approved under that section as set forth in the prospectus may be increased by an amount equal to the percentage increase in construction cost from the date of the prospectus but not exceeding 10 percent of the maximum estimated cost.

With respect to the applicability of prospectus approval requirements to purchase contract projects, section 5 of Pub. L. No. 92-313 states:

"(e) * * * Projects heretofore approved pursuant to the provisions of the Public Buildings Act of 1959, as amended (40 U.S.C. 601 et seq.), may be constructed under authority of this section without further approval, and the prospectuses submitted to obtain such approval shall for all purposes, be considered as prospectuses for the purchase of space, except that any such project shall be subject to the requirements of section 7(b) of the Public Buildings Act of 1959, as amended, based upon an estimated maximum cost increased by not more than an average of 10 per centum per year, exclusive of financing or other costs attributable to the use of the method of construction authorized by this section.

"(f) Except for previously approved prospectuses referred to in (e) above, no purchase contract shall be entered into pursuant to the authority of this section until a prospectus therefor has been submitted and approved in accordance with section 7 of the Public Buildings Act of 1959, as amended."

II

With the foregoing statutory framework in mind, we turn to the facts concerning the two projects here involved:

Anchorage

On July 13, 1972, GSA, pursuant to section 5(f) of Pub. L. No. 92-313, supra, submitted to the Senate and House Public Works Committees a "Prospectus For Proposed Purchase Contract Under the Public Buildings Act of 1959 As Amended" for Project Number 50-0031, designated the Courthouse and Federal Office Building and Parking Facility in Anchorage, Alaska. The prospectus was considered under section 7 of the Public Buildings Act of 1959, as amended,

supra, and approved by the Senate Public Works Committee on September 21, 1972, and by the House Public Works Committee on September 27, 1972.

Thereafter, GSA, using the "dual system" of purchase contracting, entered into a "Public Building Purchase Contract and Trust Indenture" dated July 22, 1974, on behalf of the United States, with the American Security and Trust Company (American), for the purpose of financing several projects, including the Anchorage, Alaska project. Under this agreement, \$45 million series K Participation Certificates (PC) were sold by GSA to the Federal Financing Bank, and the proceeds deposited with American as trustee to be disbursed as directed by the GSA contracting officer for payment of costs connected with the various phases of construction on the projects covered. Under this agreement, construction sites were to be owned by GSA, but title to improvements constructed thereon vested in American as security for payment of the purchase price (as defined by the agreement). When additional funding was necessary for subsequent phases of construction, the agreement provided for the issuance and sale of additional series of PCs.

On June 27, 1975, GSA and American terminated their agreement of July 24, 1974, and executed a new Trust Agreement and Indenture. At the same time, GSA and the Federal Financing Bank (Bank) executed a Public Buildings Purchase Contract and Financing Commitment, to provide financing for the construction of certain public building projects including the Anchorage project.

Under these agreements, rather than financing construction through sales of PCs to institutional lenders, GSA financed construction through the Bank. The Bank would, on 2 days notice at the end of each month, notify the GSA of the interest rate applicable to the Interim Certificate to be purchased by the Bank on the next succeeding business day. The next day, GSA could deliver to the Bank an Interim Certificate stating the principal amount thereof, the interest rate, and that GSA would pay the Bank such principal and interest in accordance with the terms of the Financial Agreement. Upon receipt of the Interim Certificate, the Bank is required to wire transfer to the account of American as trustee, the principal amount thereof.

Thereafter, American disburses the funds as directed by GSA to pay for construction, and title to improvements is vested in American as security for payment of the purchase price. The purchase price is the aggregate of the principal amount of all Interim Certificates purchased by the Bank plus accrued interest to the closing date. On the closing date, GSA delivers to the Bank a Final Certificate in the principal amount of the purchase price bearing interest at the rate required to yield a return to the Bank equal to that the Bank would have received from all Interim Certificates, and the Bank delivers to GSA all Interim Certificates for cancellation.

In January, 1976, GSA, submitted to the two Public Works Committees a revised prospectus (Prospectus No. PAK-76016) for the Courthouse, Federal

Office Building and Parking Facility project in Anchorage, Alaska. This revision was approved by the Senate Public Works Committee on February 4, 1976, and the House Public Works and Transportation Committee on March 3, 1976.

The description of the proposed project in the original prospectus considered and approved in 1972 stated that:

"The project contemplates the construction of a Federal building, under a Purchase Contract Agreement, to provide space for the U.S. Postal Service, U.S. Courts, and other Federal agencies, and an adjacent parking facility on a site to be acquired.

"Approximate Area: Gross - 1,037,000 Sq. Ft. Net - 803,000 Sq. Ft."

The estimated cost of financing at that time was as follows:

- "a. Cost of Site, Design, and Building \$71,496,000
- "b. Proposed Contract Term 10 to 30 years
- "c. Estimated Rate of Interest on Purchase Contract 7.5 Percent"

The "synopsis" of the revised prospectus provides that:

"This prospectus supersedes and replaces a prospectus approved previously by the Public Works Committees of the Congress in September 1972. The approved prospectus provided for construction of a Courthouse, Federal Office Building and Parking Facility to contain about 728,000 square feet of space including parking for 725 vehicles at an estimated cost of \$71,496,000 to be finance under a purchase contract agreement.

"As a result of rising costs and inflation, as well as oil pipeline activity peculiar to Alaska, recent design and construction cost estimates prepared between the concept stage and tentative stage of design, indicate available funds are insufficient to complete a project of the scope authorized. A restudy of agency requirements and alternate solutions indicate a continuing need for the project. Certain agencies, originally planned for the structure, will be retained in leased space. As now planned, the new building will provide an occupiable area of 515,000 square feet, instead of the 728,000 square feet approved in 1972, at the originally approved estimated cost of \$71,496,000. A site has been acquired and funds are available to proceed with the project upon approval of this prospectus. The new building is planned for completion by November 1978."

Atlanta

On August 30, 1966, GSA submitted for the approval of the two Public Works Committees of the Congress, the Prospectus for Proposed Construction and Alteration Under the Public Buildings Act of 1959 for three projects in Atlanta, Georgia, including Project Number 10-0121, designated "The Courthouse and Federal Office Building." The prospectus was approved by the Senate Public Works Committee on September 20, 1966, and by the House Public Works Committee on October 6, 1966.

The Courthouse and Federal Office Building had not been constructed by the time Pub. L. No. 92-313 was approved and so it became one of the 63 previously authorized building projects for which the use of purchase contracting was authorized by section 5(e) of that Act. See H.R. Rep. No. 92-989, supra.

Subsequently, GSA entered into a Public Buildings Purchase Contract and Trust Indenture dated as of August 1, 1973, with the First National City Bank (National) to provide, inter alia, for the initial financing of 17 approved projects, including the Courthouse and Federal Office Building in Atlanta, Georgia. Pursuant to this agreement, PC's series H, in the aggregate principal amount of \$71 million, were issued on August 2, 1973, and sold pursuant to an agreement dated July 26, 1973, between the United States and representatives of purchasers of PCs. The agreement also provided for the issuance of other series of PC's as additional funding became necessary for subsequent phases of construction. (Series I and J were subsequently issued and sold under the agreement.) Proceeds from these sales were deposited with National as trustee and disbursed at the direction of GSA to pay for the construction of improvements on 15 of the 17 projects. Title to such improvements vested in the trustee as security for payment of the purchase price. The Courthouse and Federal Office Building in Atlanta, Georgia, was one of the two projects for which no proceeds from the sale of PCs were used to finance construction of improvements.

In April, 1975, GSA submitted to the two Public Works Committees a "Prospectus to Amend A Public Building Project Authorized Under the Public Building Act of 1959, As Amended (No. PCA-75015)," for the Richard B. Russell Federal Building (formerly Courthouse and Federal Office Building). This amendment to the prospectus was approved by the Senate Public Works Committee on July 31, 1975, and by the House Public Works and Transportation Committee on November 20, 1975.

A First Amendment to the Public Buildings Purchase Contract and Financing Commitment dated June 26, 1975, between the United States and the Federal Financing Bank and a First Amendment to the Trust Agreement and Indenture dated June 26, 1975, between the United States and American Security and Trust Company, were executed and dated February 27, 1976. The purpose of these

two amendments was to include under the amended agreements' coverage two authorized purchase contract projects which had theretofore been covered solely by the Public Buildings Purchase Contract and Trust Indenture dated August 1, 1973, between the United States and National. The projects added were the two for which no improvements had been constructed or paid for by using proceeds from the sales of PCs and included the Richard B. Russell Federal Building in Atlanta. GSA informally advised us that the reason for adding the two projects to the agreements of June 26, 1975, was that it could reduce financing costs and achieve greater ease in operating under the agreement. Further, only two projects were added since no title to improvements had yet vested in National as trustee under their agreement and, therefore, no problem was created concerning the splitting of title in a single improvement among two trustees.

The description on the prospectus for the Atlanta project initially proposed and approved in 1966, stated that this project contemplated "the construction of a Courthouse and Federal Office Building, with air-conditioning, to provide space for the United States Courts and other Federal agencies on a site to be acquired," with an approximate area of 1,125,000 gross square feet and 816,000 net square feet. The estimated maximum cost of the project at that time was stated to be:

"1. Site, design, engineering, supervision, etc.	\$ 3,141,000
"2. Improvements	<u>24,212,000</u>
"Total Estimated Maximum Cost	\$27,353,000."

The amendment to the prospectus approved in 1975 was submitted to:

"* * * increase the authorized maximum limit of cost for the public building project listed below. The gross area of the new building project has not increased beyond authorized limits and its justification, as described in the approved Prospectus for Proposed Construction, has not lessened; however, the maximum limit of cost has increased above the amounts authorized by Section 5(e) of Public Law 92-313."

The amendment indicated that the changes proposed were as follows:

<u>"ESTIMATED COST:</u>	<u>Approved Estimated</u> <u>Maximum Cost</u>	<u>Revised Estimated</u> <u>Maximum Cost</u>	<u>Difference</u> <u>and %</u>
Site	\$ 1,652,000	\$ 2,900,000	\$ 1,248,000 - 76%
Design & Review . . .	1,029,000	3,311,000	2,482,000 - 241%
Management and Inspection	460,000	3,321,000	2,861,000 - 621%
Construction	<u>24,212,000</u>	<u>67,334,000</u>	<u>43,122,000</u> - 178%
TOTAL COST	\$27,353,000	\$77,066,000	\$49,713,000 - 182%

"APPROXIMATE AREAS:

Gross Square Feet	1,125,000	1,213,200	68,200 -	6%
Occupiable Square Feet	703,450	794,600	91,150 -	13%."

The revised estimated maximum cost is exclusive of financing and other costs attributable to the purchase contract method of acquisition.

III

The basic issue to be resolved concerns the applicability to the Anchorage and Atlanta projects, as described above, of the statutory prohibitions against "entering into" or "executing" purchase contracts after June 30, 1975. GSA's views on the effect of the statutory prohibitions are set forth in a letter of August 8, 1975, from its General Counsel to the Majority Counsel of the House Committee on Public Works, which reads in part as follows:

"We consider a purchase contract to have been 'entered into,' for purposes of subsection 5(g), when all actions have been taken that are necessary to create those legal obligations required to accomplish the purchase contract. In the case of a 'package system' purchase contract (under which system a single contractor finances and constructs the project), those necessary actions are comprised of (1) the timely submission to GSA of an acceptable bid, on the Contract to Finance, Construct and Sell, by a responsive and responsible bidder, and (2) the timely acceptance by GSA of the bid of the lowest responsive and responsible bidder. In the case of a 'dual system' purchase contract (under which GSA contracts separately for construction and financing) where the financing is derived from sources other than the Federal Financing Bank, the necessary actions are comprised of (1) the timely submission to GSA of an acceptable bid to purchase the series of GSA participation certificates which is being issued and sold to finance a project or group of projects, in whole or in part; (2) the acceptance of such bid by GSA; and (3) the execution, by the GSA contracting officer and an official of a trustee bank, of a Public Buildings Purchase Contract and Trust Indenture, covering the project or group of projects and under which indenture the series of participation certificates is being issued and sold. In the case of a 'dual system' purchase contract under which financing is being provided by the Federal Financing Bank, the necessary actions are comprised of (1) the execution, by the GSA contracting officer and an authorized representative of the Federal Financing Bank, of a Public Buildings Purchase Contract and Financing Commitment, and (2) the execution, by the GSA contracting officer and an officer of a trustee bank, of a related Trust Agreement and Indenture.

"With respect to any project otherwise duly authorized under section 5 of the Amendments, but which has not been the subject of a purchase contract entered into on or before June 30, 1975, it is clear that, pursuant to subsection 5(g), the authority to enter into a purchase contract covering any such project expired at midnight, June 30, 1975. It is also clear that the subsection would not permit a pre-existing purchase contract to be amended after June 30, 1975, to include a new project not covered under such pre-existing purchase contract.

"With respect, however, to purchase contracts which have been 'entered into' on or prior to June 30, 1975, subsection 5(g) does not, in our opinion, prohibit the execution, after June 30, 1975, of such amendments of, supplements to, or other documents related to, such pre-existing purchase contracts as are necessary fully to effect the purpose and intent of such pre-existing purchase contracts and as are in keeping with the purpose and intent of section 5 of the Amendments. Such permitted amendments, supplements, and other documents, would include, but not necessarily be limited to, the following:

"(1) A supplemental indenture, provided for in a pre-existing indenture, providing for the issuance and sale of an additional series of participation certificates to complete the contemplated financing of a project or group of projects financed in part by the prior issuance and sale of one or more series of participation certificates under the indenture thus supplemented.

"(2) A supplemental indenture, provided for in a pre-existing indenture, providing for the issuance and sale of an additional series of participation certificates to finance previously unforeseen costs of a project or group of projects previously financed in part, subject to the prior condition that all necessary revised prospectus approvals have been obtained.

"(3) Interim and Final Certificates of Obligation, to be executed and delivered to the Federal Financing Bank pursuant to pre-existing Public Buildings Purchase Contracts and Financing Commitments between GSA and the Bank.

"(4) An amendment to a pre-existing Contract to Finance, Construct and Sell effecting an increase in the Purchase Price to cover increased costs, or changes in the scope of the project, subject to the prior condition that all necessary revised prospectus approvals have been obtained."

While it is not necessary for us to pass upon all specific aspects thereof (including the four listed items), the above-quoted general analysis of when a purchase contract has been "entered into" for purposes of the statutory cutoff seems correct in relation to the "package system" and the original "dual system" methods of purchase contracting. However, in the case of the modified "dual system" of purchase contracting for phased construction--the method used for the two projects here involved--it is less clear that execution of the initial purchase contract and trust indenture constitute "all actions * * * that are necessary to create those legal obligations required to accomplish the purchase contract," at least with respect to individual construction projects.² Although the latter method includes designation of particular construction projects, financing under the purchase contract and indenture is essentially independent of these particular projects. Thus section 2.02 of the respective purchase contracts covering the Anchorage and Atlanta projects states in part:

"Construction of Improvements: Title to Improvements.

The GSA intends to proceed to acquire title to each of the Sites not owned by it at the date hereof, to enter into Construction Contracts from time to time, and to proceed to cause the Improvements to be constructed on the respective sites. Nothing herein shall be deemed to limit the right of the GSA to alter or amend the Construction Contracts, including the drawings and specifications, to terminate such contracts or to enter into new Construction Contracts relating to the same Projects. * * *

In fact, the Atlanta project was in effect transferred from one purchase contract to another. See discussion infra.

Moreover, since project design and construction, as well as necessary financing, proceed in phases under the modified dual system, projects designated in a purchase contract and indenture executed before June 30, 1975, may not actually have been initiated or even placed under design or construction contracts by that date. With respect to projects in this category--

* Although the statutory cutoffs are written in terms of purchase contracts as such, rather than the actual projects financed thereunder, GSA recognizes--correctly, in our view--that the cutoff operates in practice on the basis of projects as well. Thus GSA concedes that a project which was not subject to a purchase contract existing on June 30, 1975, could not be added to a preexisting purchase contract after that date.

which apparently include the Anchorage and Atlanta projects—it seems that GSA would have no legal obligations as of June 30, 1975, to proceed with them.

Nevertheless, we believe that GSA's basic approach of considering the statutory cutoff inapplicable to projects designated for construction under purchase contracts and indentures initially executed by June 30, 1975, is reasonable and in accord with the purposes of the relevant legislation.

The legislative history of section 5 of Pub. L. No. 92-313, discussed previously, indicates that the primary intent underlying the purchase contract authority was to assure construction of numerous urgently needed buildings. As GSA's General Counsel stated in his opinion to the House Public Works Committee:

"* * * It may be concluded that the Congress intended that all actions be taken which would be necessary fully to effect the intent of the Congress that these projects be financed and built in a manner which would best serve the interests of the Government and as economically as reasonably possible. Such actions would include the execution of such documents as would be required economically to complete the contemplated financing of such projects or to effect such changes in the cost or construction scope as would be in the best interest of the Government subject, of course, to the prior approval of the Committees on Public Works in appropriate circumstances. The same observations may be drawn even more forcefully from the fact that the Congress, in subsection 5(f) of the Amendments, authorized the Committees on Public Works to approve new purchase contract projects at any time prior to June 30, 1975. To conclude that the Congress intended that no necessary revisions to such original 63 projects, or to new projects approved under subsection 5(f), could be made after June 30, 1975, when valid purchase contracts covering such projects had been entered into prior to that date, is to presume an intention on the part of the Congress that the best interests of the Government could not be accommodated within the otherwise broad authority contained in section 5. Such a conclusion, in our opinion, is unsupportable."

GSA determined that the modified dual system for financing and construction of projects was the most efficient and economical method of accomplishing the purposes of section 5; and our Office sustained GSA's authority in this regard. As noted previously, the modified dual system necessarily involves a series of actions over time. Where projects are approved for construction and designated for financing under purchase contracts and

indentures executed by June 30, 1975, phases of financing and construction occurring after June 30, 1975, are in substance contemplated by and supplemental to the original documents. Certainly it is reasonable to conclude that Congress intended GSA to carry a project through to completion, and the fact that a project takes a long time to finance and build should not serve to defeat the intent of Congress that such project be constructed.

Thus, in our view, the two projects here in question are not subject to the statutory cutoff since both were covered by purchase contracts entered into or executed as of June 30, 1975.

IV

It remains to consider whether the specific modifications with respect to the Anchorage and Atlanta projects operate to remove them, in substance, from coverage under purchase contracts entered into by June 30, 1975.

As noted previously, the Atlanta project had initially been designated for construction under a purchase contract and indenture entered into in 1973. However, in February 1976 the project was transferred to another purchase contract (which had initially been entered into as of June 26, 1975), in order to reduce financing costs and achieve greater ease in operation. Since the Atlanta project had been covered by a purchase contract existing prior to June 30, 1975, its transfer to another preexisting purchase contract after that date does not appear significant in terms of the statutory cutoff. The other issues concerning these projects involve modifications in the projects themselves which required approval of revised prospectuses after June 30, 1975.

Under subsections 5(e) and (f) of Pub. L. No. 92-313, supra, purchase contract authority applies only to projects which received prospectus approval by the Senate and House Committees on Public Works pursuant to section 7 of the Public Buildings Act. However, subsequent amendment or revision of the prospectus does not in and of itself constitute a revocation of prior project approval. While an amendment or modification to a prospectus may bring about changes in a project, it may also indicate that a particular project, already approved and in existence, should continue. Thus a "new" project is not necessarily created by such action. The statutory cutoff date for purchase contracting seems to be directed at preventing the placing of any project not previously covered by a purchase contract under a purchase contract after June 30, 1975, not at halting action on projects already covered by purchase contracts. Thus the question of the effect of an amendment or modification of a prospectus in determining whether such project might still be considered to be covered by a purchase contract executed prior to June 30, 1975, can only be answered by considering the nature and degree of such changes and not by the fact that they took place after June 30, 1975. If the project as amended or modified is substantially the same as the project initially

placed under purchase contract, then, in our opinion, it is not in violation of the prohibitions set forth above. However, if the amendment or modification substantially changes the project from the one originally considered and approved, it thereby creates a "new" project, and it would be in violation of the prohibitions set forth above. Naturally, such a question is one which can only be determined on the specific facts involved on a case-by-case basis.

We are satisfied that the modifications relating to the Anchorage and Atlanta projects do not make them "new" projects in this sense. With respect to the Anchorage project, rather than request an increase in the estimated maximum cost necessary to build the entire project as originally approved, GSA sought through the revised prospectus and was authorized to make a reduction in the size of the project commensurate with the previously authorized amount. Thus the project was diminished in square footage by 36 percent from the original estimate and by 30 percent from the original design. However, the intended purpose and justification for the project has remained unchanged, except to the extent that the reduction in project size affects the ability of the Government to fully consolidate its agencies in one location. While the space reductions are large, in our opinion, the overall project remains substantially the same as the one originally approved.

In the case of the Atlanta project, a revised prospectus was submitted for the purpose of revising upward the original maximum cost estimate. We have been informally advised that the increase in the revised estimated maximum cost is attributable to the inflation of construction costs between the initial project approval in 1966 and 1975. Moreover, aside from increased costs, the nature of the project in size and purpose is, with a minor change, the same as that approved in 1966.

In sum, it is our opinion that the June 30, 1975, statutory cutoff for purchase contracting does not, under the circumstances described herein, preclude completion of the Anchorage and Atlanta projects.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States