Information for the House Committee on Oversight and Government Reform and its Subcommittee on Transportation and Public Assets

Delegated Leasing Authority: Review of Selected Leases and Information on GSA's Changes to Delegation Procedures

Contents

- Introduction
- Objectives
- Scope and Methodology
- Summary
- Background
- Findings for Objective 1
- Findings for Objective 2

Introduction

- The leasing of real property represents a large expenditure for the federal government. Agencies spend billions annually to lease many types of properties, ranging from office space and laboratories to aircraft hangars and boat docks.
- The General Services Administration (GSA) leases space on behalf of many federal agencies, but some agencies also lease space and have their own real property management offices that perform this function, among other things. The legal authority that allows agencies to lease space is either provided directly to the agency by statute or by GSA through a delegation of its leasing authority.

Introduction

- There are previously identified problems with these delegations of leasing authority. For example, in 2007, we and the GSA Office of Inspector General (OIG) reported on problems with GSA's management and oversight of these delegations.[1] In 2012, GSA reported it found instances of the Bureau of Indian Affairs not meeting delegated authority requirements, findings subsequently confirmed by the Department of the Interior (DOI) OIG.[2]

[1]GAO, *General Services Administration: Improvements Needed in Managing Delegated Authority of Real Property Activities*, GAO-07-1000 (Washington D.C.: Sept. 5, 2007) and GSA, Office of Inspector General, *Review of Public Buildings Service's Delegations of Authority to Lease Space*, Report Number A060082/P/6/R07004 (Aug. 24, 2007).

[2]U.S. Department of the Interior, Office of Inspector General, *Bureau of Indian Affairs: Real Property Leases*, Report Number ER-IS-BIA-0011-2013 (January 2014).

Introduction

- You asked that we review the roles of GSA and federal agencies in managing federal real property.
- We focused our review on delegations of leasing authority because this decentralized approach to leasing means that both GSA and agencies have similar roles and responsibilities. We explored whether actions by agencies in this decentralized approach met certain legal requirements given the previously identified problems.

Objectives

We addressed the following questions:

1. For selected leases, to what extent did the agencies comply with certain requirements of GSA's delegated leasing authority?
2. How, if at all, has GSA addressed problems identified in 2007 by GAO and the GSA OIG regarding GSA's management and oversight of delegations of leasing authority?

Scope and Methodology

- We reviewed prior relevant research and information on federal real property management. We also held preliminary discussions with federal agencies (the Employment and Training Administration, the Federal Aviation Administration, the National Oceanic and Atmospheric Administration, and the Transportation Security Administration) to learn about leasing practices and to help guide our work.
- We used a case-study approach for our review of leases to provide illustrative examples of selected federal agencies' compliance with real property management statutes and regulations; information from case studies cannot be generalized to all federal agencies.
- To select case study agencies, we focused on civilian agencies with leases for buildings within the United States obtained through a delegation of authority from GSA. We reviewed data from the fiscal year 2014 Federal Real Property Profile (FRPP) and identified 14 agencies with at least 30 leases acquired through a GSA delegation of authority and at least 10 leases acquired through GSA.[3] We included the GSA leases to ensure the agencies had experiences with GSA other than just delegations.
- We judgmentally selected 4 of these agencies. We sought to select agencies from a range of departments and to achieve a range of the number of leases per agency.
  - Animal and Plant Health Inspection Service (APHIS) in the United States Department of Agriculture (USDA)
  - Natural Resources Conservation Service (NRCS) in USDA
  - United States Fish and Wildlife Service (FWS) in DOI
  - National Institutes of Health (NIH) in the Department of Health and Human Services (HHS)

[3]We are aware of potential data quality problems with FRPP. We determined that the data are sufficiently reliable for the purpose of providing basic information on the agencies that lease buildings through a delegation of authority and through GSA. Fiscal year 2014 data were the most recently available at the start of our review.

Scope and Methodology

- From these agencies, we requested 61 and reviewed 45 leases that were executed using a delegation of leasing authority from fiscal years 2011 through 2015.[4]
- We assessed each lease against a selected set of requirements from statute, regulation, or the corresponding GSA delegation letter and determined lease compliance with:
  - square footage limits,
  - lease term limits,
  - prospectus limits,
  - scope of contracting officer's authority, and
  - property location.
- We selected these requirements because of past findings of violations of these requirements and because GSA has stated that it has made changes to address such violations. In addition, these requirements are common to most leases and can be assessed.
- To identify any GSA actions to address problems, we reviewed GSA guidance and other relevant documentation and interviewed GSA officials.

[4]We did not review 16 of the requested leases because NRCS could not provide documentation for 7leases which it characterized as cooperative agreements; 7others from NRCS were related pieces of another provided lease; one lease provided by NIH did not meet our selection criteria because it was not in effect during the requested time period; and FWS could not locate one of the requested leases.

Summary

- We determined that 42 of 45 leases were in compliance with selected criteria. FWS and DOI have not provided information that would allow us to make a determination of compliance for 3 leases. We determined that these 3 FWS leases met 4 of the 5 selected criteria. For the remaining criterion, we raised questions about the scope of the contracting officers' authorization to execute these leases and asked FWS and DOI officials to provide clarifying information, but we have not received the information we need to come to a legal determination. When providing comments on this report, DOI officials asserted that these 3 leases were executed under the "assumed proper authority."
- GSA has made organizational, policy, and data system changes to address the problems identified by GAO and GSA's OIG with its management and oversight of delegations of authority.

Background: Overview of How Federal Agencies Lease Real Properties

Source: GAO. | GAO-16-716R

- Not all agencies can use all of these ways to lease property. An agency may use one, two, or all three ways, depending on its legal authority.

[a] Independent leasing authority refers to the authority to acquire leased space independent of GSA. Congress has provided agencies with this authority either through their enabling legislation or through an appropriations act. A provision in an appropriations act only applies to the fiscal year of the appropriation, unless the appropriation includes language indicating it is to continue into future fiscal years. GSA reserves the right to accept or reject requests to perform leasing functions by agencies with independent leasing authority. See 41 C.F.R. § 102-73.85

Background: Leasing Through GSA

- GSA has authority to lease real property for use by federal agencies. Agencies formally request space from GSA.
- GSA first seeks to meet agencies' space needs using federally owned properties but may also lease space from the private sector, which GSA in turn provides to agencies through an occupancy agreement.
- GSA handles most aspects of the leasing process, but agencies typically have their own real property staff who work with GSA.
- GSA is limited to lease terms of up to 20 years.
- When the annual cost of a lease exceeds a statutory threshold, which was $2.85 million for fiscal year 2014, GSA must submit a prospectus of the lease for congressional approval. A prospectus is to provide basic information on a proposed lease, including the purpose, cost, and location.

Background: Leasing Using Delegations of Authority

- GSA may delegate its leasing authority to a federal agency, and the agency would then perform the functions necessary to acquire leased space.
- GSA grants three types of delegations, depending on the intended use of the leased space (see table 1 on the next page). Some types of delegations provide approval on a lease-by-lease basis. Other types of delegation authorizations are provided to agencies in regulation.

Table 1: Three Types of Delegations of Leasing Authority

Delegation Type	Definition
General Purpose	Types of space that might be needed by almost any agency, such as office or warehouse space
Categorical	Specific types of space that might be needed by multiple agencies, such as for antennas, depots, or docks
Special Purpose	Types of space designated for 13 specified agencies, such as laboratories for HHS or office space in or near stockyards for USDA

Source: GAO analysis of GSA documentation. | GAO-16-716R

Background: GSA Delegation Management and Oversight

- Agencies are responsible for compliance with all applicable laws, executive orders, regulations, and Office of Management and Budget Circulars when using the GSA leasing delegations. Agencies must also conform with the requirements of any delegation approval from GSA. The requirements can include limits on square footage or the length of the lease.
- GSA is responsible for oversight of the delegation of authority program and may review an agency's performance, deny agency requests for delegations, and revoke delegations.

Objective 1: We Found 42 of 45 Leases Were In Compliance with Selected Criteria

- We assessed a total of 45 leases for compliance with selected requirements in statute, regulation, or GSA delegation. The requirements for each type of delegation vary, so not all requirements were applicable to all leases.
  - We found 42 leases were in compliance with selected criteria, as shown in table 2 on the next page.
  - FWS and DOI have not provided information that would allow us to make a determination of compliance for 3 leases. We determined that these 3 FWS leases met 4 of the 5 selected criteria. For the remaining criterion, we raised questions about the scope of the contracting officers' authorization to execute these leases and asked FWS and DOI officials to provide clarifying information, but we have not received the information we need to come to a legal determination. When providing comments on this report, DOI officials asserted that these 3 leases were executed under the "assumed proper authority."

Table 2: Number of Reviewed Leases that Complied with Selected Criteria

Agency	Reviewed Leases	Compliant Leases	Insufficient Information
APHIS	15	15	0
FWS	9	6	3[a]
NIH	5	5	0
NRCS	16	16	0
Total	45	42	3

Source: GAO analysis of Animal and Plant Health Inspection Service (APHIS), Fish and Wildlife Service (FWS), National Institutes of Health (NIH), and Natural Resources Conservation Service (NRCS) leases. | GAO-16-716R

[a]FWS did not provided information that would allow us to make a determination about a criterion involving the use of a warranted contacting officer for 3 leases.

Objective 2: Previously Identified Problems with GSA's Management and Oversight of Its Delegations of Authority

In 2007, GAO and the GSA OIG issued reports identifying problems with GSA's delegations of authority program,[6] as previously discussed, including:

- GSA did not have complete or consistent data on leasing delegations.
  - Two offices within GSA collected separate sets of data on leasing delegations, and there was disparity between the two sets of data.
  - Agencies did not submit required semi-annual performance reports to GSA on use of the lease delegation on a regular basis.[7]
  - GSA did not always have current written policies and procedures for managing leasing delegations.

[6]GAO-07-1000 and GSA, OIG A060082/P/6/R07004.
[7]Federal Management Regulation Bulletin 2005–B1, *Delegations of Lease Acquisition Authority—Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations* (May 25, 2005), available at http://www.gsa.gov/graphics/ogp/FMR_Bulletin2005-B1_Updated_R2-w-x6-n_0Z5RDZ-i34K-pR.doc.

Objective 2: Previously Identified Problems (cont'd.)

- Agencies leased property they were not authorized to and in ways that did not comply with GSA requirements, including
  - exceeding the approved square footage amounts;
  - potentially exceeding prospectus limits without appropriate approvals; and
  - using unauthorized contracting personnel to execute contracts on behalf of the Government.
- GSA did not always use mandated cost-effectiveness criteria when deciding to delegate authority for certain delegations.

Objective 2: Previously Identified Problems (cont'd.)

- GAO and GSA OIG made recommendations to GSA in the 2007 reports, including:
  - Update the guidance for managing delegations.
  - Establish threshold limits for the delegation of GSA's lease authority to other agencies.
  - Implement management controls over delegated leases that are commensurate with risks associated with the delegations.
  - Determine the number of leases awarded for the three types of delegations.

Objective 2: GSA Made Organizational, Policy, and Data System Changes to Address Previously Identified Problems

- GSA centralized management and oversight of delegations of leasing authority and introduced process management software, currently GSA's Real Estate Exchange (G-REX) system, to better manage delegations.[8]
- With these changes, GSA was able to provide information on the number of delegations and reported that it annually approved an average of 1,195 general purpose delegations from 2011 to 2015. GSA also said that agencies reported leasing 31 times under a special purpose delegation and 74 times under a categorical delegation, in fiscal year 2015.[9]

[8]According to GSA, G-REX is a management software application that organizes and simplifies the delegation application and leasing processes.
[9]Starting in April 2014, agencies are required to report their use of special purpose and categorical delegations to GSA.

Objective 2: GSA Made Organizational, Policy, and Data System Changes to Address Previously Identified Problems

- GSA updated guidance in 2007 and 2014 that introduced new requirements for agencies using delegations of authority.
  - For general purpose delegations or special purpose delegations of 2,500 or more square feet, agencies must:
    - obtain GSA approval prior to leasing; and
    - provide lease documentation to GSA within 30 days of award.
  - For categorical delegations or special purpose delegations less than 2,500 square feet, agencies must report their use to GSA.
  - Limited general purpose delegations of authority to leases under 20,000 square feet.

GAO

GAO on the Web
Web site: http://www.gao.gov/

Congressional Relations
Katherine Siggerud, Managing Director, siggerudk@gao.gov
(202) 512-4400, U.S. Government Accountability Office
441 G Street, NW, Room 7125, Washington, DC 20548

Public Affairs
Chuck Young, Managing Director, youngc1@gao.gov
(202) 512-4800, U.S. Government Accountability Office
441 G Street, NW, Room 7149, Washington, DC 20548

Copyright
This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.