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Development, Public Buildings and Emergency Management
Committee on Transportation and Infrastructure
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Making the GSA Lease and Construction Process Efficient,
Transparent, and User-friendly

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Good morning Madam Chairman, Ranking Member Graves, and members of the Subcommittee. Thank you for holding this important hearing on improving the GSA leasing and construction process and inviting me to testify today. I am Gail Seekins, Senior Property Manager of Akridge, a full-service commercial real estate firm here in Washington, D.C. I am here today representing the Building Owners and Managers Association (BOMA) International and am a past-president of its local association, the Apartment and Office Building Association.

First and foremost, I would like to say that the General Services Administration is one of BOMA International's largest and most valued members. Our comments today are intended to highlight improvement opportunities that will help the federal government and the private sector companies that build and lease to government agencies, and better streamline the processes to save money for all parties involved. I would also like to state that our comments are a compilation of general feedback we received from a number of our member companies that do business with GSA, and are not intended to highlight specific project related concerns of my company or any other BOMA member company. We also would like to compliment GSA for their continued improvement over the years and their willingness to work with BOMA to further improve. Some of the issues to be identified can be improved internally by GSA, but some require OMB and the Congress working together to correct.

The Construction Process

Scoring Rules. Scoring rules are always at the top of the list when asked to identify some of the problematic aspects of doing business with the government. To avoid the harsh accounting treatment required for capital leases, the GSA only writes operating leases. The Office of Management and Budget (OMB) authors the rules for operating leases in OMB Circular A11. OMB's rules are generally more stringent than equivalent private sector practice. The distorting effect and complications of Federal budget scoring rules are becoming a deterrent to bidders on government procurements. Scoring rules often contort the lease procurement practice and increase costs in the following ways:

- The GSA is prohibited from leasing on government land and then leasing back the improvements even when they own acceptable sites.
- GSA is prohibited from outleasing underutilized buildings which could be renovated to meet new requirements and then leased back to the government.
- "Unique" features required by the government must be paid for outside the rent in a lump sum. This accounting for what is unique and then parsing the financing complicates the lease procurement process.
- Longer lease terms which would reduce the rental rate are often prohibited by A11 rules to avoid capital lease treatment. Leasing for 20 years yields a lower rate than leasing for 10 to 15 years. Leasing for short terms for long term Federal requirements drives up costs.
- The government cannot accept a bargain priced purchase option at the end of the lease term.
- Lease to ownership options are not allowed which rules out the cheapest financing options and lowest rates.

- Scoring rules do not seem to recognize the historic appreciating value of real estate which causes government risk factors to be overestimated.

A specific example involves FBI build to suit leases. Due to the present scoring rules, the rental rate is based on a normal “Class A” office building, with no consideration given to the specific security and construction requirements in FBI buildings, which can increase the cost of the building by as much as 10-20 percent. The Prospectus Rental Rate set by Congress is often not enough to do the job without a large lump sum payment, frequently in the millions of dollars, if not much more, for security that FBI and other agencies simply do not have in their budget. This problem has been evidenced by several failed lease construct projects after award, in addition to a number of high profile projects that cannot be awarded due to lump sums that are simply too high for FBI and other federal agencies with high technology or security needs to fund. Discovering this each time, at the time of bid evaluation, causes problems and cost for everyone that must be corrected.

BOMA understands the need for high security in high profile buildings for FBI, other law enforcement agencies, and certain Department of Energy and other agency functions. We also understand that build to suit lease buildings for these functions are quasi federal buildings and deserve the same security as their government owned counterparts. However, since the leases are usually for long periods of time and the special security features are in place for that entire period, we don’t understand why the security features can’t be factored in the lease prospectus rental amount so that a rent rate adequate to complete the entire project without a large agency lump sum can be approved.

Until OMB and Congress fix those system issues, GSA will have serious issues delivering projects for FBI and other agencies with high security requirements. This process is broken. For developers, it costs \$150,000-400,000 to bid on each project and when they just don’t award the bid, it is wasted effort for everyone and could eventually result in less industry competition for these types of leases.

Real Estate Taxes. We believe that GSA should make Solicitations for Offers (SFOs) net of any real estate taxes. At the time the project is bid, the real estate taxes are unknown, and local government assessors and project bidders can only guess. The result is that every bidder will guess differently, making it impossible for GSA to compare “apples to apples.” An inaccurate guess for the developer can result in large discrepancies in their operating budgets as well. Eliminating this unknown from the process would benefit both parties.

Site Selection/Ground Leases. BOMA believes that GSA should avoid using ground leases whenever possible. Instead, we would support GSA selecting and acquiring the site prior to issuing the SFO. The winning developer would then take assignment of the site. This would level the playing field for the bidding process. In addition, ground leases may cause additional complications to the selected developer, as these projects are difficult to finance. Lenders have their own standards for ground leases, and the developer is unable to renegotiate a deal that has already been agreed to between GSA and the owner of the land. Eliminating the ground lease would simplify the bid process and increase the quantity and quality of participants.

Square Footage Requirements. Many SFOs will include square footage requirements for specific rooms or offices without providing the additional detail of the actual dimensions required. We believe that SFOs should be as specific as possible to alleviate the possibility of a building being designed and constructed that does not meet the agency's needs or system furnishing even though the square footage requirement was met. In addition, while GSA began using the BOMA *Standard Methods for Measuring Floor Area in Office Buildings* several years ago, we still see SFOs from time to time that use terminology to measure square footage (such as "net usable") that are not defined in the Standard.

The Leasing Process

Generally, the federal government is perceived by the office building industry as a great tenant, for all of the obvious reasons including their creditworthiness. The use of outside brokerage firms over the last several years has, we believe, on balance, been a positive development, helping to instill certain private sector norms into the GSA leasing process. However, we have all encountered some frustrations as well.

Prospectus rental rates, which are often approved well before the lease procurement begins, have not kept up with the rapid increases in construction materials and labor costs; historic rates do not reflect current costs. In addition, they often don't take into account certain differentiating features, i.e., proximity to mass transit. This phenomenon often precludes many commercial landlords from competing for GSA leases who might otherwise do so.

In broad terms, government leases do not reflect current private sector market practices and many clauses are not landlord friendly. Over time, one learns which clauses get enforced and which ones don't. However, lending institutions look at all the clauses when assessing risk and assigning interest to the project. Clauses that are never used do cost the government. The leases should certainly be drafted to protect the occupant, but only when the protections make sense. For example, there are no holdover provisions in the government lease, but the government can introduce condemnation, which means a government tenant cannot be evicted. That may make sense due to the nature of government functions, but leases should have a holdover provision with a rent escalation to encourage GSA to eliminate holdovers. With the pending impact of BRAC related relocations and the anticipated delays associated with them, the holdover issue will become even more of an issue for commercial landlords over the coming years.

Termination without notice and restoration clauses may not be typical practices but are used at times in some regions. When used, they should be more aligned with industry standards to make them understandable by the general building owner community and thus increase competition for GSA leases, which should in turn result in reduced cost for the government. Additionally, some clauses serve no benefit while costing the government in the rental rate obtained for their use. An example is a clause now included in most build to suit leases which allows the government to buy a building at market rates at any time during the period of the lease. The problem is the government never exercises this clause, although lending institutions see this clause as a risk and thus penalize the project for it. GSA should not use clauses that are not used or do not provide adequate return for the cost of the clause being in the lease.

BOMA would be happy to work with GSA, and the Committee (since many of these clauses are bound by law) to identify clauses that are not industry standard or cost the government without appropriate benefit and recommend appropriate substitutes.

Staffing and Operating Procedures

The next set of issues I would like to highlight today is probably the easiest to cure. Improved communications between the GSA, federal agencies, and their private-sector business partners would resolve many of these.

Personnel turnover is certainly inevitable in any entity whether it's private sector or government. However, it sometimes appears that GSA often reassigns their staff to different positions where they have limited technical experience. The notion that anyone can do anything is simply not correct. When building owners and managers must start over with a new person, who must then invest much time learning procedures and becoming acclimated to the property, it causes frustration. We would recommend GSA consider modifying its excellent Intern Program to include more technical training in the leasing and facilities management area and target specific hires for careers in real estate leasing, both for existing buildings and build to suits.

In addition, the federal government is notorious for their slow payment processing. Delays in processing payments for work orders, operating expense increases, and real estate tax payments are not only frustrating but also costly to the federal government due to the mandate to pay interest on payments not processed within thirty days. Invoices for additional work, accompanied by supporting documentation, may be rejected without explanation or with a request for information that was provided at the outset. While the government does pay interest, they should understand slow payment creates a cash flow problem for the lessor.

Delays in processing lease documents are also an issue, and many commercial landlords are now finding that it may take three to four months to receive an executed lease back from the GSA after the landlord has signed the document. The delays associated with lease amendments or modifications are even greater. We understand that GSA is presently working to address this issue and we appreciate these efforts.

Finally, the billing process needs to be explained in more detail so that new or inexperienced to government lessor know where and how to send bills to GSA so that they can be effectively processed.

In summary, improvements in making GSA leases more attuned to industry standards will not only help the private sector, but also increase competition for government leases, which is good for everyone.

We thank the Subcommittee for holding this important hearing, and look forward to working with Congress, GSA, and other public and private sector partners to achieve our mutual goal of improving the construction and lease process to make it more effective for GSA and their private-sector partners.

About BOMA International

Founded in 1907, the Building Owners and Managers Association (BOMA) International is an international federation of more than 100 local associations and affiliated organizations. BOMA International's members are building owners, managers, developers, leasing professionals, medical office building managers, corporate facility managers, asset managers, and the providers of the products and services needed to operate commercial properties. Collectively, BOMA members own or manage more than nine billion square feet of office space, which represents more than 80 percent of the prime office space in North America.