# U.S. GENERAL SERVICES ADMINISTRATION
OFFICE OF INSPECTOR GENERAL

## Review of PBS' Use of Brokerage Contracts for Lease Acquisition Services

Audit Report No. A020135/P/W/R03003

December 11, 2002

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| Reply to Attn of: | Regional Inspector General for Auditing<br>Washington Field Audit Office |
| Subject: | Review of PBS' Use of Brokerage Contracts for Lease Acquisition Services<br>Report Number A020135/P/W/R03003 |
| To: | F. Joseph Moravec<br>Commissioner, Public Buildings Service |

This report presents the results of our audit of PBS' Use of Brokerage Contracts for Lease Acquisition Services. It provides a summary of lessons learned under each of the various contract vehicles, both national as well as regional, and offers three specific recommendations applicable to any future procurement. Specifically, the report highlights the need to define, communicate and control the funding source, including rules that govern redistribution of commission rebates to the regions; the need to correct contract administration deficiencies in the National Capital Region; and the need to develop a comprehensive acquisition plan that addresses the issues raised under the "lessons learned".

If you have any questions regarding this report, please contact myself or Andrew Russoniello, Regional Inspector General for Auditing, at (202) 708-5340.

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# EXECUTIVE SUMMARY

## *Purpose*

This review assessed the manner and extent to which the Public Buildings Service (PBS) utilizes the brokerage contracts in several metropolitan areas and evaluated the internal control environment relative to the task order process.

## *Background*

PBS has used both national and regional brokerage contracts to acquire lease acquisition services. This practice has evolved into an almost self-funding vehicle that permits brokers to collect the commission they would normally be entitled to under a commercial transaction and pass that amount on to GSA. GSA in turn can apply the amount as an offset to costs incurred under the related contract. The national contracts will soon expire and PBS is contemplating a replacement.

## *Results-in-Brief*

Overall we observed that funding deficiencies are driving contract design and use, resulting in the subordination of other critical concerns such as financial accountability, procurement integrity and the perception of fair and open competition. Administrative deficiencies, particularly in the National Capital Region, have produced a permissive environment where the risk of undetected error or abuse is unacceptably high. At the task order level, highly complex or uncertain requirements were found to fit poorly under the fixed price, task order contracts that were most typically employed. And from the perspective of anticipated national workload, the requirements are so varied and dispersed as to seemingly defy a single nationwide solution.

On the other hand, the brokers are said to provide essential assistance, and all of the regional representatives we encountered are in favor of continuing the relationship. Further, there are aspects of a successful model present in several existing vehicles. It seems clear that to remain viable, PBS will need to expand the use of these contracts, as it no longer has the in-house capacity. However, it is also apparent that the change from in-house delivery to purchased services necessitates significant revisions to its control infrastructure. A comprehensive plan that contemplates the legal, financial and procurement elements needed to support outsourced lease acquisition services is prerequisite, as is a sufficient, reliable, and fairly allocated source of funding.

## *Recommendation*

We recommend that the Commissioner of PBS consider the lessons available from current and expired brokerage contracts before committing to a new procurement strategy. Specifically:

1. The source of funding for any future contract must be defined, communicated and controlled. Current practice has resulted in incompatible regional interpretations,

which in at least two regions, has culminating in the unsupportable practice of issuing zero dollar task orders.

2. Contract administration deficiencies in the National Capital Region must be addressed before assigning additional requirements in this region.
3. Assuming the Acquisition Plan to acquire future lease acquisition services is national in scope, the plan should address procurement design options, extent of procurement delegation, accounting and internal control elements as well as the nationwide contract administration requirements such an action will impose. Please refer to *Lessons Derived from Fieldwork Observations,* page 18.

# INTRODUCTION

## *Background*

In January 1997, PBS issued a Request for Proposals for the National Real Estate Services Solicitation. The vehicle was described as "Indefinite Quantity, Indefinite Delivery Contracts by four geographic zones for real estate services, including lease acquisition, requirements development, lease renegotiations, tax appeals and other services". Contract coverage was broken into the East Zone (Regions 1, 2, 3 and 11), South Zone (Regions 4 and 7), Central Zone (Regions 5, 6 and 8) and West Zone (Regions 9 and 10).

Awards were made to two contractors in each zone:

East
- *Spaulding & Slye Services, LP*
- *The Crown Partnership*

South
- *Amelang Management Corporation*
- *Equis Corporation*

Central and West
- *PM Realty Group, Ltd.*
- *Equis Corporation*

There are two main categories of real estate services under the national brokerage contract: full lease acquisition services and menu services. The pricing for the lease acquisition services is based on a percentage of the total contract value. Menu services, listed in the table below, offer separately the various elements of a full lease acquisition, plus some related services. Antenna outleasing, facility surveys, and janitorial audit services were also available under some of the contracts.

The contract had a three-year base term with two one-year options. Notice to proceed was issued in September 1997. Options were only exercised in the East and South Zones, with expiration scheduled for September 2002.

| Menu Item Services | Pricing |
|---|---|
| Space Programming | Per usable square foot |
| Post-Award Services | Per usable square foot |
| Lease Alterations | Per usable square foot |
| Fire & Life Safety Survey | Per usable square foot |
| Outleasing | Per usable square foot |
| Lease Extension | Per task |
| Market Analysis | Per task |
| Market Survey | Per task |
| Develop Solicitation for Offers | Per task |
| Review and Evaluate Offers | Per task |
| Negotiate Offers | Per task |
| Prepare Lease Documents | Per task |
| Succeeding Lease | Per task |
| Real Estate Tax Adjustment | Per 25 leases per block |
| Operating Cost Escalations | Per 25 leases per block |
| Real Estate Tax Appeals | To be negotiated |
| Renegotiation of Existing Lease | To be negotiated |

**Figure 1 (source: review of zonal contract file)**

The annual minimum ordering guarantees and maximum ordering limits varied by zone. The East Zone minimum was $300,000 with a maximum of $3,000,000. The South Zone minimum was $250,000 with a maximum of $2,000,000. The Central Zone offered a minimum of $100,000 with a maximum of $1,000,000. The West Zone had a $250,000 minimum with a $2,000,000 maximum. Amounts are all per contract, per year.

The contracts were significantly modified in early 2000 when brokers were instructed to recapture the brokers' commission fee on behalf of PBS. This commission had previously been considered unavailable for Government collection. Instead, brokers had been instructed to ensure that lessors reduced the rental rates by the value of the non-collected commission, but this approach was not considered fully effective. The issue was brought forward to GSA legal counsel for consideration. Counsel determined that PBS could accept a commission fee collected through a broker as a rebate, and retain the use of those funds, up to the amount of costs actually incurred.

Many of the PBS regional offices supplemented the national brokerage contracts with their own regional contracts. Currently, there are regional brokerage contracts in Regions 4, 5, 7, 8, 9, 10 and 11. Many are similar in structure, offering both full lease acquisition services and menu services with a similar pricing structure.

| Reg. | Contractor | Effective Date | Contract Term | Minimum |
|---|---|---|---|---|
| 4 | JMG Contractors | February 2000 | 1 year, 4 option years | $72,500/yr. |
| 7 | Amelang | September 2000 | 2 year, 3 option years | $200/yr. |
| 7 | Spaulding & Slye | February 2002 | 1 year, 4 option years | $200/yr. |
| 7 | Julien J. Studley | February 2002 | 1 year, 4 option years | $200/yr. |
| 9 | Crown Partnership | September 2000 | 1 year, 4 option years | $2,000/yr. |
| 9 | Kabler/Robbins | September 2000 | 1 year, 4 option years | $2,000/yr. |
| 9 | Wallace & Steichen | September 2000 | 1 year, 4 option years | $2,000/yr. |
| 9 | Colliers International | September 2000 | 1 year, 4 option years | $2,000/yr. |
| 9 | Equis Corporation | September 2000 | 1 year, 4 option years | $2,000/yr. |
| 11 | Crown Partnership | October 2001 | 1 year, 4 option years | $10,000/yr. |
| 11 | Spaulding & Slye | October 2001 | 1 year, 4 option years | $10,000/yr. |
| 11 | Capitol CREAG | October 2001 | 1 year, 4 option years | $10,000/yr. |
| 11 | Trammell Crow | October 2001 | 1 year, 4 option years | $10,000/yr. |
| 11 | Equis Corporation | October 2001 | 1 year, 4 option years | $10,000/yr. |

**Figure 2 (source: review of regional contract files)**

## *Objective, Scope and Methodology*

The objective for this review was two-fold. First, we assessed the manner and extent to which PBS utilizes the brokerage contracts in several metropolitan areas down to the level of the individual task order. Second, we evaluated the internal control environment relative to the task order process.

All four zones of the national brokerage contract were reviewed. Additionally, regional contracts in Regions 4, 5, 7, 8, 9 and 11 were analyzed. Auditors first set out to gather all contract related documents such as the Request for Proposals, Price Negotiation Memorandum, contract modifications, and pricing structure worksheets. Second, auditors set out to obtain the complete universe of task orders issued against these contract vehicles. Contracting officers in each region were contacted and all task orders, receiving reports and invoices in the contract files were duplicated. To further verify the completeness of this collection, queries were run in GSA's Financial Management Information System

(FMIS) to determine if any payments made to a brokerage contract vendor had been excluded and could potentially be brokerage contract task orders. This test lead auditors to find additional task orders through the Visual Invoice Tracking and Payment (VITAP) system on the GSA Office of the Chief Financial Officer's website. With a complete collection of task orders issued under the aforementioned brokerage contracts, auditors compiled a database of brokerage contract activity. The majority of quantitative information provided in this report stemmed from this task order database.

In addition, the auditors assessed the internal control environment relative to task order administration. Each region presented a unique environment. We conducted a walk-through of sample transactions sufficient to document the task order process. We reviewed the contract files for delegation of procurement authority and interviewed contracting officials regarding the process of placing, receiving and paying for orders. We assessed procurement transaction control sufficient to ascertain extent of separation of duties; whether purchases are initiated only on the basis of purchase requisitions; whether the number sequence of task orders are accounted for; whether purchase order prices are confirmed and approved by the responsible official; and whether invoices are approved for payment by an authorized official. We assessed contract administration to determine whether the financial management information system provide a means to identify all transactions under the various brokerage contracts; whether vendor performance is measured and tracked; whether total activity under each of the contracts is known and administered in accordance with contract terms; whether all contract modifications are duly executed with appropriate signatures and date sequence; and whether modifications reflect changes that would be considered within the scope of the original procurement action. We also screened for specific fraud risk factors.

Fieldwork was conducted from March to June 2002. The audit was conducted in accordance with generally accepted government auditing standards for performance audits.

# RESULTS OF REVIEW

Faced with declining staff size and what was recurrently described to us as an insufficient operating budget, PBS regional offices are finding innovative but high-risk business solutions to obtaining lease acquisition services through the use of brokerage contracts. These services represent work that would previously have been accomplished in-house by a PBS realty specialist. The innovations we observed, such as zero dollar task orders, expanding scope contracts, bundled requirements, commission rebates, lease cost allowances, etc., all seek to capitalize on the "self-funding" aspect of the brokerage contracts. There is a tendency to include as many services as possible within the scope of these contracts, using commissions generated from full lease acquisitions as a means to supplement funding for operations. While commendable as a creative response, these practices as implemented have weakened internal control and subordinated price reasonableness as an award factor. In the more ambitious applications, and to the extent that funding concerns continue to subordinate other priorities, we view the risk of an undetected fraud as unacceptably high.

There are other issues that stem from what could be characterized as the non-commercial nature of the services requested. A prolonged learning curve is the reported norm, during which contractors must be taught what is expected to properly execute a lease on behalf of the federal government. As an indication of this, the most highly valued contractors were those that could provide ex-PBS employees. The contracts tend to generate a significant administrative burden, particularly during the learning curve, and particularly where individual task orders must be competed or negotiated prior to award. Ultimately, such administrative requirements seem disproportionate to the value derived and would not likely be entertained absent the commission rebate potential. Further, tenant agency space requests are very diverse and subject to frequent change. We argue that such variability does not readily fit within a fixed-price, menu-driven contract. Where the application is forced, we find evidence of extensive sole-source exception pricing and termination charges. In view of these observations, we recommend that PBS address the significant policy questions and control issues raised in this review prior to implementation of its proposed national brokerage contract.

This report presents an analysis of contract usage derived from a review of the task order documentation; a discussion of commissions and rebates; a summary of our observations and lessons learned; and a workload analysis derived from STAR data. The appendices contain an abstract of each of the contract vehicles and discussion of our observations relative to contract design, use and administration.

## *Contract Usage Overview*

<u>Order Activity per Contract Vehicle</u>
*Figures 3 and 4* present the contract vehicles ranked by order amount. More than half of the total order volume occurred in the National East Zone, where average order size was significantly larger than the overall average. This data includes all orders we could identify under each of the contracts, beginning with fiscal year 1998 through the date of

fieldwork, or approximately May 2002. Not all of the vehicles were in effect for the entire period.

| Contract Vehicle | Order Amount | Average Order |
|---|---|---|
| National (East Zone) | 17,915,438 | 51,929 |
| National (South Zone) | 4,810,991 | 21,194 |
| National (Central Zone) | 2,377,757 | 26,129 |
| National (West Zone) | 2,306,125 | 20,776 |
| Regional (R7) | 1,704,616 | 30,993 |
| Regional (R9) | 1,501,433 | 30,641 |
| Regional (R5) | 533,590 | 13,014 |
| Regional (R4) | 244,784 | 27,198 |
| Regional (R11) | 152,123 | 38,031 |
| Regional (R8) | 13,090 | 1,190 |
| Grand Total | 31,559,947 | 33,468 |

**Figure 3 (source: auditor's task order analysis)**

| % of Total Order Amount | | | | | | |
|---|---|---|---|---|---|---|
| Contract Vehicle | FY98 | FY99 | FY00 | FY01 | FY02 ytd | Total |
| National (East Zone) | 2.23% | 11.75% | 13.74% | 16.94% | 12.09% | 56.77% |
| National (South Zone) | 2.27% | 3.78% | 2.34% | 5.90% | 0.96% | 15.24% |
| National (Central Zone) | 1.74% | 4.79% | 0.91% | 0.10% | | 7.53% |
| National (West Zone) | 1.49% | 1.63% | 3.87% | 0.32% | | 7.31% |
| Regional (R7) | | | 0.04% | 2.71% | 2.65% | 5.40% |
| Regional (R9) | | | 0.66% | 2.79% | 1.31% | 4.76% |
| Regional (R5) | | | | 1.23% | 0.46% | 1.69% |
| Regional (R4) | | | 0.33% | 0.27% | 0.18% | 0.78% |
| Regional (R11) | | | | | 0.48% | 0.48% |
| Regional (R8) | | | | 0.04% | 0.00% | 0.04% |
| Grand Total | 7.73% | 21.95% | 21.89% | 30.30% | 18.13% | 100.00% |

**Figure 4 (source: auditor's task order analysis)**

*<u>Order Activity per Individual Contract</u>*

*Figure 5* presents the same data summarized by vendor contract. Most contract vehicles, such as the East Zone, usually include more than one vendor contract. The vendor contracts share the same terms and conditions, but reflect the pricing unique to that vendor. Note that a vendor may have been awarded several contracts under different contract vehicles (one or more of the zonal contract and a regional contract, for example). By a significant margin, Spaulding and Slye has won the largest share of task order volume, as measured by either dollars or task orders awarded.

| Contractor | Contract Vehicle | Order Amount | Average | Number of Orders |
|---|---|---|---|---|
| Spaulding & Slye Services, LP | National (East Zone) | 13,192,933 | 66,969 | 198 |
| The Crown Partnership, Inc. | National (East Zone) | 4,722,505 | 31,909 | 148 |
| Amelang Management Corp. | National (South Zone) | 3,033,720 | 20,779 | 149 |
| Equis Corporation | National (South Zone) | 1,777,272 | 21,942 | 83 |
| Equis Corporation | National (Central Zone) | 1,748,799 | 26,905 | 67 |
| Equis Corporation | National (West Zone) | 1,407,330 | 24,264 | 58 |
| Amelang Management Corp. | Regional (R7) | 1,082,599 | 29,259 | 39 |
| PM Realty Group, Ltd. | National (West Zone) | 898,795 | 16,958 | 53 |
| PM Realty Group, Ltd. | National (Central Zone) | 628,958 | 24,191 | 27 |
| Kabler Robbins | Regional (R9) | 436,324 | 145,441 | 3 |
| Julien J. Studley, Inc. | Regional (R7) | 417,359 | 41,736 | 10 |
| Wallace & Steichen | Regional (R9) | 414,660 | 59,237 | 7 |
| The Crown Partnership, Inc. | Regional (R9) | 412,115 | 24,242 | 17 |
| JMG Contractors | Regional (R4) | 244,784 | 27,198 | 9 |
| Spaulding & Slye Services, LP | Regional (R7) | 204,658 | 25,582 | 8 |
| Spaulding & Slye Services, LP | Regional (R5) | 152,002 | 21,715 | 7 |
| Capitol CREAG | Regional (R11) | 135,065 | 45,022 | 3 |
| Equis Corporation | Regional (R9) | 122,159 | 8,144 | 15 |
| Colliers International | Regional (R9) | 116,175 | 16,596 | 7 |
| Equis Corporation | Regional (R5) | 116,149 | 10,559 | 11 |
| Spaulding & Slye Services, LP | Regional (R5) | 76,953 | 15,391 | 5 |
| Spaulding & Slye Services, LP | Regional (R5) | 70,209 | 17,552 | 4 |
| Equis Corporation | Regional (R5) | 60,644 | 12,129 | 5 |
| Equis Corporation | Regional (R5) | 57,633 | 6,404 | 9 |
| Spaulding & Slye Services, LP | Regional (R11) | 17,058 | 17,058 | 1 |
| Equis Corporation | Regional (R8) | 13,090 | 1,190 | 11 |
| | | 31,559,947 | 33,468 | 954 |

**Figure 5 (source: auditor's task order analysis)**

*Order Activity by Type of Service and Source of Pricing*

With one exception (R5), all of the contract vehicles offer both a full lease acquisition service as well as individual elements of that service priced separately. While the vehicles differ slightly in scope of services, lease acquisition is the focus of each. *Figure 6* confirms that, at least in the aggregate, the predominant contract use is full lease acquisition service, wherein the contractor becomes the functional equivalent of a realty specialist, representing PBS in its dealings with both the tenant and lessor. When it successfully culminates in a lease award, this is also the service that generates a rebate to GSA; the equivalent of the commission that the broker would have earned in a commercial deal. The rebate may and often does exceed the amount GSA paid under the contract, but that amount is not reflected in this data. We discuss rebates separately, in a subsequent section of this report.

| Order Amount<br>Service Ordered | National | Regional | Grand Total |
|---|---|---|---|
| Full Lease Acquisition Services | 18,827,474 | 3,342,720 | 22,170,194 |
| Non-Contract Services | 3,785,748 | 2,000 | 3,787,748 |
| Preaward Service Menu Item | 1,867,659 | 488,050 | 2,355,709 |
| Post Award Services | 777,349 | 96,396 | 873,745 |
| Succeeding Lease | 523,169 | 91,681 | 614,850 |
| Outleasing | 546,630 | 39,436 | 586,066 |
| Space Programming | 501,344 | | 501,344 |
| Real Estate Tax Adjustments | 214,372 | | 214,372 |
| Lease Extension | 149,807 | 44,800 | 194,607 |
| Facility Survey Services | 106,400 | | 106,400 |
| Lease Alterations | 36,858 | 34,640 | 71,498 |
| Real Estate Tax Appeal | 43,470 | | 43,470 |
| Fire and Life Safety Survey | 10,286 | | 10,286 |
| Appraisal | | 9,913 | 9,913 |
| Operating Cost Escalations | 9,625 | | 9,625 |
| (blank) | 8,120 | | 8,120 |
| Antenna Outleasing | 2,000 | | 2,000 |
| Grand Total | 27,410,311 | 4,149,636 | 31,559,947 |

**Figure 6 (source: auditor's task order analysis)**

Note that the second most utilized service item is what we have labeled as "non-contract services". This represents task orders for services that are clearly outside the scope of the individual contracts with no documented justification for a sole-source (not competed) procurement action. We will see below that the majority of these actions occurred under a single contract vehicle and were confined to the National Capital Region, but before that, *Figures 7 and 8* present a different but related aspect of contract administration: task order pricing. The two tables present order activity categorized by how the task order price was derived:

- If the task order price is based on the established contract price for that service, including the occasional volume discount applied to bundled task orders, we classified the task order as **"contract-derived"**.
- If the price is higher than the contract price (or if the service is not included under the contract) and there is no evidence of an authorized price negotiation, we classified the task order as an **"exception"**. Non-contract services generated about half of the exception amount.
- If the task order did not contain sufficient detail to determine a price for the services ordered, we classified the task order as **"insufficient data"**.

| % of Order (Count)<br>Contract Vehicle | Contract-derived | Exception | Insufficient Data | Total Count |
|---|---|---|---|---|
| National (East Zone) | 66.2% | 24.9% | 9.0% | 346 |
| National (South Zone) | 90.9% | 2.6% | 6.5% | 232 |
| National (West Zone) | 86.5% | 5.4% | 8.1% | 111 |
| National (Central Zone) | 71.3% | 4.3% | 24.5% | 94 |
| Regional (R7) | 71.9% | 8.8% | 19.3% | 57 |
| Regional (R9) | 93.9% | 6.1% | 0.0% | 49 |
| Regional (R5) | 100.0% | 0.0% | 0.0% | 41 |
| Regional (R8) | 100.0% | 0.0% | 0.0% | 11 |
| Regional (R4) | 100.0% | 0.0% | 0.0% | 9 |
| Regional (R11) | 75.0% | 0.0% | 25.0% | 4 |
| **Grand Total** | **79.0%** | **11.5%** | **9.4%** | **954** |

**Figure 7 (source: auditor's task order analysis)**

Exception pricing, in general, points to a lapse in procurement process. In many instances, the exceptional aspect of the service would of itself have necessitated either a documented justification to enter into a negotiated, sole-source procurement, or a separate competitive procurement. In the case of insufficient data, the issue is usually improper or lax task order administration. For example, the task order may have been so vague that the specific services to be rendered, on whose behalf, and at what price, cannot be determined. This precludes meaningful administrative oversight and should not have been signed or issued by the administering contracting officer.

In *Figure 8* we present this pricing issue from another perspective, this time dividing the orders between the National Capital Region and the rest of the country and basing the allocation on dollar value of the order rather than order count. This point of view helps identify the source of the exception pricing, the majority of which can be attributed to the National Capital Region, and specifically, the Spaulding and Slye contract. Overall, these pricing exceptions constitute nearly one quarter of the total combined order value. The associated task order files exhibited no evidence of the ordering official having followed appropriate procurement procedures. Note that the relative percentages for both the pricing exception and insufficient data categories are higher in *Figure 8*, which is based on order value, rather than order count. The implication is that the average order value tends to be higher for the exceptions and insufficient data categories and lower for contract-derived category.

| % of Total Order Amount Location | Contractor | Contract-derived | Exception | Insufficient Data | Grand Total |
|---|---|---|---|---|---|
| **NCR** | | | | | |
| | Spaulding & Slye Services, LP | 7.54% | 16.90% | 6.05% | 30.49% |
| | The Crown Partnership, Inc. | 2.63% | 2.03% | 0.67% | 5.33% |
| | Capitol CREAG | 0.43% | 0.00% | 0.00% | 0.43% |
| **NCR Total** | | **10.60%** | **18.93%** | **6.72%** | **36.25%** |
| **Outside NCR** | | | | | |
| | Equis Corporation | 13.02% | 1.81% | 1.97% | 16.80% |
| | Amelang Management Corp. | 11.66% | 0.38% | 1.01% | 13.04% |
| | Spaulding & Slye Services, LP | 8.92% | 1.08% | 2.96% | 12.96% |
| | The Crown Partnership, Inc. | 9.34% | 1.29% | 0.32% | 10.94% |
| | PM Realty Group, Ltd. | 4.40% | 0.06% | 0.38% | 4.84% |
| | Kabler Robbins | 1.38% | 0.00% | 0.00% | 1.38% |
| | Julien J. Studley, Inc. | 1.31% | 0.01% | 0.00% | 1.32% |
| | Wallace & Steichen | 1.31% | 0.00% | 0.00% | 1.31% |
| | JMG Contractors | 0.78% | 0.00% | 0.00% | 0.78% |
| | Colliers International | 0.37% | 0.00% | 0.00% | 0.37% |
| **Outside NCR Total** | | **52.49%** | **4.63%** | **6.64%** | **63.75%** |
| **Grand Total** | | **63.09%** | **23.56%** | **13.35%** | **100.00%** |

**Figure 8 (source: auditor's task order analysis)**

<u>*Non-Contract Services*</u>

*Figure 9* drills down yet another level, this time with a focus on the "Non-Contract Services". As can be seen, this is primarily a National Capital Region phenomenon. The services are not a logical fit for the fixed-price, task order contract under which they were procured, but it was an expedient vehicle. Some of this work simply bypassed the formal procurement system, the contractor accepting verbal direction from individuals not authorized to act on behalf of the contracting officer. In other cases, a proposal was submitted and a task order issued, with no justification for setting aside the competition requirement. In several of the examples, PBS was acquiring the services of an ex-PBS employee tasked to manage various program areas under vaguely worded orders. This practice spanned several years during a part of which three projects overlapped. The cost justification for two of those both assumed a full time effort. The third assumed a 72% of full time effort. The contractor proposed the individual by name, and in one case even cited a concurrent project as relevant experience. The fact that the same individual would be performing all three tasks simultaneously was not a documented consideration.

| Service | Comment | Amount | % of Total | Notes |
|---|---|---|---|---|
| **NCR** | | | | |
| Non-Contract Services | | | | |
| | DC AAP/Ratification | 1,441,000 | 38.04% | a |
| | Research & Development | 388000 | 10.24% | b |
| | Legal Services | 371,767 | 9.81% | c |
| | Workplace Solutions | 257,112 | 6.79% | d |
| | Telecommuting Center | 255,000 | 6.73% | e |
| | Consulting | 223,363 | 5.90% | f |
| | Multi-Project Assignment | 100,000 | 2.64% | g |
| | Technical Support Services | 96,000 | 2.53% | h |
| | Site Selection Study | 68,447 | 1.81% | I |
| | Other | 176,661 | 4.66% | j |
| Non-Contract Services Total | | 3,377,350 | 89.17% | |
| **Outside NCR** | | | | |
| Non-Contract Services | | | | |
| | Lease Audit | 207,413 | 5.48% | k |
| | Telecommuting Center | 121,625 | 3.21% | l |
| | Consulting | 35,000 | 0.92% | m |
| | Lease Buyout | 17,660 | 0.47% | n |
| | Other | 28,700 | 0.76% | o |
| Non-Contract Services Total | | 410,398 | 10.83% | |
| **Grand Total** | | 3,787,748 | 100.00% | |

**Figure 9 (source: auditor's task order analysis)**

See **Appendix C** for notes to this table.

<u>*Cancellations*</u>
*Figure 10* presents the contract vehicles and contractors ranked by the greatest percentage of cancelled orders. Vendor performance could be one of several potential factors influencing this rate, but our review did not extend to that level of detail. External factors, such as client agency funding, or orders issued as placeholders to satisfy a minimum revenue guarantee could also apply. We provide the data here to bring attention to the bottom line ten percent cancellation rate. Under the terms that apply to most of the contract vehicles, the vendor is entitled to partial payment for actions terminated prior to completion. These outlays would not result in a rebate; they would be eligible for offset (from other unapplied rebates) only in the aggregate.

| Contract Vehicle | Count of index | Cancelled | % Cancelled |
|---|---|---|---|
| National (Central Zone) | 94 | 20 | 21% |
| National (West Zone) | 111 | 18 | 16% |
| Regional (R5) | 41 | 5 | 12% |
| National (South Zone) | 232 | 25 | 11% |
| Regional (R7) | 57 | 6 | 11% |
| National (East Zone) | 346 | 23 | 7% |
| Regional (R11) | 4 | | 0% |
| Regional (R4) | 9 | | 0% |
| Regional (R8) | 11 | | 0% |
| Regional (R9) | 49 | | 0% |
| Grand Total | 954 | 97 | 10% |

| Contractor | Count of index | Cancelled | % Cancelled |
|---|---|---|---|
| Equis Corporation | 259 | 47 | 18% |
| PM Realty Group, Ltd. | 80 | 13 | 16% |
| The Crown Partnership, Inc. | 165 | 13 | 8% |
| Amelang Management Corp. | 188 | 14 | 7% |
| Spaulding & Slye Services, LP | 223 | 10 | 4% |
| Capitol CREAG | 3 | | 0% |
| Colliers International | 7 | | 0% |
| JMG Contractors | 9 | | 0% |
| Julien J. Studley, Inc. | 10 | | 0% |
| Kabler Robbins | 3 | | 0% |
| Wallace & Steichen | 7 | | 0% |
| Grand Total | 954 | 97 | 10% |

**Figure 10 (source: auditor's task order analysis)**

## *Rebates and the Use of "Zero Dollar" Task Orders*

We observed variations of "zero dollar" or no-cost task orders under two separate regional contract vehicles, where payment for leasing services rendered was expected to come from the landlord or property owners who were signing a lease and not from GSA controlled funds. Both regions acknowledge this practice to be a significant departure, and although regional counsel was consulted to some extent, no legal opinion was sought. In our own discussions, both regional counsels appear tentative, raising concerns of potential violation of the Antideficiency Act and possibly illegal augmentation of funds. We would add improper accounting and inadequate financial control to that list of concerns.

<u>Legal Advice from the General Counsel</u>
On May 3, 1999, the Associate General Counsel issued a memorandum entitled "Rebate of Broker's Commission Under the National Broker Contract". GSA had requested legal advice on whether it may recover and retain the commissions typically paid to real estate brokers by landlords in private sector leasing transactions. The memorandum stated that it is permissible for GSA to accept a rebate from the tenant brokers and credit the amount to the appropriation from which the brokers are paid. In part, it provides the following background:

> *"GSA has retained the services of tenant brokers through the national broker contract. As currently structured, the brokers under this contract are paid directly by GSA… GSA's brokers are prohibited from accepting any commission from a landlord or any other source for work performed under the contract. Where a GSA broker would be entitled to a commission…the broker must notify the contracting officer and negotiate to have the commission…removed from the offer or have GSA's lease obligation reduced….*
>
> *"Regardless of the provisions…a perception remains that some landlords continue to factor the cost of the commission into the rent charged GSA. This perception led to the inquiry regarding how GSA could recover and retain the commission payable to the brokers."*

The memo goes on to discuss the circumstances in which a commission can by retained; but first, it explains why the common business practice cannot be adopted.

> *"The common practice of having tenant brokers compensated directly by the landlord through a commission would not be acceptable in a government contract for two reasons. First, there is a potential for a conflict of interest between the government's interest in receiving the best value and the brokers' interest in receiving the highest compensation. Secondly, to allow the brokers to be compensated by anyone other than GSA for services provided to GSA, would be an illegal augmentation of GSA's appropriations….*
>
> *"As a general rule, absent specific statutory authority, all funds received for the use of the United States must be deposited in the general fund of the Treasury as*

*miscellaneous receipts…. There are exceptions to this general rule. One of the categories of exceptions relates to receipts that qualify as repayments to an appropriation…. Authorized repayments are defined as either reimbursements or refunds…. Refunds are defined as repayments for excess payment…. GSA may accept a rebate of the commission and properly characterize it as refund…if GSA receives the amount from the broker and credits the amount to the appropriation against which the cost of the broker contract is charged….*

*"The current national broker contract would need to be modified to require brokers to report where and if broker commissions were available and to have the broker pay the commission directly to GSA…. The recovery…in this manner would not be an illegal augmentation because it would be an adjustment in previous amounts disbursed to the broker which would serve to provide GSA with that which it bargained for under the broker's contract."*

<u>*Guidance from the PBS Chief Financial Officer*</u>

On April 4, 2000, the Assistant Commissioner, Office of Financial and Information Systems issued financial guidance on the matter, instructing PBS in the mechanics of collecting the rebates. Among other issues, the guidance compelled a contract modification to establish the broker's requirements with respect to notification and remittance. It informed that the rebates would be applied as a credit against the originating task order, identified by ACT number. It also established a requirement to conduct a periodic reconciliation to determine whether all refunds were being collected and whether refunds were in excess of actual contract payments. While the definition of "excess payment" might be open to interpretation, the guidance reaffirmed the precept that such funds could not be retained by the Federal Building Fund and would instead be remitted to Treasury. This guidance proved incomplete.

Additional clarification was prepared August 14, 2001, by the Acting Chief Financial Officer. It stated in part that

> *"Rebates received from vendors under National, Regional, or other brokers' contracts may be used to offset obligations made under these contracts…. Such offsets or credits will have the effect of increasing unobligated balances in BA61, which may be available for immediate regional obligation."*

But it also cautioned that these offsets or credits are applied only if specific procedures are followed. These include the use of prescribed transaction coding, and verification to an ad hoc rebate log maintained by the PBS Budget Division via email updates from the regions. It described a tiered order of precedence that it would follow in applying the offsets:

1. Offset obligations incurred under the originating action.
2. Offset obligations incurred for other actions originating with that broker, in that region, under that contract.
3. Offset obligations incurred by other regions, but again, only with the same broker, under the same contract.
4. Upon expiration of all task orders, any excess would be transferred to Treasury.

An even greater restriction was present. Any rebate received subsequent to the fiscal year of the originating obligation (task order) was to be credited as a prior year recovery and therefore would not be made available for immediate regional obligation. To further complicate matters, contract number is not a captured data element within the GSA financial system, many of the actions span one or more fiscal years, and there is no key that will uniquely identify the originating obligation, as the same ACT number was applied to multiple task orders.

Predictably, discussion with associates from several regions disclosed that there has been significant frustration with the Budget Division's inability to track and return to their respective regions rebate monies submitted. The funds were instead held in suspense and not made available for regional obligation. Existing fund balances were insufficient to permit additional broker service task orders. In response, two of the regions included in our review initiated the zero dollar task order, wherein the task orders are issued with zero dollars in obligated amount and payment to the broker is to be made directly from the commission/rebate amount received from the landlord. The issuance of these orders is not treated as a financial event; therefore no accounting entry is recorded.

Below we discuss and compare the two regional examples.

<u>*Pacific Rim Region's Approach*</u>

The Pacific Rim Region was one of two regions observed issuing zero dollar task orders under its regional contract. As of the end of fieldwork the region had entered into agreements for full acquisition lease services under 26 such task orders. It estimates that the broker fees would have been $1,212,206 had the orders contained an obligation amount.

Each task order issued included the following language:

> *"Broker fee will be paid through the commission/rebate accepted by the contractor. Any excess commission/rebate over and beyond the fee shall be made payable to GSA…"*

This approach of having the tenant broker compensated directly by the landlord and having any excess commission proceeds sent to GSA conflicts with the May 3, 1999 legal memorandum cited in the above background discussion. Counsel was unequivocal; to allow the brokers to be compensated directly by anyone other than GSA for services provided to GSA would be an illegal augmentation of GSA's appropriations. Further, since no expense is recognized under a zero dollar transaction, there can be no justification to retain any of the rebate. The right to retain those funds, again according to the same memorandum, can be justified only to the extent that it represents a refund, or repayment of excess payments. Finally, the contract itself specifically prohibits, as an organizational conflict of interest, compensation from any source other than the Government. This fundamental change in the terms of agreement was accomplished not through contract modification, but through the specific language incorporated into each task order, which according to the contracting officer, the vendors were free to accept or reject.

Each task order also states:

> *"If the commission rebate(s) accepted by the contractor does not fully cover the estimated broker fee, then contractor agrees to waive the difference".*

And further:

> *"If a lease…transaction is terminated prior to…lease award…then the contractor will not be entitled to payment…"*

In effect then, the government will order and receive a service of value for which the contractor may or may not be compensated. Particularly in the case of transaction termination, we question whether this language is sufficient to avoid a claim for equitable adjustment. Nationwide, documented order cancellations were observed in ten percent of the task orders reviewed.

*Rocky Mountain Region's Approach*
As of the end of fieldwork the Rocky Mountain Region had entered into ten zero dollar agreements for full lease acquisition services under a regional contract designed for this purpose. The "price" for a full lease acquisition service is expressed in terms of the percentage of commission to be rebated. Neither the contract nor the task order establish a fixed price for the service; the vendor appears to have agreed to work for whatever commission it can negotiate less the rebate percentage it has agreed to remit to GSA. The rebate varies from zero percent for the smallest projects to 40 percent for the largest. A modification in June 2002 states that the vendor will now rebate 100 percent of the commission, with the government to pay the vendor in accordance with the terms of the price schedule. The modification only serves to confuse an already ambiguous contract vehicle.

As with the Pacific Rim Region example, issuance of the task order does not result in an accounting entry to record an obligation of funds. The orders do make reference to a subsequent modification to reflect necessary accounting entries, but no examples of such modifications were observed. Likewise, there were no invoices or record of rebates from the vendor for any work related to these task orders, most of which were awarded in fiscal year 2001. Again as with the Pacific Rim Region, the procedures observed conflict with the legal justification that permits retention of rebates. Further, the procedures produce an inadequate accounting of the event and negate the financial controls that would have at the least created an open item subject to year-end accounting reconciliation. The approach exists solely as a means to order services for which funding is otherwise not available. Overall, this structure better serves the interest of the contractor than the government; it creates an incentive for the contractor to maximize its fee and the potential to under-report commissions collected.

## *Lessons Derived from Fieldwork Observations*

In the course of this review we examined PBS' experiences with its four zonal contracts and six unique regional contracts. Appendix B presents a summary of each along with contract-specific lessons. This section consolidates those observations by topic and includes a reference to the Appendix B source.

<u>*Administration and Internal Control*</u>

1) Best Practices:
   a) With good design and sufficient resource dedication, it is possible to effectively administer brokerage contracts, but it does require significant effort and some organizational restructuring. (South Zone, Appendix B-6)
   b) A task order file template reduces the administrative burden and improves the average quality of all related documentation. (Region 5, Appendix B-13)
   c) It would be informative to follow up on the effectiveness of the performance measurement methodology established under these contracts, which stood out with tangible, measurable performance standards. (Region 7, Appendix B-15)
2) Problem Areas:
   a) Specific task order administration requirements need to be articulated. A file template would help. Examples of adequate and inadequate practices should also be provided. Projections of anticipated administrative workload and staffing requirements would then be possible. (Region 11, Appendix B-20)
   b) Vaguely worded description of services frustrates accomplishment of task order oversight responsibilities, including price validation and acknowledgment of receipt. Task orders should cite specific contract service, details of the requirement sufficient to validate pricing, source of request and a link to related STAR data if applicable. (East Zone, Appendix B-2)
   c) Deficient procurement and contract administration practices observed here may extend beyond this contract vehicle, implying a need for an objective assessment and corrective action. (Region 11, Appendix B-20)
   d) Funding or minimum order guarantee concerns should not be permitted to subordinate internal control and proper procurement practices. Excessive task order modifications driven by such concerns have this effect. (Central Zone, Appendix B-8)
   e) An ambiguous task description defeats meaningful price validation and acceptance. Under a fixed price, task order contract such as this, the order format should emulate the contract price schedule format. (Central Zone, Appendix B-8)
   f) The practice of grouping transactions under a single, blanket ACT number defeats a critical internal control element. (West Zone, Appendix B-10)
   g) It is important to designate Contracting Officer's Representative (COR) and Technical Representative (COTR) names and responsibilities under each contract,

and to communicate to vendors that only the designated COR is authorized to issue a task order. (East Zone, Appendix B-2)

h) Unless contract administration is made a priority and supported with an adequate plan, staffing and resources, the risk of bias, contract misuse and overpayment will remain unacceptably high. (East Zone, Appendix B-2)

<u>*Contract Design and Application*</u>

1) The vendors do make a cost distinction between major and non-major market acquisitions, seeking a premium for the latter. (Region 7, Appendix B-15)

2) To be effective, brokers require specific knowledge and experience in the federal leasing process. The alternative is an extended learning curve, which is resource intensive for the administering region. (Region 4, Appendix B-12)

3) Reliance on labor-hour analysis for price negotiations implies a task of indeterminate performance risk, which places this (labor hour) contract at odds conceptually with the fixed-price contracts PBS has awarded elsewhere for these same services. (Region 5, Appendix B-13)

4) Because it relies upon task-specific negotiations to arrive at price, it would be time and resource prohibitive to expand the use of this (labor hour) contract to areas of significant demand. (Region 5, Appendix B-13)

5) The requirements of the National Capital Region are unique and likely best satisfied through regional-scope contracts designed to meet those needs. (Region 11, Appendix B-20)

6) The requirements of the National Capital Region range from the simple to the very complex. The more complex requirements do not lend themselves to a fixed price task order environment. (East Zone, Appendix B-2)

7) It is best to restrict contract application to the more stable, less complex requirements. (South Zone, Appendix B-6)

8) Travel costs:

   a) Consider eliminating travel cost as direct reimbursable. Administration of this item is an acknowledged inefficiency. On larger scale procurements this function could become unmanageable. (Central Zone, Appendix B-8)

   b) Travel costs as a direct reimbursable item pose a significant administrative burden, particularly under any scenario that greatly expands the use of brokerage contracts. (West Zone, Appendix B-10)

9) Capacity to evaluate the program effectiveness requires collection of certain key data elements. For example:

   a) Actions that culminate in a lease award should cite the lease number. This would enable a link between task order data and STAR data, which would be useful to evaluate broker performance. (East Zone, Appendix B-2)

b) FMIS (the financial system) does not capture contract number, so it cannot produce a contract level summary report. Comprizon (a procurement system) does capture contract number but does not capture ACT number so it cannot be reconciled with FMIS. Further, Comprizon data presents an incomplete picture of procurement actions as manual transactions are still permitted. (East Zone, Appendix B-2)

<u>*Level of Funding*</u>

1) Lack of adequate funding, perceptions of inequities in the reallocation of rebate dollars, and a permissive environment have encouraged the creation of inappropriate and potentially illegal transaction accounting. (Region 9, Appendix B-18)

2) Contingent, third-party compensation such as occurs under this contract cannot be reconciled with existing procurement regulations, budget rules, and accounting requirements. (Region 8, Appendix B-17)

3) Funding and administrative requirements must be addressed strategically. Inadequate funding will either promote the misrepresentation of tasks in search of funding alternatives, or preclude access to contracting services altogether. (Region 11, Appendix B-20)

4) Cost savings will not be the justification to satisfy PBS' desire for brokers to co-locate with the PBS realty specialists (potentially a task-specific requirement under these contracts), as the vendors offer no discount for this arrangement. (Region 7, Appendix B-15)

## *Workload Analysis*

Disregarding leasehold size and dollar value, which tend to weight the National Capital Region too heavily for workload measures, PBS lease activity is otherwise widely and surprisingly evenly dispersed across the country. PBS leasehold interests can be found both within and beyond densely populated urban areas. The data below helps depict this, looking back over several fiscal years to capture a cumulative image.

*Figure 11* presents an allocation of each region's completed lease procurements allocated by action type. For example, about 48 percent of the R11 lease actions (R11 is the National Capital Region) represent requirements satisfied by awarding "new" and "new/replacing" leases, while about 30 percent were "renewals"; i.e., requirements satisfied by exercising an option to extend an existing lease. Each region's total would add up to 100 percent. In all regions, the majority workload by type of procurement action is the new lease acquisition.

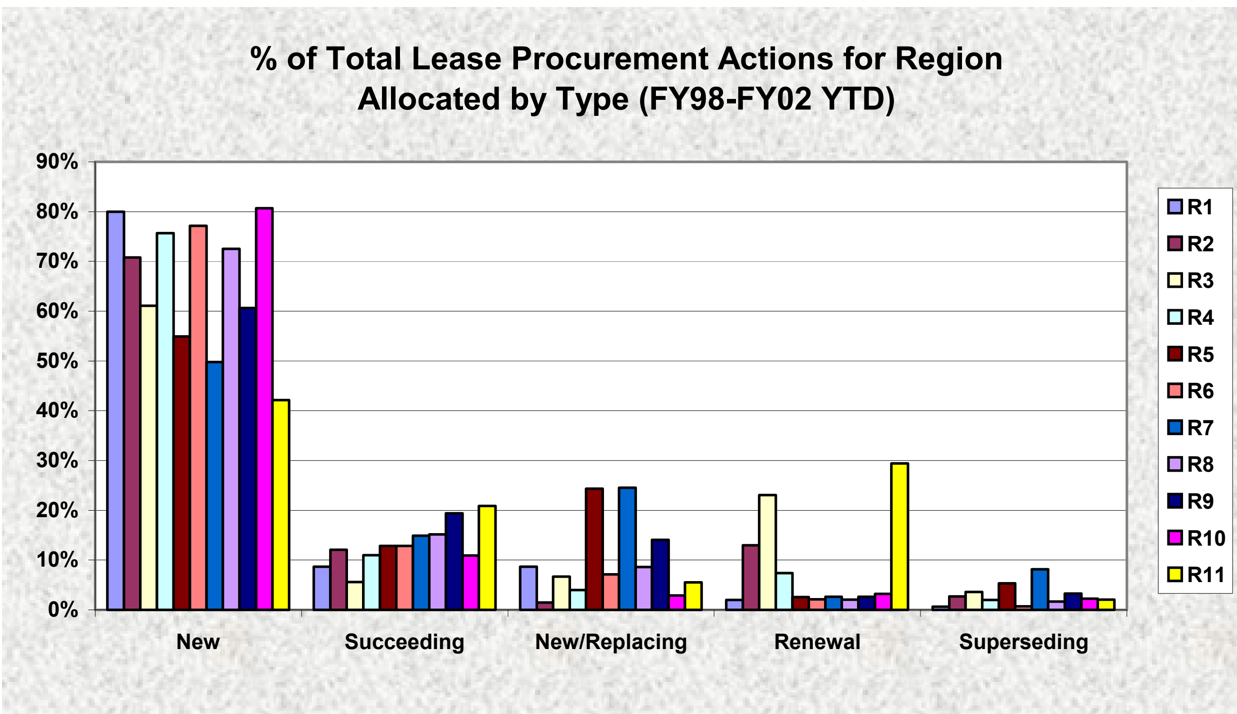


**Figure 11 (source: STAR lease payment history)**

In terms of level of effort, in general a "renewal" requires minimal procurement effort: a unilateral action by the realty specialist. By comparison, a "new" lease action would typically necessitate the following:

- Project Survey
- Market Survey
- Develop Solicitation For Offers
- Review and Evaluate Offers
- Negotiate Offers

- Best and Final Offers
- Prepare Lease Documents
- Post Award Services

Between those boundaries should exist the level of effort required to award a "succeeding" or "superseding" lease, but variances are possible and all of the elements of a competitive procurement may still be present. For example, a procurement action that began as "new/replacing" might ultimately result in a "succeeding" lease if the incumbent's offer represents a better option for the tenant.

*Figure 12* expands the workload definition to include what we differentiate here as administrative (versus procurement) actions: "lease extensions", "terminations" and "changes in square feet requirement". Both sets of actions share in common the need to interact with the lessor, but these administrative actions would not generate commission fees. Of the three areas, only "lease extensions" are offered as a menu item on the initial brokerage contracts. The chart presents each action as a stand-alone set that adds up to 100 percent. For example, the chart shows that about 21 percent of the total "new" lease actions nationwide were accomplished in R4 (the Southeast Sunbelt Region headquartered in Atlanta), about double the number of actions of any other region, including the National Capital Region. Not apparent from the chart but evident in the underlying data, if *all* lease actions are afforded equal weight, then R4 and R11 combined account for about 34 percent of the total actions, each with about 17 percent of the total.

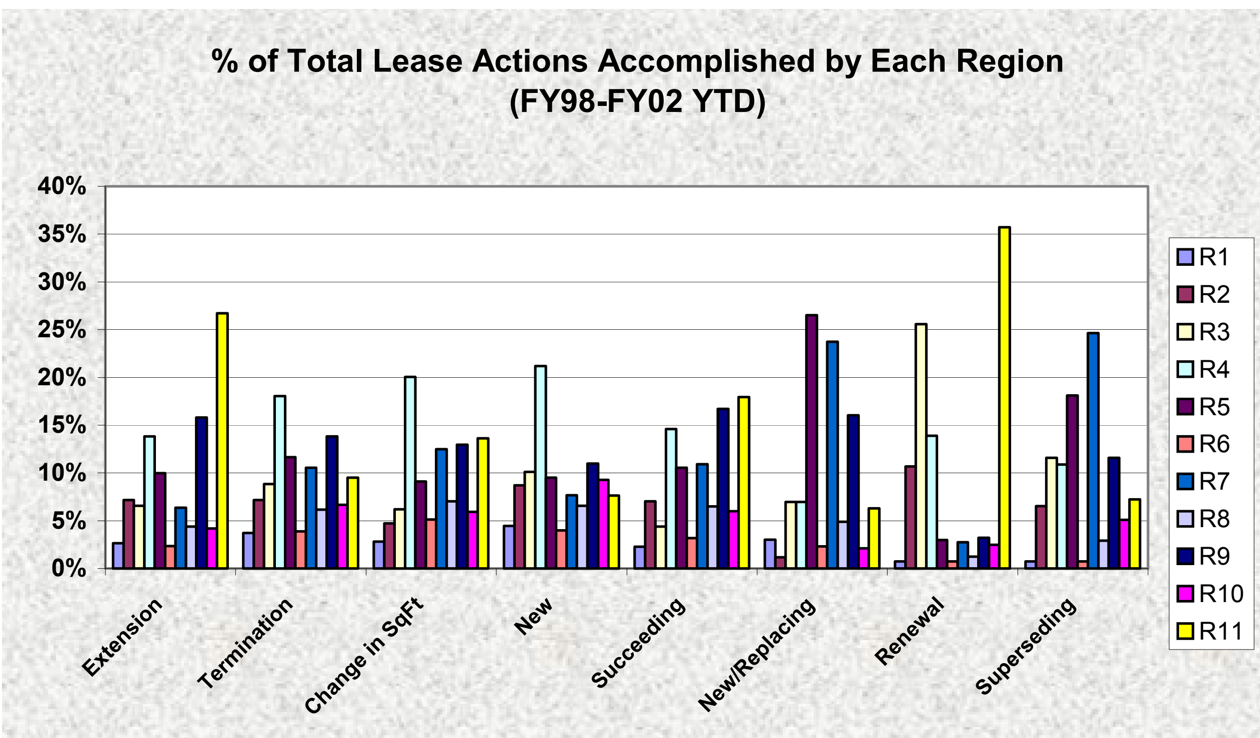


**Figure 12 (source: STAR lease payment history)**

*Figure 13* offers a very general look at the potential workload dispersion. A Metropolitan Statistical Area (MSA) is an urbanized area (city) of at least 50,000 people with a total metropolitan population of at least 100,000. According to PBS customer billing records, about 33 percent of the active leases nationwide (excluding the National Capital Region which is 100% within an MSA) are located outside of an MSA. Many of the regional officials with whom we spoke expressed an interest in contracting out these more dispersed locations. Most also recognized the dilemma that the most capable brokers with knowledge of GSA leasing will likely have no presence in these non-MSA locations. Contracts that optimize on the broker's expertise could then have the opposite of the desired effect, leaving PBS realty specialists with a primary workload of non-MSA locations.

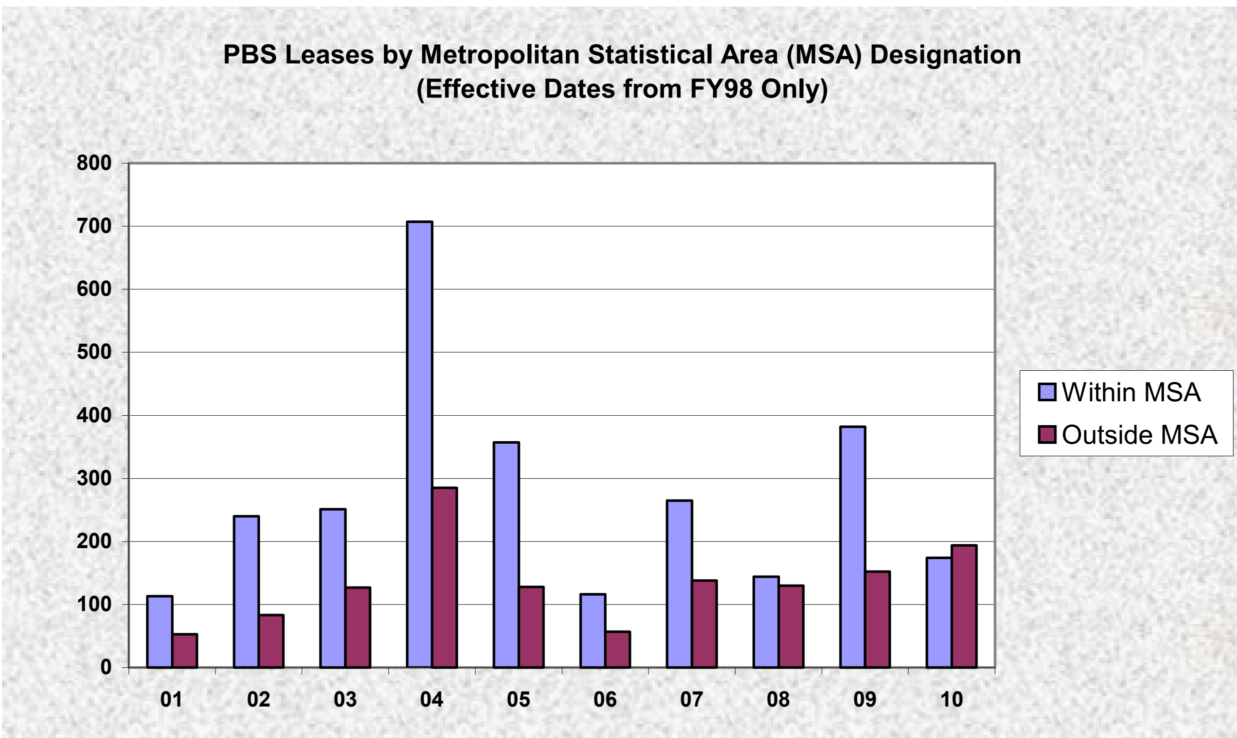


**Figure 13 - (source: STAR customer billing records)**

Note that we did make one adjustment to the MSA data. In many locations, most but not all leases within the same zip code cited an MSA number. We adjusted the data to include all leases within such zip codes, redistributing about five percent of the total active leases to an MSA. Other than that, we performed no test of the data accuracy.

In *Figure 14*, we drill down into the same data set to present the most active MSA locations. Again, this represents any lease with an effective date from October 1997 through May 2002. Note the number of leases not in an MSA (29 percent); the distribution of locations across the various regions; and the remainder (38 percent) spread over an additional 237 MSAs not listed below.

| Lease by Location | Action Count | % of Total | Region |
|---|---|---|---|
| Location not in an MSA (per STAR) | 1360 | 29.49% | multiple |
| Washington, DC-MD-VA-WV PMSA | 504 | 10.93% | R11 |
| New York, NY PMSA | 87 | 1.89% | R2 |
| Los Angeles-Long Beach, CA PMSA | 75 | 1.63% | R9 |
| Atlanta, GA MSA | 74 | 1.60% | R4 |
| Chicago, IL PMSA | 62 | 1.34% | R5 |
| Philadelphia, PA-NJ PMSA | 54 | 1.17% | R3 |
| Denver, CO PMSA | 53 | 1.15% | R8 |
| San Francisco, CA PMSA | 50 | 1.08% | R9 |
| Seattle-Bellevue-Everett, WA PMSA | 47 | 1.02% | R10 |
| Miami, FL PMSA | 47 | 1.02% | R4 |
| Obsolete MSA Codes | 45 | 0.98% | multiple |
| Portland-Vancouver, OR-WA PMSA | 38 | 0.82% | R10 |
| Tampa-St. Petersburg-Clearwater, FL MSA | 36 | 0.78% | R4 |
| Boston, MA-NH PMSA | 35 | 0.76% | R1 |
| Kansas City, MO-KS MSA | 35 | 0.76% | R5 |
| Nashville, TN MSA | 33 | 0.72% | R4 |
| Baltimore, MD PMSA | 32 | 0.69% | R3 |
| San Diego, CA MSA | 32 | 0.69% | R9 |
| St. Louis, MO-IL MSA | 32 | 0.69% | R5 |
| Orlando, FL MSA | 31 | 0.67% | R4 |
| Riverside-San Bernardino, CA PMSA | 30 | 0.65% | R9 |
| Detroit, MI PMSA | 29 | 0.63% | R5 |
| Dallas, TX PMSA | 29 | 0.63% | R7 |
| Jacksonville, FL MSA | 29 | 0.63% | R4 |
| All other MSA Locations (237, see note) | 1733 | 37.58% | multiple |
| Grand Total | 4612 | 100.00% | |

**Figure 14 - (source: STAR customer billing records)**

Throughout our review we heard that perhaps the greatest procurement challenge encountered under the current contracts has been overcoming each contractor's learning curve; i.e., the period during which the contractor learns how to deliver an executable lease in compliance with all applicable federal policy and regulations, and also within the terms and conditions of their contract. PBS is now contemplating a new contract vehicle that would seek to obtain services for half or more of its total lease acquisition workload. Several variations of workload requirements have been considered, including placing out for bid: 1) all of the MSA locations, 2) half of the total projected nationwide workload without respect to MSA location, or 3) the entire lease workload requirements for two or more of PBS' largest tenant agencies nationwide. The workload analysis presented above, though rudimentary, still raises the concern whether any existing contractor would be able to qualify. Further such an ambitious workload requirement as would occur under any of the three scenarios seems to interject so much performance risk as to cancel out the anticipated benefit of obtaining lower prices through aggregation (the concept of procurement leverage). The requirement could in effect be asking the vendor community to create something for which a commercial equivalent does not exist. The extensive subcontracting arrangements that would have to occur seem inefficient and undesirable, and we question the ability of any prime contractor to control organizational conflicts of interest such as would occur with an affiliated broker that also represents lessors.

## *Conclusion*

Overall we observed that funding deficiencies are driving contract design and use, resulting in the subordination of other critical concerns such as financial accountability, procurement integrity and the perception of fair and open competition. Administrative deficiencies, particularly in the National Capital Region, have produced a permissive environment where the risk of undetected error or abuse is unacceptably high. At the task order level, highly complex or uncertain requirements were found to fit poorly under the fixed price, task order contracts that were most typically employed. And from the perspective of anticipated national workload, the requirements are so varied and dispersed as to seemingly defy a single nationwide solution.

On the other hand, the brokers are said to provide essential assistance, and all of the regional representatives we encountered are in favor of continuing the relationship. Further, there are aspects of a successful model present in several existing vehicles. It seems clear that to remain viable, PBS will need to expand the use of these contracts, as it no longer has the in-house capacity. However, it is also apparent that the change from in-house delivery to purchased services necessitates significant revisions to PBS' control infrastructure. A comprehensive plan that contemplates the legal, financial and procurement elements needed to support outsourced lease acquisition services is a prerequisite, as is a sufficient, reliable, and fairly allocated source of funding.

## *Recommendations*

We recommend that the Commissioner of the Public Buildings Service consider the lessons available from current and expired brokerage contracts before committing to a new procurement strategy. Specifically:

1. The source of funding for any future contract must be defined, communicated and controlled. Current practice has resulted in incompatible regional interpretations, which in at least two regions, has culminating in the unsupportable practice of issuing zero dollar task orders.
2. Contract administration deficiencies in the National Capital Region must be addressed before assigning additional requirements in this region.
3. Assuming the Acquisition Plan to acquire future lease acquisition services is national in scope, the plan should address procurement design options, extent of procurement delegation, accounting and internal control elements as well as the nationwide contract

administration requirements such an action will impose. Please refer to *Lessons Derived from Fieldwork Observations,* page 18.

## Management's Comments

The Commissioner of the Public Buildings Service has provided comments to this report, which we have included in their entirety as Appendix A. While there is general concurrence with the audit recommendations, PBS is committed to further exploration of the legality of zero dollar task orders as a means to finance a new national brokerage contract vehicle. Absent zero dollar task orders, this new initiative will generate a significant funding obligation in the current fiscal year. Estimates of annual dollar value under this proposed vehicle are $65 million to be shared by several contractors, each offering nationwide coverage, possibly through a team of affiliates. Accordingly, PBS has requested an opinion from the GSA Office of General Counsel.

## Management Control

The body of our report discusses various deficiencies, including inconsistent application of the legal justification to retain commission rebates; a cumbersome and uncertain method of rebate redistribution; the use of zero dollar task orders; inadequate and inconsistent contract administration procedures; and the override of a key financial control feature, the ACT number. Cumulatively, these deficiencies undermine effective administration of the brokerage contract program and could, as the program expands, rise to a level of significance that would warrant disclosure as a material weakness under the Federal Manager Financial Integrity Act (FMFIA). As many of the contracts are now expired or soon to expire, this standpoint is conditional; i.e., dependent upon the controls and administrative practices put in place to manage the successor contracts. We believe that application of the lessons learned under the current contracts, as discussed within this report and incorporated into the recommendations, will sufficiently address the control weaknesses cited.

# APPENDIX A

***Management's Response To Draft Report***

GSA

GSA Public Buildings Service

DEC 2 2002

MEMORANDUM FOR ANDREW A. RUSSONIELLO
REGIONAL INSPECTOR GENERAL
FOR AUDITING (JA-W)

FROM: F. JOSEPH MORAVEC
COMMISSIONER

SUBJECT: Draft Audit Report No. A020135/P/W/000000
Review of PBS's Use of Brokerage Contracts for
Lease Acquisition Services

This responds to your request for management's response on the subject draft audit report presented to members of my staff and me at a September 12, 2002, exit conference. I appreciate the thorough review performed by your staff in reviewing PBS's administration of each of the four zonal contracts awarded under the January 1997 Request for Proposals for the National Real Estate Services Solicitation and subsequent regional contracts awarded for similar services in regions 4, 5, 7, 8, 9 and 11. The information provided in the report's observations, lessons, and recommendations is helpful and will be applied to our procurement strategy for the replacement contract for national real estate services.

**RESULTS-IN-BRIEF**

Audit observations are summarized under Results-in-Brief:

"Overall we observed that funding deficiencies are driving contract design and use, resulting in the subordination of other critical concerns such as financial accountability, procurement integrity and the perception of fair and open competition. Administrative deficiencies, particularly in the National Capital Region, have produced a permissive environment where the risk of undetected error or abuse is unacceptably high. At the task order level, highly complex or uncertain requirements were found to fit poorly under the fixed price, task order contracts that were most typically employed. And from the perspective of unanticipated national workload, the requirements are so varied and dispersed as to seemingly defy a single national solution.

On the other hand, the brokers are said to provide essential assistance, and all of the regional representatives we encountered are in favor of continuing the relationship. Further, there are aspects of a successful model present in several existing vehicles. It seems clear that to remain viable, PBS will need to expand use of these contracts, as it

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***Management's Response To Draft Report***



no longer has the in-house capacity. However, it is also apparent that the change from in-house delivery to purchased services necessitates significant revisions to PBS's control infrastructure. A comprehensive plan that contemplates the legal, financial and procurement elements needed to support outsourced lease acquisition services is a prerequisite, as is a sufficient, reliable, and fairly allocated source of funding."

**MANAGEMENT'S OVERALL RESPONSE**

PBS management is in overall agreement with the report's observations, lessons and recommendations. We especially appreciate the favorable comments with respect to Region 4's administration of the South Zone and regional contracts.

It should be noted that many of the report's negative observations resulted **not** from the January 1997 Request for Proposals for the National Real Estate Solicitation itself but from PBS's failure to implement a comprehensive national financial and contract administration plan.

At the exit conference we agreed that it served little purpose to focus attention on soon to expire zonal contracts or regional contracts that will be terminated upon award of the new contract(s) but to use the report as a "road map" for the replacement National Real Estate Services Solicitation. We also agreed that PBS itself was aware of many of the report's observations and that the Office of Realty Services (PE) has been working diligently to design a contract vehicle and implement controls that will provide PBS with the ability to effectively administer national real estate services contract. Several working teams are in the process of addressing the scope of work, fiscal controls, contract administration, contractor performance and training needs for GSA and contractor personnel as reflected in the procurement's Comprehensive Acquisition Plan.

**RESPONSE TO RECOMMENDATIONS**

**Recommendation 1.** The source of funding for any future contract must be defined, communicated and controlled. Current practice has resulted in incompatible regional interpretations, which, in at least two regions, has culminated in the unsupportable practice of issuing zero dollar task orders.

**Response**: We agree in part. The current regional practice of submitting an estimated dollar amount for contract workload with no detailed backup to support the budget request, has led to the regions under-budgeting for contract fees leading to innovative practices. To correct this situation, the new national contract establishes a maximum and minimum workload estimate with each region identifying specific lease acquisitions and menu of service workload to be contracted out in each year of the contract. Requiring the regions to identify specific workload has allowed the Office of Real Estate Services (PE) to develop a more detailed and accurate national budget projection for submission to the Office of PBS Chief Financial Officer (PH) for funding broker contract work.

# APPENDIX A

***Management's Response To Draft Report***



Notwithstanding the above, we disagree that the issuance of zero dollar task orders as used in Regions 8 and 9 is an unsupportable practice. We believe that this innovative practice has merit and, while new to the Government's way of doing business, is consistent with long established real estate industry practice. We have asked the Office of General Counsel for an opinion and are awaiting a reply. Should this practice be acceptable, zero dollar task orders will provide flexible funding that will allow for greater use of the contract(s) as well as an income source to the Government. We will inform you of the outcome.

**Recommendation 2.** Contract administration deficiencies in the National Capital Region must be addressed before assigning additional requirements in this region.

**Response:** We agree. The report later states that NCR has addressed its contract administration deficiencies and made several internal control improvements (page B-12, Summary of Region 11 Regional Brokerage Contracts). "These changes, similar to the good practices noted in other regions, are appropriate and responsive to the known problems identified under the East Zone contract."

To address nationwide contract administration coherence, an Administration Team has been established to develop guidance and procedures for the new national contract. Guidance will include a tutorial to cover ordering procedures, tracking task orders, payments, and commission rebates, or zero dollar task orders, whichever applies. The tutorial will be distributed to all regional ordering officials. Contract administration training will be provided and must be completed before any ordering official can order off the contract. Reporting mechanisms are being developed that will allow the national Contracting Officer and PE to monitor task order issuance, contractor payment and performance, and insure that procedures are being followed.

We concur with NCR's response to Recommendation 2 and lesson 1 and have attached a copy of PBS Assistant Regional Administrator Anthony Costa's October 25, 2002, memorandum to the Office of Realty Services for your review.

**Recommendation 3.** Assuming the Acquisition Plan to acquire future lease acquisition services is national in scope, the plan should address procurement design options, extent of procurement delegation, accounting and internal control elements as well as the nationwide contract administration requirements such an action will impose.

**Response:** We agree. The approved August 15, 2002, Comprehensive Acquisition Plan, copy attached, for the national procurement addresses this recommendation. A more specific Comprehensive Plan is being written to support the Comprehensive Acquisition Plan that will detail the guidance and procedures being developed for the new contract.

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Although not included as a recommendation, we feel compelled to state PBS's position in regard to Lesson 1, "Summary of Region 11 Regional Brokerage Contracts," page B-12 of the Audit report.

> <u>Lesson 1.</u> The requirements of the National Capital Region are unique and likely best satisfied through regional scope contracts designed to meet those needs.

<u>Response:</u> We agree that the requirements of NCR are unique. However, we strongly disagree that the requirements are of such a nature that would preclude NCR from inclusion in the national contract(s). The National Office and NCR had discussions on this issue during the formulation stages of the new national contract and concluded that NCR's contracting needs can be met through the national contract(s). We see no need to segregate NCR from other regions or maintain separate regional contracts for NCR use. The scope design team, PE, and NCR have worked closely to insure that the scope of work for the national solicitation includes NCR's requirements.

As explained at the exit conference, although national in scope, the design of the contract and the bundling of workload by region will allow each region, including NCR, to control use of the contract(s). Each region will be able to directly order off the contract(s), provide contract oversight and monitor contractor performance so as to insure responsiveness to regional needs.

If you have any questions regarding management's response, please contact Mr. William Jenkins, National Realty Services Officer, at (202) 208-6530.

Attachments: (1) National Broker Contract Comprehensive Acquisition Plan
(2) NCR IG Audit Response

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In accordance with GSA Order APD 2800.13B a comprehensive acquisition plan is normally used for complex, high dollar value ($50 million or more) and high visibility acquisitions. The solicitation for national broker services will result in 2 to 4 awards of Indefinite Delivery Indefinite Quantity (IDIQ) contracts each with a national scope. The contracts will each have a per year minimum guarantee of $3.5 million and per year maximum order limitation of $25 million for a base year and four option years. Each contract will have a total potential value of $125 million. This acquisition plan is prepared in accordance with the above referenced order and FAR Part 7.105 that outlines the requirements of written acquisition plans.

1. ACQUISITION BACKGROUND AND OBJECTIVES

**A. Statement of need:** General Services Administration is responsible for the acquisition and administration of leasehold interests and other real estate services in support of GSA and other Federal client agencies.

This acquisition is to provide for National broker service contracts to assist GSA's National Office of Realty Services and its eleven (11) Regional Offices. With directions to downsize and combine like efforts, GSA looked to the private industry to determine the feasibility of outsourcing and testing the compatibility of GSA's leasing support requirements to the private sector. After reviewing private sector practices and to support congressional mandates, in 1997, GSA awarded eight bundled zonal real estate contracts. Each contract covered two or three GSA Regions. These contracts were GSA's first attempt to define consistent service levels throughout GSA and offered private industry experience with GSA's lease acquisition processes and methods.

Due to the nature of real estate broker services throughout the nation, inconsistent implementation, and contractor misconceptions with Government leasing requirements, these contracts did not provide the level of service need by all GSA Regions. GSA realized the vital service the contracts provided in managing unpredictable lease acquisition workload. Subsequently additional regional contracts were awarded for similar services. Each contract contained varying terms, conditions, pricing, and administration requirements. Currently, GSA has twenty-nine broker service contracts.

Managing and tracking the funds spent and rebated on numerous regional contracts is administratively burdensome. GSA is currently contracting out approximately 20% of the lease workload and spending $25 million annually in contract fees. The National Office of Realty Services, in support of GSA's strategic goal of "Operating Effectively and Efficiently", has identified the need to award and implement fewer broker service contracts.

The increase of workload to be contracted out is in anticipation of the continual downsizing efforts of the agency. GSA Realty Specialists will continue to reduce in numbers through attrition in the next few years with approximately 40% of the workforce being eligible for retirement by the end of FY05. To prepare for this reduced number of

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personnel, more of the workload must be contracted out and the majority of the remaining Realty Specialists realigned as Project Managers with oversight and administration of the contractors work, administration of the awarded leases, and support to tenant agencies.

**B. Applicable conditions :** The significant conditions affecting this acquisition

(1) Twenty-nine (29) separate broker contracts are currently in place. Each has its own pricing and terms and conditions.

(2) Broker Fees are inconsistent across GSA Regions. There is no established catalog or market prices for broker services, but there is a competitive commercial market. Generally, commercial broker services are based upon market forces and not directly on cost. GSA as a large player in the market should demand and expect significant reductions, improved terms and other concessions when acquiring broker services.

(3) GSA's resources of integrating and administering the multiple contracts are being stretched thin by unpredictable workload and reduced personnel strength.

(4) The procurement supports GSA's strategic measures and goals for cohesion, consistency, and customer focus.

There are no known cost, schedule, and capability or performance constraints for this acquisition.

**C. Cost:** Due to the inconsistencies of fee applications and the complexities with broker commissions, a simple Life-Cycle-Cost model was accomplished using a combination of two estimating techniques: parametric and analogous system, for Broker Services. Market Research for Broker Services reveals the unique nature of the industry commission fees. Fees are not regulated by state and vary from broker to broker from 0 to 8 %. This dynamic nature precludes using standard projections for meaningful cost benefit analysis to identify substantial savings. We anticipate making multiple awards of 2 to 4 Indefinite Delivery Indefinite Quantity (IDIQ) fixed priced contracts with a base year and 4 option years. Each contract will have a minimum guarantee of $3.5 million and a maximum order limitation of $25 million per year for the base and each option period.

Under these contracts, the contractors will collect the commission normally paid to a tenant representative broker (where available) and rebate the total amount to the government. The rebates will be used to offset the costs of contract services. Funds collected in excess of the total contract costs must be deposited to the Treasury in miscellaneous receipts upon expiration of the contracts. Since rebates may only be used to offset expenses related to the contract from which the task order was issued, GSA will be able to retain more rebated funds with fewer contracts. Rebates can be used to offset expenses across regional lines as long as expenses were generated from the same contract vehicle.

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**D. Capability or performance:** Due to longstanding personnel shortages these contracts are necessary to ensure lease procurement actions are performed timely. Failure to award leases timely results in holdover situations that can be very expensive for the government and can adversely impact a client agency's mission and PBS customer service goals. The role of the GSA Realty Specialist, who has traditionally had the primary responsibility for performing lease acquisitions and subsequently administering the awarded lease, is changing substantially. In addition to the Realty Specialist's acquisition and administration responsibilities they are now required to maintain the leased and federally owned inventory billing systems (STAR), implementation of new pricing, management of Occupancy Agreements (OA's), and provide increased customer service to tenant agencies through improved contract administration of existing leases and federally owned space. These changes are necessary and essential to meet current GSA PBS performance goals.

The purposes of the national broker contracts are: to add capability and capacity for our regions, get better value for the tax payers by using our national inventory as leverage, improve services provided to client agencies, and to ensure leases are administered in a manner so that government interests are protected. While contract administration functions are inherently governmental and in accordance with OMB regulations and FAR 7.5 may not be contracted out, some areas of the lease acquisition process may be performed by contract. These contracts attempt to obtain services from the commercial real estate sector to allow GSA the advantage of substantial market data available in the private sector and to obtain the services of high-level commercial brokers with substantial experience in negotiating leases. The leasing process is a competitive acquisition process that must be conducted in accordance with applicable Federal laws, Executive orders, and procurement regulations. While certain acquisition functions may be contracted out, a high degree of contract oversight is required to ensure that decisions made on behalf of the government are reserved strictly for the Realty Specialist who will continue to serve as the Government's Contracting Officer.

**E. Delivery or performance period requirements:** Contracts will be awarded for a base year and four (4) one-year option periods

**F. Trade-offs:** It is GSA's intent to award multiple award Firm-Fixed-Price (FFP) contracts to provide Broker Services in the most cost effective manner possible. Performance based contracting measures are to be included in the acquisition to the maximum extent appropriate with the understanding that services that require creative thinking or require highly skilled technical efforts often do not have defined outcomes in terms of measurable performance. Where the end product of the work effort cannot be specifically defined at the outset of the procurement, it does not lend itself to the detailed definition required for successful use of the Performance Based Service Contract. The work requirements will be performance based to the maximum extent possible considering the contractors will be required to fully comply with Federal laws and regulations that govern lease acquisitions. Due to the requirement deliverables be

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approved by the Contracting Officer for the lease, submissions produced by the contractor require 100% inspection prior to acceptance. Performance is assured by the requirement for experienced and highly skilled personnel from both the contractors and GSA. The request for proposals (RFP) will clearly state the relative importance of all evaluation factors other than cost and price. It is essential to the mission of GSA that it receives the highest quality, technically excellent, and timely support services. The volume of work and the geographic coverage of the contract can only be satisfied by the most highly qualified of businesses with major real estate clients who require similar scopes of service and geographic coverage.

**G. Risks:** It is the intent of GSA to issue FFP contracts, as indicated above, with the outlined performance measures, which have proven effective over the past years. This is the most cost-effective approach for satisfying GSA's requirements. Our existing methods of contractor control, oversight, and performance quality control are being revised to ensure that government personnel who oversee contractor work have the requisite experience and skills to ensure services performed by the contractor are in accordance with contract requirements. It is critical to the success of the contracts to have sufficient personnel who are thoroughly trained and knowledgeable of commercial real estate practices; Federal Laws, Statutes, Executive Orders and regulations related to Federal lease acquisition. They must also be knowledgeable of the Federal procurement regulations needed to perform contract administration duties for a complex service contract. These same personnel will also serve to assist the contracting officer for the administration of the lease and the primary customer contact for issues related to the lease, billings, etc. These people need to be highly skilled and thoroughly trained for the success of the contract and other work of the Realty Services Organization.

A contract administration team under the direction of Mary Pesina is developing an in-house training program and written guidance for use by ordering and administration personnel. Realty Specialists who will be task order CORs will be provided a thorough orientation. They must also take the Federal Acquisition Institute COR mentor course prior to being assigned as a COR for the task order.

**H. Acquisition streamlining:** GSA has encouraged participation with industry via hosting roundtables and exchanges of information. GSA has considered the recommendations offered by industry in the development and tailoring of the acquisition's requirements. Acquisition streamlining accomplishments include:

(1) Surveyed all regions for changes to improve services in new contracts.

(2) During the market research phase held group meetings with six major national real estate firms to obtain insight on commercial practices that could be incorporated into new contracts.

(3) Held discussions with contractors who had been awarded previous zonal contracts to obtain their input as to what should be changed in the new contracts to improve procedures.

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(4) Held an industry conference on June 6, 2002, in Washington, DC, to obtain input from industry on alternatives for structuring workload so that contractors could offer their best pricing and best-qualified personnel.

**2. PLAN OF ACTION.**

**A. Sources:** There are no mandatory sources as indicated in FAR PART 8 for this acquisition.

A pre-solicitation notice was published at the FedBizOpps.gov web site. Due to the number of firms expressing interest and the participation at the industry conference, sufficient sources exist for a full and open competition. The previous zonal contracts were not set aside due to the geographic coverage and complexity. Due to the diverse locations, complexity of performance, and size of the anticipated contract award, it remains unlikely that a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns will have the capacity to perform as a prime contractor. Small Business Teaming, Joint Ventures, or Partnering for this acquisition will be allowed in accordance with SBA regulations. Large businesses will be required to submit small business sub-contracting plans and goals. A decision to not set aside will be prepared by the contracting officer and submitted to the Office of Enterprise Development, Small Business Technical advisor for coordination with the SBA upon completion of the solicitation package.

Since there are currently incumbent small business concerns performing real estate contracts in some Regions a justification to support bundling will be prepared. Large businesses will be required to submit subcontracting plans that provide subcontracting opportunities for the various small business categories. The solicitation package must be submitted for SBA review 30 days prior to issuance of the solicitation with the decision to not set-aside the procurement. In addition notification to incumbent small businesses as required by FAR 10.001©(2) is being issued at least 30 days prior to issuance of the solicitation.

Market research conducted for the acquisition indicates that sufficient sources are available for acquisition of this scope.

**B. Competition:** This action will be conducted under the Competition and Contract Act (CICA) as a full and open competition with all sources being allowed to compete.

The proposed acquisitions will contain Full Lease Acquisition Services, Advanced Lease Acquisition Services, Menu Services, Hourly Services, and have reporting requirements.

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**C. Source-selection procedures:** Source selection procedures in FAR Part 15 will be followed. Technical and price proposal will be evaluated with technical qualifications being more important than price. William B. Jenkins, National Realty Services Officer (PE) will serve as the source selection authority.

**D. Contracting considerations:** GSA intends to make multiple awards of fixed price indefinite delivery, indefinite quantity (IDIQ) contracts, no less than 2 and no more than 4 contracts, each serving all 11 GSA regions. The award of these contracts will not preclude the Government from awarding additional contracts for similar services in the event the government determines additional contracts are required.

**Commercial Services:** While certain aspects of the services required by the contract meet the definition of commercial services in FAR Part 2, "services of a type offered and sold competitively in substantial quantities in the commercial market place". The contracts do not meet the criteria that "they are sold based on established catalog or market prices for a specific task performed under standard commercial terms and conditions." There are no established catalog or market prices. The broker of each transaction negotiates the fee for services. Payment for services is normally by a third party (a lessor) through a commission. GSA legal counsel has determined that the government may not participate in this type of payment arrangement. Additionally government leases are procured in accordance with lease acquisition regulations and require the Government to make any and all decisions on behalf of the government. Much of the work that is required by the government is substantially different from normal terms and conditions of commercial leasing. In a commercial contract, the contractor may assume they can provide services to the Government in substantially the same manner they do for their normal commercial customers. This is not the case. Due to these differences, Part 12 procedures for commercial services will not be used for these procurements.

**Minimum and Maximums:** Each contract will have a minimum guarantee and maximum order limit. The total minimum guaranteed amount for each contract is $3,500,000. The maximum order limitation per contract will be $25,000,000.

**Fair Opportunity:** Task orders over $2,500, will be awarded based on the "fair opportunity" provisions required by FAR Part 16.505(b). Orders will be placed in accordance with the following criteria:

1. Necessary to meet the contract minimum guarantee
2. Price
3. Price and specialized experience
4. And/or price and performance on previous orders

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Price must be considered in each fair opportunity decision. The Ordering Official for a task order must document a decision to place an order for a higher price due to higher technical merit of specialized experience or past performance. Rationales must contain sufficient facts to be sound.

**Labor considerations**

A decision as to whether the Service Contract Act (SCA) is applicable to this procurement has been submitted to Acquisition Policy for review. The DOL waived the SCA for the previous zonal real estate contracts, based on reasoning that the contracts were a test directed by a House committee. Al Matera the GSA agency labor advisor has advised that this same justification could not be used for another waiver. However other consideration are being reviewed since no wage determinations exist for the categories of employees anticipated to be utilized in contract performance. Personnel in the commercial sector typically are paid a commission and do not receive payment for holidays or other benefits. Personnel who work on the contract will not be solely devote to work under the contract and will most likely continue to perform regular commercial services for other clients.

**Covered personnel**

FAR 37.2 and GSAM 537.204 required that prior to issuance of a task order, which includes the evaluation by a contractor of another contractor's proposal, that a determination concerning covered personnel be prepared. Due to the large number of task orders to be placed, the CO intends to prepare a waiver from the GSAM requirements so that a class determination can be prepared that would cover all task orders issued under the contract.

**Personal Services**

The government will not exercise supervision over the contractor employees, services will not be performed on site, no equipment will be provided by the government, and therefore, the contract is not for personal services and does not violate FAR 37.104(b).

**Incentives**

GSA considered using an incentive contract, fixed price plus award fee. However administration of an award fee contract is burdensome. With limited personnel and limited monetary resources, GSA's capability to administer this type of contract is considered to be impractical as compared to the advantages to the Government. A fixed price contract, in itself, is the incentive for a contractor to operate efficiently and effectively.

**E. Budgeting and funding:** Budget estimates are based primarily on the historical costs for current and anticipated support levels being provided under the twenty-nine (29) existing contracts. Funding has been requested to allow for contracting

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of approximately 50% of the expiring lease workload for the first year of the contract. It is anticipated that funds required will increase from a current of $24,000,000 per year to approximately $65,000,000 per year.

Minimum guarantees for each contract will be obligated at award in accordance with GSAM 501.602 (b).

Funding for this acquisition will be provided in a timely fashion from the GSA Chief Financial Officer through support services for each fiscal year.

**F. Product or service descriptions:** A hybrid performance-based description for broker services will be used in the acquisition. The Performance Work Statement will be in accordance with current directives for development and application of performance based statements of work to the extent possible for the requirements of this contract and included as Section C in the solicitation.

**G. Priorities, allocations, and allotments:** No supplies are to be provided for in this acquisition.

**H. Contractor versus Government performance:** GSA's objective for increasing the workload to be contracted out is to realign the GSA Realty Specialists as Project Managers with oversight and administration of the contractors work. These changes are necessary and will benefit our customers in the form of improved services. Such change also will refine the GSA business model and reshape its organization to reduce overhead.

Due to GSA's limited resources, its personnel's role will be one of programmatic review, technical evaluation and technical acceptance on behalf of the Government. To maintain personnel effectiveness and to handle unique or emergency acquisitions, GSA personnel will need to enhance and maintain their skills while assuming the management oversight for this acquisition. This acquisition team does not anticipate any impact on government personnel as far as loss of jobs or grade reductions. Therefore, this acquisition is not subject to the provisions of OMB circular A-76.

Due to the various duties to be assumed by the Realty Specialist in their new role as project managers, it is anticipated that grade increases may occur when new position descriptions are established. GSA personnel will be the catalysts to a completely customer centered service for lease acquisitions for all federal agencies. This action will ensure GSA's commitments to coherence, consistency, and customer focus.

**I. Inherently governmental functions:** In accordance with OFPP Policy Letter 92-1 and FAR Subpart 7.5 the services to be performed under this acquisition are considered not to be inherently governmental functions. As stated earlier many functions are closely related to inherently governmental functions and require a high degree of contract administration to ensure all inherently governmental functions are reserved for the government and not performed by the contractor.

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**J. Management information requirements:** No information system currently exists to track data that will be needed for management evaluations. GSA may implement an ACCESS database to track information concerning the contract. Existing regional systems will be used to the maximum extent possible to track nationwide contracts usage. The contractor will be required to provide monthly reports to the contracting officer on all task orders received and completed as well as awards and rebates received. This is necessary for the Contracting Officer to be able to monitor ordering limitations and ensure rebates are submitted to Finance and the appropriate times.

**K. Make or buy:** No consideration was given to make-or-buy programs.

**L. Test and evaluation:** Not applicable for this acquisition.

**M. Logistics considerations:** Not applicable for this acquisition.

**N. Government-furnished property:** Any GFP provided to the contractor will be established by individual task order. It is not anticipated that the Government will provide any equipment other than
(1) Forms and formats for submissions
(2) Web-sites for access to forms, samples, and regulations.

**O. Government-furnished information:** During the Post Award Conference contractors will be provided an orientation and Government information, including samples, manuals, drawings, and test data. During task assignments by the contractors additional information may be provided as needed.

**P. Environmental and energy conservation objectives:** Not applicable for this acquisition. Each task assignment will address, if necessary.

**Q. Security considerations:** . Employee personnel will be required to pass security clearance under GSA procedures for contract personnel. If requested by a client agency, a higher level of clearance may be required. Contractors may be required to obtain access badges for identification. Each task assignment will address any special clearance requirements.

**R. Contract administration:** The National Office of Real Estate Services will provide personnel to serve as the Contracting Officer Representative (COR) with responsibility for the overall technical support for the contracts. The Contracting Officer, after review of the nominee qualifications, will provide approval of the named person via a delegation letter at the time of contract award. Each Regional Office will be requested to provide a primary contract person to coordinate all contract matters for their Region. The CO will delegate ordering authority to regional ordering officials who will be 1102 contract specialists and who will award task orders under the contracts. The ordering

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officials will delegate certain responsibilities to CORs who are the contracting officers for the lease acquisition and who will be responsible for the day to day monitoring of contractor performance and for inspection and acceptance of the services and the submissions prepared by the contractors. In certain complex acquisitions, the COR may be supplemented by an appropriate number of technical monitors (COTRs) to ensure adequate management of the effort. The Contracting Officer will request the COR in consultation with the COTRs, to provide input on contractor performance for input to the national contractor past performance database.

**S. Other considerations:** This action will include the continued bundling of requirements GSA-wide for broker services. A justification in accordance with FAR 7.107 must be prepared and submitted for approval.

**T. Milestones for the acquisition cycle. Below are the anticipated milestones for this acquisition. Dates are provided for information purposes only:**

| Event | Projected Date |
|---|---|
| Call for Workload Data from Regions | **5/15/02** |
| Conference Call with the Regional Realty Services Officers | **5/16/02** |
| Issue Presolicitation Notice in Fed Biz Ops for Industry Conference | **5/17/02** |
| Hold Presolicitation Industry Conference | **6/6/02** |
| Approve Source Selection Plan | **8/9/02** |
| Finalize Scope of Work and Evaluation Factors | **8/9/02** |
| Deputy Commissioner approves Comprehensive Acquisition Plan | **8/13/02** |
| Bundling Justification approved by Deputy Administrator | **8/16/02** |
| Submit Small Business Set Aside Waiver | **8/21/02** |
| Post presolicitation notice to Fed Biz Opps | **9/26/02** |
| Post Request For Proposal to Fed Biz OPPS | **10/11/02** |
| Pre-proposal conference | **10/23/02** |
| Post amendment of RFP to Fed Biz Opps to incorporate pre-proposal conference notes | **10/30/02** |
| Proposals Due (no sooner than 30 days after issuance of the solicitation) | **11/15/02** |

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| | |
|---|---|
| Start Source Selection Technical and Price Evaluation Reviews | **11/18/02** |
| Complete Initial Technical and Price Reviews | **11/27/02** |
| Determine competitive range | **12/02/02** |
| Notify and debrief unsuccessful offerors as necessary | **12/02/02** |
| Start discussions with offers in competitive range | **12/09/02** |
| Request Final revised proposals | **12/16/02** |
| Reccivc Final Revised proposals | **1/10/03** |
| Begin evaluations of final revised proposals | **1/13/03** |
| Submit recommendation for award to Source Selection Authority | **1/21/03** |
| Source Selection Decision | **1/23/03** |
| Notification to unsuccessful offerors | **1/24/03** |
| Debriefing of unsuccessful offerors | **1/27/03** |
| Award | **1/31/03** |
| Notice To Proceed, Effective date | **3/31/03** |

**U. Identification of participants in acquisition plan preparation.** The National Broker Contract Scope Development Committee performed discussion and preparation of this Acquisition Plan. The committee is comprised of technical and contracting professionals from several GSA regional offices, GSA General Counsel's Office, and Chief Financial Office Budget Personnel. The written plan was prepared by

Ms. Mary Pesina – National Broker Project Manager, GSA Central Office

Ms. Nancy Sellers – Procuring Contracting Officer, Region 4

Mr. Ted Mahoney – Contracting Officer, Region 10

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**August 5, 2002**

Mary Pesina
Prepared By:
Mary Pesina
National Broker Project Manager (PE)

8/5/02
Date

GF Davis
Concur:
Gary F. Davis
Legal Counsel (LR)

8/05/02
Date

Wm Jenkins
Concur:
William B. Jenkins
National Realty Services Officer (PE)

8/8/02
Date

Paul Chistolini
Approve:
Paul E. Chistolini (P)
Deputy Commissioner PBS

8/15/02
Date

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GSA

GSA National Capital Region

OCT 2 5 2002

10/30/02

MEMORANDUM FOR WILLIAM B. JENKINS
NATIONAL REALTY SERVICES OFFICER
OFFICE OF REALTY SERVICES (PE)

FROM: ANTHONY E. COSTA
ASSISTANT REGIONAL ADMINISTRATOR
PUBLIC BUILDINGS SERVICE (WP)

SUBJECT: IG Audit Response

In response to your request for regional comments on the subject report, NCR offers the following:

**East Zone National Contract Administration**

**IG Comment**

The report audit cites numerous deficiencies with the National Capital Region's (NCR's) administration of the National Contract for the Eastern Zone, including:

- task order issuance (vaguely worded description of services)
- ordering work outside the scope of the contract and established pricing
- verbal issuance of task orders by Leasing Specialists who lacked contracting authority
- funding issues including rebates
- no visible contract administration strategy in place
- contract administration focused on one individual for task order issuance, monitoring of funding, acceptance of contractor work and invoices and processing of contractor payments

Recommendation 2 states, "Contract Administration deficiencies in NCR must be addressed before assigning additional requirements in this region."

**Response:** We agree that there were weaknesses concerning our administration of the East Zone National Contract. Our major weakness was failure to implement proper oversight and task order review procedures. In preparation for implementing our

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regional contract, we took corrective action to mitigate these deficiencies and are pleased that the report acknowledges the steps taken to improve internal controls, including:

- discontinuance of blanket ACT numbers
- formal designation of Contracting Officer's Representatives (CORs) and Technical Representatives (COTRs) that delineates authority and responsibility
- specific, written ordering instructions and a task order selection criteria checklist
- certificates of non-disclosure
- increased training (CORs, COTRs and contractor personnel)

Page B-21 paragraph 2 states, "These changes, similar to the good practices noted in other regions, are appropriate and responsive to the known practices identified under the East Zone contract."

<u>NCR Regional Broker Contract</u>

<u>IG Comment</u>

While complementing the region for internal control improvements, the report states on page B-21 paragraph 2, "However, there is still no defined methodology for tracking contract-wide order activity."

<u>Response:</u> We disagree. While day-to-day contract administration is the responsibility of each Service Center's designated COR, the administration process provides for funneling of information to the Contracting Officer. The CO is responsible for tracking contract-wide order activity including maintaining summary data by contractor for minimum and maximum order limitations, task order issuance and contractor performance.

<u>IG Comment</u>

It appears that the auditors had difficulty in fully understanding the AAP two-step procurement process and how it fits into NCR's overall lease acquisition strategy. This is evidenced in the following statement contained on page B-20, paragraph 2, "While the statement of work language is ambiguous as to intent, it appears that the regional brokerage contracts can be used to satisfy both the procurement action to create AAP inventory as well as the fulfillment of a tenant specific requirement from AAP inventory."

<u>Response:</u>

We disagree that the statement of work is ambiguous. Language is clear and adequately addresses the establishment of an AAP inventory and using the inventory to satisfy specific agency requirements.

# APPENDIX A

***Management's Response To Draft Report***

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**IG Comment**

Page B-20, paragraph 3 states that the regional contract includes the provision for "fair opportunity to be considered" by competing at the task order level. "In practice, the provision tends to establish criteria under which the Government can issue a task order *without* competition citing the necessity to satisfy the minimum-ordering limit, the contractor's prior performance, any specialized experience, and any conflict of interest that would restrict a contractor's ability to perform the work." To support this statement, the report cites four task orders issued under the contract. Two were properly competed (fair opportunity) and two were awarded to Capital CREAG on a sole source basis (without competition) using justifications that did not satisfy FAR competition requirements or task order criteria cited in the contract. The report alludes award was made without competition to satisfy the minimum-ordering limit.

**Response:** We disagree with the general finding. The regional contract provides for award of task orders consistent with FAR requirements and prescribes the proper procedure to be followed, which includes competition requirements. However, we do agree that the two non-competitive task orders awarded to Capital CREAG did not follow prescribed procedure.

The Contracting Officer met with the responsible COR to find out why the two task orders were awarded non-competitively. She determined that award resulted from a misunderstanding of what constituted follow-on work. Two current Capital CREAG employees had been employed by GSA as contract Realty Specialists prior to award of the regional contract. Upon award and employment with Capital CREAG, the two contract Realty Specialists were appropriately terminated from GSA employment. The COR awarded the two task orders under the misconception that since the two individuals had performed earlier work for a client agency while employed by GSA that Capital CREAG was best qualified to perform the follow-on work for the client agency. It was explained to the COR that despite being employed by Capital CREAG, award to Capital CREAG did not constitute an allowable non-competitive award and that competitive procedures should have been followed.

The Contracting Officer met with the Service Center CORs on September 30, 2002 to review proper task-ordering procedures.

The allegation that award was made to Capital CREAG without competition to satisfy the minimum contract guarantee is unfounded. The minimum guarantee and task ordering procedures are mutually exclusive. The minimum guarantee was included in the RFP in accordance with FAR requirements and to demonstrate the Government's intent to use the contract.

# APPENDIX A

*Management's Response To Draft Report*

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**IG Comment**

Report pages B-21, paragraph 3 and B-22, paragraph 1 allege that conflicting interpretations in the scope of work, particularly related to AAP, and "ambiguity extending back to the source selection plan itself, and the subsequent price analysis" has lead to "excessive variance between the contract-awarded prices, more than l00 percent in the case of full lease acquisition services, and even greater in the case of some menu item services." The report, however, acknowledges, "that price analysis was primarily conducted at the aggregate proposal level, where service cost variances such as these would not be detected."

**Response:** We disagree. While misinterpretation is always a possibility, particular care was taken in the wording of the scope of work and in the crafting of the source selection plan to avoid ambiguity. The RFP, source selection plan, price analysis and source selection report received Regional Counsel review at each step in the process. Further, given the inclusive and extensive nature of the scope of work to include full lease acquisition services for traditional and AAP procurements, and numerous menu of service items, it would have been impractical to do a price analysis in any manner other than at an aggregate level. This evaluation method is consistent with the FAR. The five offers determined to be in the competitive range submitted aggregate cost proposals that were in line with the Government's aggregate independent cost estimate.

The RFP clearly states that offers are to be evaluated at the aggregate level, and includes the following: "The prices quoted are 'ceiling prices' and are for evaluation purposes only." The RFP also provides for further competition under each task order...."Each task order will be individually competed and proposal prices may be lower than those on the Offer Pricing Worksheets." The price for each item within the aggregate represents a ceiling price, which cannot be exceeded.

We will, however, consider comments made on page B-21 paragraph 3 with respect to AAP pricing: "PBS may pay the broker twice: once to evaluate a group offers and to replenish the AAP inventory, then a second time to satisfy a tenant-specific requirement to be filled from that inventory. The combined fees under such a scenario are significantly higher than for a non-AAP full lease transaction." We will use this information, along with other factors, as part of the decision making process in determining when to use the broker contract to fill a leasing need through AAP or traditional lease acquisition.

**Note:** As a result of the IG's audit efforts and upon further review of proposals submitted in response to the RFP, an error was discovered in the overall cost for Crown Properties' in the price analysis. Recalculation of Crown Properties' cost

# APPENDIX A

***Management's Response To Draft Report***



proposal, found it to be outside the competitive range. To rectify this erroneous award, Crown Properties' option to extend service beyond September 30, 2002, was not exercised.

**Lessons**

With respect to the four lessons found on page B-22, we offer the following response:

**Lesson 1.** The requirements of the National Capital Region are unique and likely best satisfied through regional scope contracts designed to meet those needs.

**Response:** We disagree. Inclusion of NCR in the proposed National Contract is appropriate both for agency coherency and as part of PBS's nationwide real estate contracting effort. NCR has been represented on the National Scope Team to ensure that our unique needs have been fully addressed in the scope of work.

**Lesson 2.** Funding and administrative requirements need to be articulated strategically. Inadequate funding will either promote the misrepresentation of tasks in search of funding alternatives, or preclude access to contracting services altogether.

**Response:** It is our understanding that the Office of Realty Services (PE) is responding to this and other strategic issues.

**Lesson 3.** Specific task order administration requirements need to be articulated. A file template would help. Examples of adequate and inadequate practices should also be provided. Projections of anticipated administrative workload and staffing requirements would then be possible.

**Response:** We agree. NCR will issue a file template to help to ensure proper task ordering and administration. NCR will also explore a centralized organizational model for contract administration and oversight.

**Lesson 4.** Deficient procurement and contract administration practices observed here may extend beyond this contract vehicle, implying a need for an objective assessment and corrective action.

**Response:** We disagree. NCR has an aggressive program in place to monitor the quality of procurements and contract administration. Periodic procurement and lease acquisition reviews, enhanced Regional Counsel review and internal monitoring programs have contributed to our identifying and determining training and education needs, correcting deficiencies and improving overall program quality. We would be happy to share with the IG what we are doing in these areas.

Should you have any questions, please contact Ms. Sharon Jenkins, Deputy Assistant Regional Administrator, Public Buildings Service, NCR at (202) 708-5891.

# APPENDIX B

***Contract-Specific Observations***

## *Summary—East Zone National Brokerage Contracts*

The East Zone of the national brokerage contracts includes Regions 1, 2, 3 and 11 (New England Region, Northeast Caribbean Region, Mid-Atlantic Region and National Capital Region respectively). Notice to proceed was issued in September 1997 and the contracts expire in September 2002, the end of the second option year. Spaulding & Slye Services, LP and The Crown Partnership are the two contract holders. The minimum ordering guarantees were $300,000 per contract per year; the maximum ordering limitation was $3 million per contract per year. Modifications included the addition of antenna outleasing to the scope of work and a revision to the fee agreement for select full lease acquisitions in Region 1 and the National Capital Region (NCR).

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| **National (East Zone)** | | | | | |
| **Spaulding & Slye Services, LP** | | | | | |
| | Full Lease Acquisition Services | 87 | 25.1% | 9,373,400 | 52.3% |
| | Non-Contract Services | 29 | 8.4% | 2,853,798 | 15.9% |
| | Preaward Service Menu Item | 22 | 6.4% | 230,192 | 1.3% |
| | Succeeding Lease | 16 | 4.6% | 201,691 | 1.1% |
| | Real Estate Tax Adjustments | 17 | 4.9% | 184,863 | 1.0% |
| | Post Award Services | 8 | 2.3% | 116,562 | 0.7% |
| | Lease Extension | 9 | 2.6% | 84,000 | 0.5% |
| | Outleasing | 4 | 1.2% | 80,760 | 0.5% |
| | Real Estate Tax Appeal | 1 | 0.3% | 41,220 | 0.2% |
| | Space Programming | 1 | 0.3% | 9,191 | 0.1% |
| | (blank) | 2 | 0.6% | 8,120 | 0.0% |
| | Lease Alterations | 1 | 0.3% | 5,135 | 0.0% |
| | Operating Cost Escalations | 1 | 0.3% | 4,000 | 0.0% |
| **Spaulding & Slye Services, LP Total** | | **198** | **57.2%** | **13,192,933** | **73.6%** |
| **The Crown Partnership, Inc.** | | | | | |
| | Full Lease Acquisition Services | 74 | 21.4% | 3,385,669 | 18.9% |
| | Non-Contract Services | 13 | 3.8% | 711,287 | 4.0% |
| | Preaward Service Menu Item | 34 | 9.8% | 220,950 | 1.2% |
| | Space Programming | 1 | 0.3% | 180,397 | 1.0% |
| | Post Award Services | 6 | 1.7% | 99,369 | 0.6% |
| | Succeeding Lease | 13 | 3.8% | 88,172 | 0.5% |
| | Lease Alterations | 3 | 0.9% | 13,536 | 0.1% |
| | Outleasing | 1 | 0.3% | 10,000 | 0.1% |
| | Lease Extension | 2 | 0.6% | 7,500 | 0.0% |
| | Operating Cost Escalations | 1 | 0.3% | 5,625 | 0.0% |
| **The Crown Partnership, Inc. Total** | | **148** | **42.8%** | **4,722,505** | **26.4%** |
| **Grand Total** | | **346** | **100.0%** | **17,915,438** | **100.0%** |

**Figure 15 - (source: auditor's task order analysis)**

Twenty-five percent of the task order count (86 of 346 orders), representing 37 percent of the total dollar amount, were ***pricing exceptions***, meaning the price per service was either higher than the contract rate with no justification cited, or the service was not covered under the scope of this contract. Sixty five percent of these pricing exceptions (56 of the 86 orders), representing 89 percent of the pricing exception dollar amount, originate in

NCR. Additionally, nine percent of task orders contained data insufficient to validate order pricing.

About half of the pricing exceptions represent task orders placed for services not covered under the contract. These actions should have been subject to competition in accordance with federal acquisition regulations or have presented justification for sole source acquisition. The belief that these contracts were generating rebate dollars available for current obligation may have provided the incentive to expand their scope of activity, but it also appears to have created an incentive to set aside federal procurement rules. Additional discussion of this topic is found under *Contract Usage Overview* (page 6) and *Appendix C* of this report.

Overall, there was no visible contract administration strategy in place. All actions were simply to be funneled through a single Contact Specialist. There was no separation of duties to serve as a check and balance; the Contract Specialist drafted the task order, approved it, certified receipt of services, and approved the invoices for payment. Task orders were so vague that it was often not possible from that document to determine the services ordered, the basis for pricing or the specific tenant requirement involved. There was no file plan. There was no requirement to document receipt of services prior to payment. There was no methodology for managing the minimum ordering guarantees or maximum ordering limitations. There was no express delegation of authority or explanation of duties and responsibilities for ordering officials and technical representatives.

Further, it was evident that the realty specialists could and did circumvent the lone Contract Specialist. The contractor accepted verbal orders from individuals who did not have requisite procurement authority. In such cases, the Contract Specialist charged with administration would have no advance knowledge of the work underway until after the arrival of an invoice requesting payment for services rendered. This practice culminated in September 2001 when contracting officials in NCR were presented with over $3 million in unapproved task orders for services rendered. Two Leasing Specialists in the Service Delivery Support Division had placed unsigned orders with Spaulding & Slye Services, LP and were retroactively seeking the contracting officials' approval. A Ratification of Unauthorized Commitment of Funds was required and ultimately approved in February 2002. The ratification package calls for the retroactive approval of 13 task orders valued at $3,535,907.

An additional complication stemmed from the use of blanket ACT numbers. This is a national issue, but its effects are more pronounced in the East Zone because of the task order volume and because of the absence of other controls that might mitigate the effects. The ACT number, a key internal control element of the financial accounting system, is a unique identifier assigned to each transaction. It enables access to all budgetary and accounting entries related to a given transaction, which permits for example the means to verify that total payments do not exceed the amount authorized on the task order. To account for minimum ordering guarantees, the Office of the Chief Financial Officer apparently instructed regional offices to obligate the annual minimum guarantee under a single ACT number. All task orders issued up to that amount were then assigned and accounted for under that one blanket ACT number, in effect defeating the internal control aspect as there was now no systematic way to isolate order-specific financial data.

This control override plagued both the accounting for minimum ordering guarantees and accounting for commission rebates (see the report section *Rebates and the Use of Zero Dollar Task Orders, page 14*). There were several examples of a vendor instructed to bill for the difference between the value of services rendered and the remaining balance on the authorizing task order, ostensibly as a means to satisfy a portion of the minimum guarantee. As there was no way for the Contract Specialist to accurately determine the total value of outstanding orders, such an instruction is inappropriate and only exacerbates the problem of administering the guarantee.

Another example seems to be an attempt to circumvent the rebate process entirely in order to maintain local control over the rebate amount. In supplemental lease agreement GS-11B-60259 for the Chester Arthur Building there is a provision for the lessor to

> "make available a leasing costs allowance payable to the United States General Services Administration ('the leasing allowance') of an amount equal to $1,425,000.00…The Government may, at its sole discretion, direct the lessor to disburse the leasing allowance to pay for any real estate consulting or brokerage services supplied to the Government in connection with this lease or apply any unused portion of the leasing allowance as a credit against annual rent due under the lease."

This "leasing costs allowance" is precisely three percent of the total lease value and appears to represent the broker's commission. The deal was a negotiated five-year lease extension. Lease extension as menu item was available under the contact as a fixed price service for $6,000. PBS instead paid the broker a fee of $288,300, apparently under the terms of a consolidated task order of which this requirement was part. Neither the file nor our limited inquires were helpful in understanding the rationale for this deal.

Lessons:

1. The requirements of the National Capital Region range from the simple to the very complex. The more complex requirements do not lend themselves to a fixed price task order environment.
2. The perception that these contracts are potentially self-funding generates demand for their use. The gulf between funding and needs appears more pronounced in this region, hence the tendency to expand the application of these contracts beyond the express scope of services.
3. Unless contract administration is made a priority and supported with an adequate plan, staffing and resources; the risk of bias, contract misuse and overpayment will remain unacceptably high.
4. Vaguely worded description of services frustrates accomplishment of task order oversight responsibilities, including price validation and acknowledgment of receipt. Task orders should cite specific contract service, details of the requirement

sufficient to validate pricing, source of request and a link to related STAR data if applicable.

5. Capacity to evaluate the program effectiveness requires collection of certain key data elements. For example:
    a. Actions that culminate in a lease award should cite the lease number. This would enable a link between task order data and STAR data, which would be useful to evaluate broker performance.
    b. FMIS (the financial system) does not capture contract number, so it cannot produce a contract level summary report. Comprizon (a procurement system) does capture contract number but does not capture ACT number so it cannot be reconciled with FMIS. Further, Comprizon data presents an incomplete picture of procurement actions as manual transactions are still permitted.
6. It is important to designate Contracting Officer's Representative (COR) and Technical Representative (COTR) names and responsibilities under each contract, and to communicate to vendors that only the designated COR is authorized to issue a task order.

## *Summary – South Zone National Brokerage Contracts*

The South Zone of the national brokerage contracts includes Regions 4 and 7 (Southeast Sunbelt and Greater Southwest Regions). Notice to proceed was issued in September 1997 and the contracts expire in September 2002, after conclusion of the second option. Amelang Management Corporation and Equis Corporation are the two contractors. The minimum ordering guarantee is $250,000 per contract per year; the maximum ordering limitation is $2 million per contract, per year. During the life of the contract the following ancillary services were added via modification: antenna outleasing, real estate tax appeals, and renegotiation of existing leases (prior to expiration).

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| **National (South Zone)** | | | | | |
| **Amelang Management Corp.** | | | | | |
| | Full Lease Acquisition Services | 94 | 40.5% | 2,486,381 | 51.7% |
| | Preaward Service Menu Item | 34 | 14.7% | 292,441 | 6.1% |
| | Post Award Services | 7 | 3.0% | 130,388 | 2.7% |
| | Succeeding Lease | 5 | 2.2% | 88,162 | 1.8% |
| | Lease Extension | 5 | 2.2% | 24,041 | 0.5% |
| | Lease Alterations | 2 | 0.9% | 8,300 | 0.2% |
| | Space Programming | 2 | 0.9% | 4,007 | 0.1% |
| **Amelang Management Corp. Total** | | **149** | **64.2%** | **3,033,720** | **63.1%** |
| **Equis Corporation** | | | | | |
| | Full Lease Acquisition Services | 68 | 29.3% | 1,592,860 | 33.1% |
| | Preaward Service Menu Item | 10 | 4.3% | 75,415 | 1.6% |
| | Space Programming | 1 | 0.4% | 57,600 | 1.2% |
| | Post Award Services | 1 | 0.4% | 28,432 | 0.6% |
| | Succeeding Lease | 3 | 1.3% | 22,965 | 0.5% |
| **Equis Corporation Total** | | **83** | **35.8%** | **1,777,272** | **36.9%** |
| **Grand Total** | | **232** | **100.0%** | **4,810,991** | **100.0%** |

**Figure 16 - (source: auditor's task order analysis)**

Overall, the South Zone task orders were administered in strict accordance with the terms of the contract and with good procurement practices in general. There were no task orders issued for services outside the scope of contract (an action that usually indicates an unauthorized circumvention of the FAR competition requirements). Pricing that was other than contract derived was noted in less than ten percent of total orders issued. Also present were the following factors, which we consider to have contributed to effective contract administration:

- The Contracting Officer maintained personal involvement. She instituted control elements, retained direct oversight and maintained the task order files.
- Files contain a checklist for delivery order close out that requires that the originator:
  - Ensure required documentation is on file. At a minimum each file contains a GSA 300, GSA 279 FPDS, Receiving Report and Payment Verification.

- Acknowledge that all work was completed, any open items have been reconciled, close out information has been entered into the PBS Electronic Acquisition System (EAS), GSA disposition label is affixed, and a performance evaluation was prepared.

- The task orders used clear, complete language to describe the requirement.
- A separation of duties was maintained. The same individual did not create, authorize and approve for payment.
- The contract was used primarily to satisfy space requests without known complications or unusual requirements. This was by choice, as explained to us, but may also reflect the general characteristics of the region's workload.
- The region designated an exclusive "broker team" consisting of experienced, competent realty specialists to handle all of the technical aspects of task order administration, promoting an expedited learning curve and consistent methodology.
- A task order database was created and maintained. This included, for example, a data field to capture lease number. Citation of the lease number links the transaction with the objective evidence of service rendered and permits a tie-in to the STAR inventory system for additional analysis.
- The process was standardized and/or automated to the extent possible.

Lessons:

1. With good design and sufficient resource dedication, it is possible to effectively administer brokerage contracts, but it does require significant and sustained effort and some organizational restructuring.
2. It is best to restrict contract application to the more stable, less complex requirements.

## *Summary of Central Zone National Brokerage Contracts*

The Central Zone of the national brokerage contracts covered Regions 5, 6 and 8 (Great Lakes Region, Heartland Region, and Rocky Mountain Region respectively) from notice to proceed in September 1997 to expiration of the initial base term in September 2000. Renewal options were not exercised. Central Zone brokerage contractors were Equis Corporation and PM Realty Group, Ltd. (now PM Liquidators). Both contracts had $100,000 per year minimum order guarantees. Contract modifications added antenna outleasing, real estate tax audit consulting and facility surveys to the scope of work.

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| **National (Central Zone)** | | | | | |
| **Equis Corporation** | | | | | |
| | Full Lease Acquisition Services | 54 | 57.4% | 1,454,167 | 61.2% |
| | Outleasing | 2 | 2.1% | 121,170 | 5.1% |
| | Post Award Services | 2 | 2.1% | 43,194 | 1.8% |
| | Preaward Service Menu Item | 2 | 2.1% | 38,944 | 1.6% |
| | Succeeding Lease | 3 | 3.2% | 35,754 | 1.5% |
| | Space Programming | 2 | 2.1% | 27,397 | 1.2% |
| | Real Estate Tax Adjustments | 1 | 1.1% | 22,275 | 0.9% |
| | Lease Alterations | 1 | 1.1% | 5,898 | 0.2% |
| **Equis Corporation Total** | | **67** | **71.3%** | **1,748,799** | **73.5%** |
| **PM Realty Group, Ltd.** | | | | | |
| | Outleasing | 4 | 4.3% | 194,754 | 8.2% |
| | Full Lease Acquisition Services | 9 | 9.6% | 169,774 | 7.1% |
| | Preaward Service Menu Item | 9 | 9.6% | 147,744 | 6.2% |
| | Facility Survey Services | 2 | 2.1% | 106,400 | 4.5% |
| | Fire and Life Safety Survey | 3 | 3.2% | 10,286 | 0.4% |
| **PM Realty Group, Ltd. Total** | | **27** | **28.7%** | **628,958** | **26.5%** |
| **National (Central Zone) Total** | | **94** | **100.0%** | **2,377,757** | **100.0%** |

**Figure 17 - (source: auditor's task order analysis)**

In comparison with the other contracts reviewed, the order cancellation rate for the Central Zone seemed excessive. Of the 94 total task orders, 20 were ultimately cancelled. At 21 percent, this is the highest cancellation rate of any zone or region. A cancellation typically triggers a termination payment under the terms of these contracts, and in this instance we found $58,263 invoiced against cancelled orders. We did not research cause, but note that 35 percent of the cancelled orders were for a single tenant agency, the Internal Revenue Service. Also, the task order files often did not contain evidence of a duly executed modification, but rather only a note or other annotation referring to the cancellation. The informality of the file makes it difficult to determine if and when an action was taken. If a vendor bills for the full amount of a cancelled order that is still seen as valid within the financial system, the vendor will be paid in full.

There was additional evidence of administrative inconsistency. We observed no task orders for services outside the contractual scope of work, and only three percent of task orders placed were clearly pricing exceptions; i.e., ordered services priced above the contract rate with no record of negotiation. However, 24 percent of task order files examined did not contain sufficient information to validate pricing. These orders may have contained pricing exceptions that stemmed from a verbal agreement, or mistakes, but neither condition could be determined from the available documentation. The files point to a deficient process.

Secondly, in several instances we noted task orders that should otherwise have been cancelled were instead modified repeatedly to use the obligated order amount to acquire new services. This practice resulted in some task orders that were indecipherable. For example, task order P0599FY0006 began as a full lease acquisition for the Department of Labor in Wisconsin. It was modified to increase obligated funds to include a full lease acquisition for the IRS in Indiana. The task order was then modified again with the following note: "This order is in conjunction with P0599FY0015. Consider this Part II." It is unclear how the services on this second modification factor into work being done under P0599FY0006 or why P0599FY0015 is broken into parts rather than rolled into one task order. To further complicate matters, funds under P0599FY0006 were deobligated and a note in the file referred to P0599FY0059 for future activity. Such complexities defeat the purpose of the order document, as it no longer serves to communicate the requirement or establish a control amount.

Finally, travel costs allowable under the contract also presented an administrative challenge. The contract permitted incidental travel expense as a direct cost incurred in connection with delivery of an ordered service. The vendor would submit evidence of costs much like an employee would voucher for travel expense. This might include airfare, lodging, mileage, parking, etc, all of which must be reviewed prior to payment. However, unlike processing an employee voucher, travel expense invoiced under the contract is not supported by an automated system or standard authorization/voucher process. What we observed was extremely inefficient and could provide little assurance that costs were authorized and reasonable. Perhaps in response to similar concern, the region issued a number of task orders for travel costs only. At least in some instances the travel appears to relate to services ordered in previous fiscal years. We found it difficult or impossible in some cases to tie those costs to their related service order.

Lessons:

1. An ambiguous task description defeats meaningful price validation and acceptance. Under a fixed price, task order contract such as this, the order format should emulate the contract price schedule format.
2. Funding or minimum order guarantee concerns should not be permitted to subordinate internal control and proper procurement practices. Excessive task order modifications driven by such concerns have this effect.
3. Consider eliminating travel cost as a direct reimbursable. Administration of this item is an acknowledged inefficiency. On larger scale procurements this function could become unmanageable.

## *Summary of West Zone National Brokerage Contracts*

The West Zone of the national brokerage contracts serviced Regions 9 and 10 (Pacific Rim Region and Northwest/Arctic Region respectively) from notice to proceed in September 1997 to September 2000. Renewal options were not exercised after the expiration of the initial base term. The minimum-ordering guarantee in the West Zone was $250,000 per contractor per year. West Zone brokerage contractors were Equis Corporation and PM Realty Group, Ltd. (now PM Liquidators). During the life of the contracts, modifications were made to add antenna outleasing and janitorial audit service to the scopes of work.

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| **National (West Zone)** | | | | | |
| **Equis Corporation** | | | | | |
| | Preaward Service Menu Item | 30 | 27.0% | 625,072 | 27.1% |
| | Full Lease Acquisition Services | 8 | 7.2% | 266,650 | 11.6% |
| | Non-Contract Services | 2 | 1.8% | 213,663 | 9.3% |
| | Post Award Services | 5 | 4.5% | 160,484 | 7.0% |
| | Space Programming | 6 | 5.4% | 65,038 | 2.8% |
| | Outleasing | 4 | 3.6% | 36,465 | 1.6% |
| | Succeeding Lease | 2 | 1.8% | 32,724 | 1.4% |
| | Real Estate Tax Adjustments | 1 | 0.9% | 7,234 | 0.3% |
| **Equis Corporation Total** | | **58** | **52.3%** | **1,407,330** | **61.0%** |
| **PM Realty Group, Ltd.** | | | | | |
| | Preaward Service Menu Item | 18 | 16.2% | 236,901 | 10.3% |
| | Post Award Services | 3 | 2.7% | 198,920 | 8.6% |
| | Space Programming | 9 | 8.1% | 157,714 | 6.8% |
| | Outleasing | 4 | 3.6% | 103,481 | 4.5% |
| | Full Lease Acquisition Services | 9 | 8.1% | 98,573 | 4.3% |
| | Succeeding Lease | 2 | 1.8% | 53,701 | 2.3% |
| | Lease Extension | 4 | 3.6% | 34,266 | 1.5% |
| | Non-Contract Services | 1 | 0.9% | 7,000 | 0.3% |
| | Lease Alterations | 1 | 0.9% | 3,989 | 0.2% |
| | Real Estate Tax Appeal | 1 | 0.9% | 2,250 | 0.1% |
| | Antenna Outleasing | 1 | 0.9% | 2,000 | 0.1% |
| **PM Realty Group, Ltd. Total** | | **53** | **47.7%** | **898,795** | **39.0%** |
| **Grand Total** | | **111** | **100.0%** | **2,306,125** | **100.0%** |

**Figure 18 - (source: auditor's task order analysis)**

"Preaward Service Menu Item" was the most frequently ordered service for both contracts by a large margin. By comparison, "Full Lease Acquisition Services" topped the list for most other contracts. Also, 16 percent of the West Zone task orders were cancelled; the second highest cancellation rate in any zone or region. The absence of current activity seemed to limit both the quantity and quality of feedback relative to these contracts. We did not pursue reasons for these anomalies.

Task orders in the West Zone generally adhered to the scope of work, with three percent of task orders placed for non-contract services. These services included conference participation and seminar materials. Additionally, five percent of task orders placed were pricing exceptions, containing services not priced in accordance with the contract pricing structure and not in the Government's favor. Eight percent of task orders contained data insufficient to determine if the order amount was derived from the contract pricing structure.

Task order administration was also weakened by the use of blanket ACT numbers, a nationwide practice but more pronounced here. The vast majority of task orders were issued against two ACT numbers: P65494402 for Equis Corporation and P65494392 for PM Realty Group. The PBS Office of Finance apparently prescribed the practice as a means to ensure recognition of the annual minimum order guarantee under each contract. The absence of a unique transaction control number is harmful to the control environment, defeating the means relied upon to track accounting actions by transaction. Without a unique ACT number, for example, there is no simple method to measure whether total payments exceed the total amount authorized under the related task order.

Also irregular, two West Zone task orders totaling $40,000 were issued for blanket travel requirements. The contract permitted incidental travel expense as a direct cost incurred in connection with delivery of an ordered service. The vendor would submit evidence of costs much like an employee would voucher for travel expense. However, unlike processing an employee voucher, travel expense invoiced under the contract is not supported by an automated system or standard authorization/voucher process. When travel funds are obligated separately from the actual service ordered, there is no assurance that costs are authorized, related and appropriate to a specific task.

Lessons:

1. The practice of grouping transactions under a single, blanket ACT number defeats a critical internal control element.
2. Travel costs as a direct reimbursable item pose a significant administrative burden, particularly under any scenario that greatly expands the use of brokerage contracts.

## *Summary of Region 4 Regional Broker Contract*

The Southeast Sunbelt Region (Region 4) has in place a sole-source, SBA 8(A) set-aside regional contract to supplement its existing national brokerage contracts. JMG Funding Control, Inc. was awarded an indefinite delivery, indefinite quantity task order contract for an initial term of one year, effective June 1, 2000, with four option years. The minimum guarantee is $72,500 per year and the maximum order limitation is $580,000 per year, or $2,900,000 over the life of the contract. JMG received a total of nine orders, valued at $103,901 in FY2000, $85,315 FY2001 and $55,568 through July FY2002. All were for full lease acquisition service all priced in accordance with the contract.

The contracting officer attributes the region's moderate use of this contract to several factors. First, she notes that JMG's pricing is at the high-end of the acceptable range. Second, to permit it to qualify, JMG was not held to the same level of experience requirements as other contractors, so there was some concern about the contractor's ability to perform, and a substantial amount of time was devoted to ensuring that JMG understood the contract requirements. Current performance has been satisfactory.

Lessons:

1. To be effective, brokers require specific knowledge and experience in the federal leasing process.

## *Summary of Region 5 Regional Brokerage Contracts*

The Great Lakes Region (Region 5) has awarded six regional brokerage contracts, two each covering Southern Illinois, Northern Illinois, and the States of Michigan and Ohio combined. These are multiple-award, indefinite delivery, indefinite quantity task order contracts. The base term is October 1, 2000 through September 30, 2002 plus three option years. The guaranteed minimum order value is $50,000 per contract per year. The maximum total dollar limitation is $500,000 per contract per year.

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| **Regional (R5)** | | | | | |
| **Equis Corporation** | | | | | |
| | Preaward Service Menu Item | 17 | 41.5% | 186,132 | 34.9% |
| | Succeeding Lease | 7 | 17.1% | 38,381 | 7.2% |
| | Appraisal | 1 | 2.4% | 9,913 | 1.9% |
| **Equis Corporation Total** | | **25** | **61.0%** | **234,426** | **43.9%** |
| **Spaulding & Slye Services, LP** | | | | | |
| | Preaward Service Menu Item | 15 | 36.6% | 259,728 | 48.7% |
| | Outleasing | 1 | 2.4% | 39,436 | 7.4% |
| **Spaulding & Slye Services, LP Total** | | **16** | **39.0%** | **299,164** | **56.1%** |
| **Grand Total** | | **41** | **100.0%** | **533,590** | **100.0%** |

**Figure 19 - (source: auditor's task order analysis)**

The contract does incorporate provisions designed to achieve a fair opportunity to be considered as prescribed by FAR. Generally, orders above $25,000 are to be competed. It includes within its description of services a full array of lease acquisition and related services, but unlike other contracts examined, does not contain a "full lease acquisition" service per se, only the component parts. What sets this contract apart however is that while it defines specific services, it does not establish a fixed price for those services. The price schedule is simply a fully loaded labor hour rate for project managers, real estate associates, space planners, appraisers, architects, engineers, etc. It does not establish a staffing requirement or standard number of hours per service. The contractor responds to each task order with a staffing proposal priced out at contract rates, plus estimated travel and advertising.

The apparent benefit to this structure is flexibility, but that mainly accrues to the contractor as it can customize each proposal to reflect the specific conditions at hand, eliminating much of the risk it would assume were its prices fixed. The corollary is that the price risk shifts instead to the government, so for example, it can expect to pay more for an urgently needed service. This procurement model is administration intensive; every requirement must be drafted with sufficient detail for the offeror to determine its staffing and travel requirement. An independent government estimate is prepared. Negotiations are often required, as the price difference between the proposal and the estimate belies a significant difference in assumptions. All of these actions require documentation. Were it quantifiable, the administrative effort might be found to exceed the order values, which were typically below the $25,000 competition threshold.

In the case of the few task orders that were competed, negotiations were more involved, and the administrative demands increased. The process also highlighted differences in perception of the services required. The two vendors are among the more experienced contract holders, yet their bids were at times so far apart (up to 600% difference observed) and both so far from the independent government estimate, as to question to what extent the parties share common understanding of the requirements even under the national, fixed price contracts.

There was also one example of a bundled requirement, ultimately priced at more than $89,000 but not competed. The statement of work did not specify the services sought. It instead established a geographical limitation and a fixed time period (3 months), and asked that the contractor submit a price proposal to cover all potential work in that location during that period of time. The file did not disclose the basis for establishing a determination of fair and reasonable pricing, nor does it appear, given the vague requirement, that it would be possible to do so. We note that there has been no transaction accounting subsequent to the initial task order obligation, which was dated September 2001.

One positive aspect is that the Contracting Officer established a task order file template to be adopted by the designated Contracting Officer Representatives for each of the six contracts. It included a file checklist; an outline of the task order steps; sample forms and letters; excerpts from the contract; etc. This seemed to ease the administrative burden and standardize the file structure.

Lessons:

1. A task order file template reduces the administrative burden and improves the average quality of all related documentation.
2. Because it relies upon task specific negotiations to arrive at price, it would be time and resource prohibitive to expand the use of this contract to areas of significant demand.
3. Reliance on labor-hour analysis for price negotiations implies a task of indeterminate performance risk, which places this contract at odds conceptually with the other, fixed-price contracts PBS has awarded for these same services.

## *Summary of Region 7 Regional Brokerage Contracts*

Region 7 (Greater Southwest Region) utilizes three brokerage contracts in managing its leasing workload. The first was awarded to Amelang Management Corporation and became effective in September 2000. The contract has a two-year base term and three one-year options. Additional vendors were added one year later, with contracts awarded to Spaulding & Slye Colliers and Julien J. Studley, Inc. with notice to proceed in February 2002. These contracts have a one-year base term and four one-year option periods. Included in the pricing structures are differentiated fees for services within and outside major markets as well as provisions for the contractor or the Government to provide for workspace. These contracts also include additional service options, such as negotiation of a superseding lease, environmental analysis and report, and negotiation of a change order. The guaranteed minimum for all three contracts is $200 per contractor, per year, much lower than the guarantee for the national brokerage contracts.

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| **Regional (R7)** | | | | | |
| **Amelang Management Corp.** | | | | | |
| | Full Lease Acquisition Services | 23 | 40.4% | 939,996 | 55.1% |
| | Succeeding Lease | 3 | 5.3% | 36,500 | 2.1% |
| | Lease Alterations | 5 | 8.8% | 34,640 | 2.0% |
| | Post Award Services | 2 | 3.5% | 33,163 | 1.9% |
| | Lease Extension | 2 | 3.5% | 20,800 | 1.2% |
| | Preaward Service Menu Item | 4 | 7.0% | 17,500 | 1.0% |
| **Amelang Management Corp. Total** | | **39** | **68.4%** | **1,082,599** | **63.5%** |
| **Julien J. Studley, Inc.** | | | | | |
| | Full Lease Acquisition Services | 7 | 12.3% | 394,809 | 23.2% |
| | Succeeding Lease | 1 | 1.8% | 16,800 | 1.0% |
| | Preaward Service Menu Item | 2 | 3.5% | 5,750 | 0.3% |
| **Julien J. Studley, Inc. Total** | | **10** | **17.5%** | **417,359** | **24.5%** |
| **Spaulding & Slye Services, LP** | | | | | |
| | Full Lease Acquisition Services | 4 | 7.0% | 180,658 | 10.6% |
| | Lease Extension | 4 | 7.0% | 24,000 | 1.4% |
| **Spaulding & Slye Services, LP Total** | | **8** | **14.0%** | **204,658** | **12.0%** |
| **Grand Total** | | **57** | **100.0%** | **1,704,616** | **100.0%** |

**Figure 20 - (source: auditor's task order analysis)**

Of these 57 task orders, all services ordered were within the contractual scope of work. Seventy-two percent of task orders were priced in accordance with the contracts. Nine percent of task orders were pricing exceptions, meaning the order amount was higher than the contract price with no documented explanation for the variance. The majority of these exception-priced task orders were awarded to Amelang Management Corporation. Additionally, 19 percent of the task orders contained data insufficient to determine if the order amount was derived from the contract pricing structure.

The contract does not address task order competition, and no competitive actions were noted in our review of task orders. We note that the initial single award contract would have required a specific justification, as multiple award contracts are the express preference under the FAR. There were several other notable aspects to this vehicle. The solicitation sought alternative pricing for work performed in government provided work space, but this brought no pricing concessions from the contractors. The solicitation did however achieve pricing differentiation for work performed in major versus non-major markets, and for lease acquisition subject to simplified versus standard procedures. The statement of work also drew a distinction between aspects of the lease acquisition that must be performed by the government and those responsibilities assignable to the contractor. Also, we noted a set of objective performance standards and a standard timeline of milestone events depicting several variations of lease acquisitions.

Lessons:

1. The vendors do make a cost distinction between major and non-major market acquisitions, seeking a premium for the latter.
2. Cost savings will not be the justification to satisfy PBS' desire for brokers to co-locate with the PBS realty specialists (potentially a task-specific requirement under these contracts), as the vendors offer no discount for this arrangement.
3. It would be informative to follow up on the effectiveness of the performance measurement methodology established under these contracts, which stood out with tangible, measurable performance standards.

## *Summary of Region 8 Regional Brokerage Contract*

The Rocky Mountain Region (Region 8) awarded a sole source regional brokerage contract to Equis Corporation effective January 2001 for one base year and four option years. The scope of work includes:

- On-Site Real Estate Services,
- Lease Acquisition Services and
- Menu Services.

The contract pricing structure is as follows. The vaguely defined on-site services are priced simply as a rate per hour line item. Full lease acquisition services are priced in terms of the percentage of commission to be rebated to GSA, not a definite amount. Menu services are also simply proposed as a rate per hour. The minimum order guarantee is 50,000 square feet for lease acquisition services, and $25,000 for menu item services. The contract maximum order limitation (MOL) is expressed as a percentage of estimated annual order amounts, which is dependent on the number of option years exercised. For lease acquisition services, the MOL is 300,000 square feet times the number of contract years awarded, or up to 1,500,000 square feet. For menu services, the MOL is $750,000 times the number of contract years awarded, or up to $3,750,000.

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| **Regional (R8)** | | | | | |
| **Equis Corporation** | | | | | |
| | Preaward Service Menu Item | 1 | 9.1% | 13,090 | 100.0% |
| | Full Lease Acquisition Services | 10 | 90.9% | - | 0.0% |
| **Equis Corporation Total** | | **11** | **100.0%** | **13,090** | **100.0%** |
| **Grand Total** | | **11** | **100.0%** | **13,090** | **100.0%** |

**Figure 21 - (source: auditor's task order analysis)**

Note that total order amount for the ten full lease acquisition services is zero. These were all issued as zero dollar task orders, with the broker to be paid directly from the lessor. This is one of two regional contracts under which we observed such a practice. For additional information, please refer to report section *Rebates and the Use of "Zero Dollar" Task Orders (page 14).*

Lessons

1. Contingent, third-party compensation such as occurs under this contract cannot be reconciled with existing procurement regulations, budget rules, and accounting requirements.

## *Summary of Region 9 Regional Brokerage Contracts*

Region 9 (Pacific Rim Region) awarded five regional brokerage contracts effective September 2000 through August 2001 with four one-year options. Coverage is zone specific:

- San Francisco Service Center (Zone 1)
- Pacific Service Center (Zone 2),
- Los Angeles Service Center (Zone 3),
- Desert Service Center (Zone 4) and
- Regionwide (Zone 5).

Wallace & Steichen, Inc. was awarded a brokerage contract for Zones 1-4. Equis Corporation services Zone 5. The Crown Partnership, Inc. and Colliers International handle Zones 1-5. Kabler/Robbins Commercial Real Estate, Inc. serviced Zone 1 for the base term of the contract and added Zones 2-4 in September 2001. Options for the first option year were exercised under all five contracts. The minimum-ordering guarantee for each contract is $2,000. The contracts include both full lease acquisitions and menu services. Hourly rates ranging from $50-$360 in the base year are available for leasing services, space planning, building environmental evaluations and fire protection surveys. The contracts also call for a fair opportunity to be considered with price, past performance, experience and key personnel qualifications cited as criteria for task order selection.

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| **Regional (R9)** | | | | | |
| **Colliers International** | | | | | |
| | Full Lease Acquisition Services | 3 | 6.1% | 58,000 | 3.9% |
| | Post Award Services | 3 | 6.1% | 57,325 | 3.8% |
| | Preaward Service Menu Item | 1 | 2.0% | 850 | 0.1% |
| **Colliers International Total** | | **7** | **14.3%** | **116,175** | **7.7%** |
| **Equis Corporation** | | | | | |
| | Full Lease Acquisition Services | 15 | 30.6% | 122,159 | 8.1% |
| **Equis Corporation Total** | | **15** | **30.6%** | **122,159** | **8.1%** |
| **Kabler Robbins** | | | | | |
| | Full Lease Acquisition Services | 2 | 4.1% | 431,324 | 28.7% |
| | Preaward Service Menu Item | 1 | 2.0% | 5,000 | 0.3% |
| **Kabler Robbins Total** | | **3** | **6.1%** | **436,324** | **29.1%** |
| **The Crown Partnership, Inc.** | | | | | |
| | Full Lease Acquisition Services | 14 | 28.6% | 404,207 | 26.9% |
| | Post Award Services | 2 | 4.1% | 5,908 | 0.4% |
| | Non-Contract Services | 1 | 2.0% | 2,000 | 0.1% |
| **The Crown Partnership, Inc. Total** | | **17** | **34.7%** | **412,115** | **27.4%** |
| **Wallace & Steichen** | | | | | |
| | Full Lease Acquisition Services | 7 | 14.3% | 414,660 | 27.6% |
| **Wallace & Steichen Total** | | **7** | **14.3%** | **414,660** | **27.6%** |
| **Grand Total** | | **49** | **100.0%** | **1,501,433** | **100.0%** |

**Figure 22 - (source: auditor's task order analysis)**

Of these 49 task orders, only one for conference participation seemed to fall outside the contractual scope of work. Two additional task orders issued were pricing exceptions; priced at amounts greater than the pricing structure with no justification for the variance. All other task orders (94 percent) were priced in accord with the contract. However, 26 of these were issued as "zero dollar" task orders, with funding to come directly from the lessor. To date, zero dollar task orders have been issued to all contractors except Kabler/Robbins Commercial Real Estate. For additional information, please refer to report section *Rebates and the Use of "Zero Dollar" Task Orders (page 14).*

Lessons:

1. Lack of adequate funding, perceptions of inequities in the reallocation of rebate dollars, and a permissive environment have encouraged the creation of inappropriate and potentially illegal transaction accounting.

## *Summary of Region 11 Regional Brokerage Contracts*

The National Capital Region (NCR) awarded five indefinite delivery, indefinite quantity contracts effective October 2001 with a one-year term and four one-year options. The vendors selected were Capitol CREAG; Equis Corporation; The Crown Partnership; Spaulding & Slye Services, LP; and Trammell Crow Company. The minimum order guarantee on NCR's regional brokerage contracts is $10,000 per contract, much lower than the guarantee under the national brokerage vehicles. The maximum order limitation is $3,000,000 per contract.

In addition to the usual full lease acquisition and menu service items, this contract has been tailored to the unique requirements of the Advanced Acquisition Program (AAP), a procurement methodology unique to NCR that results in a standing inventory of properties available for lease ranked by price. Under AAP, a significant percentage of the lease procurement is accomplished in advance of the actual tenant space requirement by means of a periodic blanket solicitation for offers (SFO) used to create the inventory. As they occur, tenant-specific requirements are then satisfied from that inventory, without the need for individual competitive procurement actions. While the statement of work language is ambiguous as to intent, it appears that NCR contemplates using this contract to satisfy both the procurement action to create AAP inventory as well as the fulfillment of a specific tenant requirement from AAP inventory.

These regional brokerage contracts include a provision for the "fair opportunity to be considered" at the task order level. In theory the provision is there to maximize competition, allowing the five vendors an opportunity to reduce their contract price to win additional business under individual task orders. In practice, the provision tends to establish criteria under which the government can issue a task order *without* competition, citing the necessity to satisfy the minimum-ordering limit, the contractor's prior performance, any specialized expertise, and any conflict of interest that would restrict a contractor's ability to perform the specified work.

In this instance, there were only four orders in process as of our fieldwork cutoff: two of these were competed; two were not. Of the latter, one cites "continuation of work from another contract vehicle" as reason not to compete the requirement. The other cites "commitments made prior to {the contracting officer's} involvement". Both also mention successful prior performance. Neither justification appears sufficient to satisfy the fair opportunity provisions required by FAR 16.505(b) or the task order placement criteria delineated in the contract. Further, while the contract does list prior performance as a task order criterion as one of the award factors, to find it cited as a reason to exclude competition was unexpected.

| Contractor | Service Ordered | Order Count | % of Count | Order Amount | % of Amount |
|---|---|---|---|---|---|
| Regional (R11) | | | | | |
| Capitol CREAG | | | | | |
| | Full Lease Acquisition Services | 3 | 75.00% | 135,065 | 88.8% |
| Spaulding & Slye Services, LP | | | | | |
| | Full Lease Acquisition Services | 1 | 25.00% | 17,058 | 11.2% |
| Grand Total | | 4 | 100.00% | 152,123 | 100.0% |

**Figure 23 - (source: auditor's task order analysis)**

As the table above indicates, implementation of the regional brokerage contracts has been slow, which we believe is primarily due to the absence of funding. But the delays are also partly by design as the region works to correct problems encountered under the national brokerage vehicle. Internal control improvements include:

- Discontinuance of blanket ACT numbers;
- Formal designation of Contracting Officer's Representatives (CORs) and Technical Representatives (COTRs) that delineates authority and responsibility;
- Specific, written ordering instructions and a task order selection criteria checklist;
- Letters to the contractors that advise that only CORs can authorize a task;
- Certificates of non-disclosure; and
- Increased training.

These changes, similar to the good practices noted in other regions, are appropriate and responsive to the known problems identified under the East Zone contract. However, there is still no defined methodology for tracking contract-wide order activity. The financial management information system does not capture contract numbers, in effect disabling the definitive source of verification. This will impact administration of both the maximum order limitation and the minimum revenue guarantees (although mitigated here by the low value guarantees). Also, as task order volume increases, the inability to capture and easily access contract summary data will preclude complete vendor prior performance feedback to each of the CORs. (Prior performance is cited as a task order award criterion.)

With respect to pricing, the price per service established under the contract is described as a "ceiling price". Actual cost under a task order can be lower if the task order is competed. That fact notwithstanding, the contract-derived prices were the basis for award and should represent fair and reasonable pricing as is, not simply serve as a starting point. Our observations, however, raise doubt. For example, the rates accepted for new lease requirements to be filled from AAP inventory offer little discount from the rates for a standard full lease acquisition. Prior discussion with various PBS officials had portrayed the AAP as a means to accomplish as much as 75 percent of the lease acquisition in advance of the tenant requirement. The contract prices do not reflect these efficiencies, and if our interpretation is correct, could actually produce a total cost for an AAP procurement that exceeds the same requirement accomplished under a tradition full lease acquisition. That is, PBS may pay the broker twice: once to evaluate a group of offers and replenish the AAP inventory, then a second time to satisfy a tenant-specific requirement to be filled from that inventory. The combined fees under such a scenario are significantly higher than a non-AAP full lease acquisition.

In an attempt to further research this issue we found conflicting interpretations regarding the intended scope of services. This ambiguity extends back to the source selection plan itself, and to the subsequent price analysis. There is an excessive variance between contract-awarded prices, more than 100 percent in the case of full lease acquisition services, and even greater in the case of some menu item services. The variances might indicate several different but perhaps equally valid interpretations of a vague requirement, or they might indicate an incomplete understanding of the requirement on the part of one or more of the vendors. Contract file documentation indicates that price analysis was primarily conducted at the aggregate proposal level, where service cost variances such as these would not be detected.

Lessons:

1. The requirements of the National Capital Region are unique and likely best satisfied through regional scope contracts designed to meet those needs.
2. Funding and administrative requirements must be addressed strategically. Inadequate funding will either promote the misrepresentation of tasks in search of funding alternatives, or preclude access to contracting services altogether.
3. Specific task order administration requirements need to be articulated. A file template would help. Examples of adequate and inadequate practices should also be provided. Projections of anticipated administrative workload and staffing requirements would then be possible.
4. Deficient procurement and contract administration practices observed here may extend beyond this contract vehicle, implying a need for an objective assessment and corrective action.

# APPENDIX C

### *Non-Contract Services Referenced in Figure 9*

| Note | Description |
|---|---|
| a | **DC AAP/Ratification**: Two DC AAP orders totaling $1,441,000 were included in the NCR ratification package; i.e., these orders bypassed the procurement office. Basis of negotiation was not disclosed. These orders were for "services provided for the Advanced Acquisition Program", otherwise not defined. Vendor appears to have been tasked to conduct the periodic solicitation for offers used to establish the inventory of pre-priced space available for lease. |
| b | **Research & Development**: An order was issued for the contractor to "provide Space Occupancy and Post-Occupancy Research and Development Support" for $388,000. The scope of work included researching "the relationship between people, space and productivity" and "the future of emerging workplace technologies and practices". Invoices were paid on a monthly basis. |
| c | **Legal Services**: Two orders were placed for "fee due in connection with legal services provided by Arnold & Porter to the Securities and Exchange Commission for the relocation of their headquarters". Invoices included a contract management fee of five percent added to the legal costs. Total invoiced to date for the legal services portion of orders is $83,260. |
| d | **Workplace Solutions**: Two orders were placed for Workplace Solutions in NCR, totaling $257,112. The scope of work includes gathering and analyzing historical data on NCR projects, working as a team leader to bring together multiple disciplines and presenting plans to staff and clients. The contractor names one individual to specifically handle this project. This individual also works simultaneously on Telecommuting Center projects, although the cost justification assumes a full time equivalent for both projects. |
| e | **Telecommuting Center**: Three orders were issued for Telecommuting Center Projects in NCR for $255,000. The scope of work includes approving budgets, analyzing financial reports and recommending billing rates to federal agencies. The orders retain the services of the contractor from February 1999 through January 2002. Invoices were paid on a monthly basis. |
| f | **Consulting**: Five orders were placed for consulting services, totaling $223,363. One order was for technical consulting support during negotiations. Two of the orders were for real estate consulting. The remaining two orders were for miscellaneous consulting associated with given projects. |
| g | **Multi-Project Assignment**: One order was vaguely described as a multi-project assignment for a given Service Delivery Division. It was priced with the blanket order amount $100,000. |
| h | **Technical Support Services**: Two orders were placed for Technical Support Services at a cost of $96,000. One order was for a specific project and was invoiced in full at project completion. The second order called for reviewing current leases and establishing a negotiating strategy for maximizing the GSA position. Invoiced are paid via a monthly retainer. |
| i | **Site Selection Study**: Two orders totaling $68,447 were placed for site selection studies at the NOAA Science Center in Maryland. The scope of work included preparing a site selection analysis for sites provided by GSA and supplemented by the contractor. Price includes line items for meetings, briefings and report copies. |
| j | **Other**: Fourteen additional non-contract service orders include project management, memorandum report to Congress, lease audit, title search and miscellaneous work. |
| k | **Lease Audit**: An order was placed in the West Zone which included $110,000 for lease audits in a given Service Center. Invoices indicate that the lease audits included CPI escalations, property tax work, settlement negotiations and field space utilization studies at a cost of $150-$175 per hour. |
| l | **Telecommuting Center**: An order was placed in the East Zone for "all necessary Management Services for nine Telecenters located throughout Region 3". The amount of this order is $121,625. Scope of work includes receiving, reviewing and paying expenses as well as analyzing financial |

# APPENDIX C

***Non-Contract Services Referenced in Figure 9***

| | |
|---|---|
| | performance of all centers. The file indicates that the same contractor handling the NCR Telecenters will handle the Region 3 Telecenters. Additionally, the contractor is given the formal title "GSA Regional Telecenter Coordinator" to allow for cover letter signature. |
| m | **Consulting**: Region 3 issued two task orders totaling $35,000 for "analysis of possible lease renewal/extension" under the East Zone contract. The scope of work includes analyzing the owners' offers, determining the "upside" of a lease extension action, and providing information necessary to make a decision regarding lease extension. |
| n | **Lease Buyout**: Three task orders were issued in Region 3 for lease buyout services totaling $17,660. Scope of work includes "buy-out analysis, review of current lease files, negotiation of lease buy-out". |
| o | **Other**: Five additional tasks orders were issued outside of NCR for non-contract services. Services ordered include conference participation/presentation, seminar materials and labor and appraisal services. |

# APPENDIX D

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