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United States General Accounting Office

GAO

Briefing Report to the Honorable
Mac Sweeney, House of Representatives

June 1988

LEASING OFFICE SPACE

FAA's Denver Solicitation May Have Unduly Restricted Competition



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

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June 28, 1988

The Honorable Mac Sweeney
House of Representatives

Dear Mr. Sweeney:

In your September 15, 1987, letter, you asked that we review the leasing of office space by the Federal Aviation Administration (FAA) at Stapleton International Airport in Denver, Colorado, to determine whether there were any violations of government regulations. FAA plans to move several of its Denver offices, now located in two buildings adjacent to the airport, to a building annexed by the airport.

We briefed you on April 11 and May 9, 1988, and were requested to summarize and formally transmit the information presented in the briefings. This report contains the points discussed in the briefings, supplemented with further details.

RESULTS IN BRIEF

Because FAA's space requirements at Stapleton Airport exceeded its general authority to lease up to 10,000 square feet of space without obtaining the approval of the General Services Administration (GSA), FAA requested and obtained a "delegation of authority" from GSA to lease 32,000 square feet of space at the airport. The delegation of authority required FAA to comply with GSA's acquisition and property management regulations.

We found that FAA's solicitation to acquire space on the grounds of the airport may have unduly restricted competition, since the record does not demonstrate that the agency's actual need is for space on the airport grounds. We recommend that FAA review its space needs at Stapleton to determine whether its actual requirements are for space near the airport. We suggest that FAA consider a resolicitation that provides offerors with space located on or near Stapleton Airport an opportunity to compete and an indication, through evaluation criteria, of the weight to be accorded proximity to the airport. A detailed discussion of FAA's actions are contained in the appendix.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to review the facts surrounding FAA's space acquisition process for its Denver offices and to determine if FAA adhered to government regulations. We obtained and reviewed FAA and GSA records relating to this space acquisition, as well as applicable FAA and GSA regulations, guidelines, and policies. We compared what FAA did to the requirements in the regulations. We also inspected the existing and proposed buildings and interviewed FAA officials in Denver, Colorado, Seattle, Washington, and Washington, D.C.; GSA officials in Denver and Washington, D.C.; and city of Denver and Stapleton International Airport officials.

We did our work from December 1987 through May 1988 in accordance with generally accepted government auditing standards.

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As you requested, we did not obtain official comments on this report from FAA or GSA. However, we did discuss our facts with officials in FAA's Northwest Mountain Region, located in Seattle, who generally agreed with them. Copies of this report are being sent to the Secretary of Transportation, the Director of the Office of Management and Budget, the Administrators of FAA and GSA, and other interested parties. If you have any questions on this matter, please call me on (202) 275-8676.

Sincerely yours,



L. Nye Stevens
Associate Director

BACKGROUND, CHRONOLOGY OF EVENTS, AND ANALYSISBACKGROUND

The Federal Aviation Administration (FAA) maintains the following six offices in Denver: Airways Facilities Sector Office, Airport District Office, Aircraft Certification Field Office, Civilian Aviation Safety Field Office, Flight Standards District Office, and the Airways Facilities Installation Field Office. Since 1972, five of these offices have been housed in a building leased by the General Services Administration (GSA). Called Building D, it is adjacent to Stapleton International Airport's east/west runways. One activity--the Airways Facilities Installation Field Office--is housed in Building G, which is also used for storage and is located near Building D. The lease for Building D will expire in June 1988, but the lease contains an option for one additional year. The lease for Building G will expire in May 1989. The leases cost about \$288,000 annually.

For several years, local and regional FAA officials have sought to collocate the Denver offices on or near Stapleton International Airport. FAA policy, reflected in FAA Order 4420, Space Acquisition Handbook, calls for collocation of offices when economically justified and operational requirements can be satisfied, adding that first consideration be given to space on airport grounds. The Handbook also says that space for technical activities not directly related to air traffic control, navigation facilities, or their supporting elements shall be located on airport grounds, where possible. According to an FAA headquarters official, the purpose of this on-airport policy is to ensure that FAA offices are conveniently located to its aircraft community "clients," who are generally located at airports.

FAA considers Building D to be unsuitable space. In a December 1985 briefing document, FAA's Northwest Mountain Region officials, headquartered in Seattle, Washington, said that for the past several years, the condition of Building D had been deteriorating and had reached the point where it was no longer considered suitable space for the Denver FAA employees. An FAA manager in Denver told us that although the current owner recently had completed many needed maintenance items in Building D, including the installation of a new roof, the building needed

further improvements and renovations to make it suitable. FAA informed GSA in June 1986 that Building D was substandard, poorly constructed, and lacked adequate environmental controls.

Our discussions with FAA regional staff indicate that FAA's problems with Building D concern the deteriorating nature of the building, not its location. Nonetheless, the FAA Seattle region informed GSA in June 1986 that while Building D was located adjacent to Stapleton Airport, the building was about 4 miles from the main terminal area, did not have direct access to the aviation public, and was not on a bus line.

Under GSA's Federal Property Management Regulations (FPMR) Section 101-18.104-1[1][2], FAA is authorized to lease up to 10,000 square feet of space at airports without obtaining GSA approval. This authority covers general purpose office space in buildings under the jurisdiction of public or private airport authorities. To lease office space in excess of 10,000 square feet, FAA must obtain a specific delegation of authority from GSA.

CHRONOLOGY OF EVENTS

In 1985 GSA and FAA conducted market surveys to identify suitable lease space at or near Stapleton Airport in preparation for renegotiating the lease for Building D, which was to expire on June 30, 1986. GSA ran an advertisement in a Denver newspaper to locate space within 1 mile of the airport. According to FAA's contracting officer in Seattle, the only existing building that "looked halfway decent" was located under a freeway, making access to the airport difficult. According to FAA, in response to GSA's advertisement, Stapleton Airport expressed an interest in constructing a new building for FAA on the airport. However, FAA records indicated that FAA contacted Stapleton officials in August 1983 and December 1984 to determine if the airport had space available or would be willing to build an office facility to lease to FAA.

FAA's market survey sought space within 5 miles of the airport terminal building. According to the contracting officer, the majority of the space found was warehouse-type space, and all of the buildings were in worse condition than Building D. After these surveys were done, GSA renegotiated its lease with the owner of Building D. The lease will expire in June 1988, with 1 additional option year. No market surveys have been done since 1985.

On January 30, 1986, FAA's Northwest Mountain Region forwarded a Space Project Document to FAA headquarters requesting a delegation of authority from GSA to lease office and storage space at Denver's Stapleton Airport. In justifying the proposed delegation, the document said that the existing buildings were substandard and did not have direct access to the aviation public. The document also said that

"An on-airport location will make the FAA offices readily accessible to the aviation public and industry, creating a greater aviation public awareness and enhancing the FAA's ability to respond more directly to public needs."

The region informed FAA headquarters that GSA had advertised for replacement space in the vicinity of Stapleton in a Denver newspaper and that none of the responses were considered suitable. The region also informed FAA headquarters that Stapleton Airport expressed an interest in constructing a new building for FAA on the airport in response to GSA's advertisement.

On June 9, 1986, FAA headquarters asked GSA to delegate authority to lease 32,000 square feet of general purpose space at Stapleton Airport. In its request, FAA said that its existing space was not well maintained and that the City and County of Denver were willing to construct a new building on Stapleton for lease to FAA. FAA advised GSA that the new Stapleton Airport space not only would eliminate the current workplace deficiencies, but also would allow consolidation of FAA offices and associated warehouse space in a single building. In its request, FAA explained that it wanted to lease a new building from Stapleton for three reasons: (1) to consolidate its offices, (2) to be closer to the airport, and (3) to get away from unfavorable conditions in Building D. FAA further said that GSA and FAA market surveys had not identified existing suitable facilities at or near the airport.

GSA regional officials in Denver objected to the delegation as being too limited. Nonetheless, on August 15, 1986, GSA granted FAA the authority to lease 32,000 square feet of property at Stapleton Airport, with the proviso that FAA comply with GSA's acquisition and property management regulations.

A GSA central office official told us that GSA did not assess the merits of FAA's request to lease property at the airport. The official said that GSA's rationale for approval was that FAA was in a better position to know what their space and location needs would be.

A GSA headquarters official also advised us that it would not be difficult for GSA to expand the delegation of authority to cover locations near the airport. According to a Denver GSA official, if the area of delineation was not limited to airport grounds, Building D would be in the area of consideration because of its proximity to the airport. He also said the approval of the delegation of authority was based not on Building D's history of problems, but on FAA's position that its offices needed to be on the airport grounds.

On September 22, 1986, FAA issued a "Solicitation for Offers," involving a 10-year lease for a maximum of 33,600 square feet of space within the boundaries of Stapleton Airport. The solicitation was advertised in the Commerce Business Daily and in two Denver newspapers on September 18, 1986. By September 30, 1986, FAA received two responses to its solicitation.

One response was from a commercial developer who proposed to construct a building if he could obtain a site from the airport. In an October 1986 letter, the commercial developer advised FAA that because Stapleton would not provide him a building site, he would be unable to provide FAA an offer.

The second response was from Stapleton Airport itself, which offered a building which was adjacent to the airport but owned by the City and County of Denver.¹ An airport official advised FAA that, while the building was not then located on airport property, annexing it to the airport (transferring it from the General Fund to the Airport) would not be a problem. The official explained that the building then would be located on the airport.

The Stapleton offer proposed using an existing building, constructed in 1974, rather than constructing a new building, even though, in response to GSA's 1985 advertisement, Stapleton had earlier proposed to construct a new building. The city said

¹Stapleton International Airport is also a unit of the Department of Public Works, City and County of Denver. The proposed building was owned by the General Fund of the City and County of Denver.

that it proposed using the existing building until the new proposed airport for Denver opened, rather than for the city to construct a new, more costly building for the short-term needs of FAA. The building offered by Stapleton is located about the same distance from the main terminal as Building D (see fig. I.1). An airport official had also advised FAA that the building needed renovations, including a new air conditioning system.

In December 1986, FAA began negotiations concerning Stapleton's offer to lease the existing building after its annexation by the airport. FAA proposed to contract separately for all services, utilities, and maintenance functions. The rental rate was not determined at that time, and was to be set after the building had been independently appraised and the cost of alterations determined by a consulting firm.

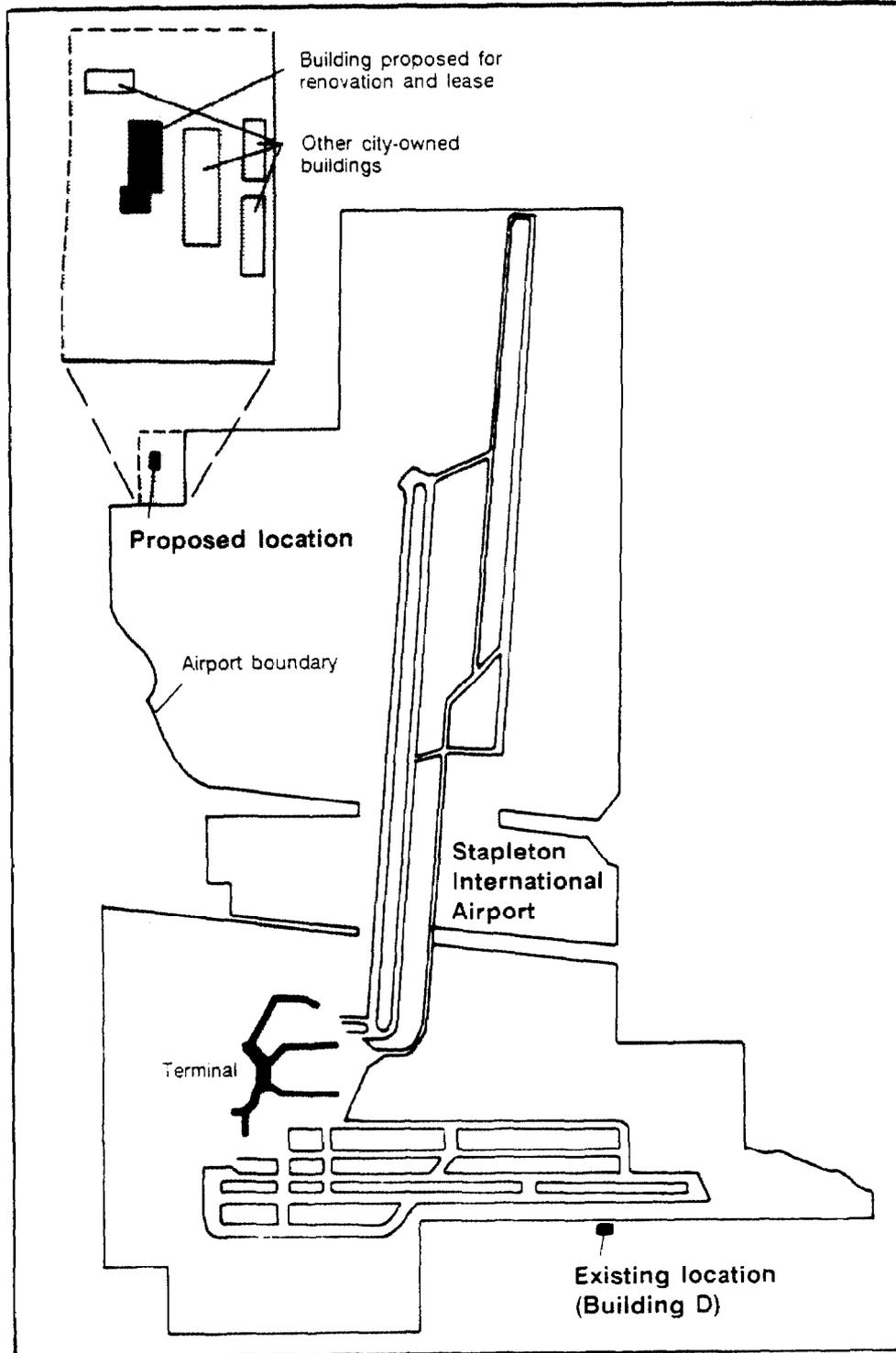
According to FAA regional officials, a contract has not yet been awarded to Stapleton. Negotiations are still going on, although a draft lease agreement has been sent to Stapleton for its review and approval.

Project files show that a Denver FAA manager had identified and called to the attention of regional officials an alternate office building site which he termed "ideal." FAA officials told us that although the space was 5 to 7 blocks from the airport, they did not pursue this alternative because it was off-airport and therefore beyond their delegated authority. FAA's contracting officer did explain, however, that this building was not easily accessible to the airport.

On September 2, 1987, FAA regional officials met with the owner of Building D. The owner of Building D objected that she had no opportunity to bid on the lease even though Building D has over 32,000 square feet of available lease space. FAA regional officials informed her that FAA was only authorized to lease 32,000 square feet of space on Stapleton Airport. The FAA officials also informed the owner that she had not responded to their solicitation when it was offered, they were in the final negotiation phase, and they could not consider any new offers. FAA officials said that her expressed willingness to offer lower rent, improve the building, and cede the land to the airport were not relevant. They also said that Building D was located in Aurora, Colorado, and the city had no need for the land; a new airport was proposed to be constructed northeast of the present site; state law would require the city to obtain approval from 70 percent of the residents of Aurora before it could be annexed; and the city questioned the wisdom of buying land containing a building owned by someone else.

Figure I.1:

Existing and Proposed
Locations for FAA at Denver's
Stapleton International Airport



On December 28, 1987, the City and County of Denver transferred the existing building to Stapleton Airport and, as a result, the property is now considered to be on-airport.

ANALYSIS

FAA requested a delegation to lease 32,000 square feet of general-purpose space at Stapleton Airport.² In its request for a delegation to lease space at the airport, FAA said that its functions are best performed at an airport because of the need for FAA inspectors and specialists to be easily accessible by the aviation industry and the general public. GSA delegated leasing authority to FAA as requested, subject to FAA's compliance with applicable regulations, including the General Services Administration Acquisition Regulation (GSAAR), 48 C.F.R. ch. 5 (1987). Subchapter N of the GSAAR, which concerns the acquisition of leasehold interests in real property, provides that such acquisitions are subject to the competition provisions of Part 6 of the Federal Acquisition Regulation, which requires agencies to achieve full and open competition through the use of competitive procedures. In essence, this means that all sources capable of meeting an agency's minimum needs must be given the opportunity to compete. The issue presented in this case is whether FAA's determination to solicit leasing space on the airport reflected a considered judgment of its minimum needs, or instead, the geographic limitation unduly restricted competition.

We have held that an agency has the primary responsibility for determining its minimum needs. In this regard, however, an agency cannot impose a geographic restriction or select a delineated area that does not represent its actual needs. (Mid-America Industrial Park, Inc., B-217042, Feb. 15, 1985, 85-1 CPD paragraph 204.)

FAA statutory programs are directed to safety and improvement of air commerce. The agency has explained that it needs to be located at airports in order to facilitate access by and to the aviation industry. In its request for a delegation from GSA, FAA explained that "[o]perating in an airport environment not only promotes aviation public awareness, but it enhances FAA's ability to respond more effectively to the public needs."

²FAA's regional counsel in Seattle told us there are several privately owned and leased properties on the airport that could have been offered in response to the solicitation.

FAA's policy in this regard is reflected in FAA Order 4420, Space Acquisition Handbook. Paragraph 107 of the Handbook sets forth the operational standards and guidelines that FAA is to follow in its lease acquisitions. These standards provide that first consideration should be given to space on airports. Paragraph 251 of the Handbook further provides that technical space requirements not directly related to air traffic control, navigation facilities, or their supporting elements shall be located on airports where possible. The FAA official responsible for the Handbook explained that the policy reflects FAA's need for quick access to all points on the airport. The same official also explained that the on-airport policy is not a "hard and fast" rule. Although FAA should be located on airport grounds whenever possible, it is imperative for FAA to consider all other relevant factors, such as cost and feasibility.

Several FAA documents articulate FAA's policy more broadly, saying that FAA facilities should be "on or near the airport." For example, one such document on locating FAA offices explains the need to be located on or immediately adjacent to an airport:

"Inasmuch as the great majority of our program efforts and liaison with the aviation industry is conducted at the airports, we consider it essential that all security field offices be located on or immediately adjacent to the major airports. Accessibility of our field offices to the air carriers and airport operators, and our capability for effective response in the event of a hijacking or other aviation security emergency, would be seriously jeopardized were we forced to locate our field offices away from the immediate airport area."

Further, one FAA regional official explained that "our image as an aviation oriented organization is enhanced by being within the proximity of an airport, which we believe to be a radius of ten miles as the outside limit for such a location." Our review of the record, therefore, suggests that while FAA's policy reflects a strong need to be in close proximity to an airport and convenient to airport activities, it does not require a location directly on airport grounds.

Moreover, our review does not indicate that FAA's regional office in Denver has an actual need to be on the airport. To the contrary, managers for the five FAA activities in Building D told us that it is not essential that their operations be located on the airport to accomplish their mission objectives. FAA's regional counsel in Seattle explained that FAA's need is to be in

close proximity to the aviation industry and to provide access for the flying public. FAA's regional counsel said that FAA does not have a need to be on the airport; rather, their offices need to be close to the cargo ramp area at the airport.³ FAA's contracting officer in Seattle reiterated that while FAA needs to be close to the airport, if there were suitable space across the street from the airport, "it would be perfect." Furthermore, as the FAA official responsible for the Handbook explained, the FAA policy to be on-airport where possible is not a "hard and fast" rule excluding consideration of other relevant factors in local acquisition decisions. On the basis of the record, FAA's regional offices in Denver have not demonstrated an actual need to be directly on the airport.

We accordingly think that the on-airport geographic restriction may have unnecessarily excluded potential competitors who could satisfy a requirement to be on or near the airport. Although FAA argues that there is no suitable space near the airport, the last market surveys were conducted in 1985 and the record indicates that there are several other properties, including Building D, that might well meet, or be modified to meet, FAA's needs. One other such property, located five to seven blocks from the airport, was found by an FAA official in Denver. This property was not given serious consideration by FAA because it was not on the airport. FAA records also showed that a commercial real estate broker advised FAA in October 1987 that the area around the airport had a 17 percent vacancy rate, and offered two properties near the airport, each with 32,000 to 33,000 square feet of space.

We think that FAA should have reconsidered their stated needs when Stapleton responded to the solicitation with a building that was not then located on the airport. The building offered by Stapleton was located adjacent to the airport, 1.7 miles from the cargo ramp and approximately 6 miles from the passenger terminal. The fact that FAA was willing to consider a building that was not then on the airport is consistent with our observation that FAA's apparent need is to be near, not necessarily on, the airport. In our view, proximity to specified

³FAA's regional counsel explained that Stapleton's building is a lot closer to the cargo ramp area than Building D. The new building is 1.7 miles from the ramp, while Building D is located approximately 6 miles from the ramp. Neither building is served by existing means of public mass transportation.

areas of the airport, or the advantages that might result from having an on-airport location, are factors that, if clearly rationalized and articulated, could properly be considered in evaluating competing proposals.

We are not unaware of FAA's objection to the delays that might result from making a change in the solicitation at this point. We note, however, that FAA's negotiations have been underway since December 1986, and that the agency has been able to negotiate a short-term extension of its lease at Building D pending conclusion of that process. Moreover, we find that FAA's apparent failure to ensure that it met the legal requirement for full and open competition in federal procurements outweighs the agency's interest in avoiding any delays.

RECOMMENDATION

We recommend that FAA review its space needs at Stapleton to determine whether its actual requirements are for space near the airport. We suggest that FAA consider a resolicitation that provides offerors with space located on or near Stapleton Airport an opportunity to compete, and an indication through evaluation criteria of the weight to be accorded proximity to the airport.

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