

Real Property Leasing

EXECUTIVE SUMMARY

We reviewed the Commission's real property leasing procedures to determine whether they were efficient, met Commission needs effectively, and complied with applicable guidance. Generally, we found that the procedures were efficient and effective, and complied with the guidance.

The Office of Administrative and Personnel Management (OAPM), which administers real property leasing, has supplemented its expertise by using the services of real estate brokers and the Office of General Counsel (OGC). OAPM has established procedures for leasing space in headquarters and the field offices.

We are making several recommendations to enhance leasing, including updating Commission guidance; documenting OGC review of leasing documentation; enhancing analysis of lease billings; and providing additional training to leasing staff.

BACKGROUND

Under the Securities Act Amendments of 1990 (Public Law 101-550), section 4(b) (3) of the '34 Act, the Commission has independent leasing authority to lease space directly, without using the services of the General Services Administration (GSA). Also, it is not subject to GSA's space management regulations or directives. The Commission has issued guidance on leasing and space assignment in its regulation SECR 5-8, the Space Management Program (dated August 23, 1996).

The Associate Executive Director in OAPM has overall responsibility for the leasing program, and signs all agency leases. The OAPM Operations Officer, assisted by a leasing specialist, manages day-to-day leasing activities. In addition, attorneys in the Office of General Counsel review all lease agreements for legal sufficiency.

Additional leasing expertise is provided by two real estate brokers hired by OAPM, one for headquarters and one for the field offices. They provide information about space availability and prices in a geographic area; coordinate leasing activities; prepare market analysis and appraisals; and assist the Commission in analyzing leasing offers in response to a solicitation.

OAPM leases approximately 450,000 rentable square feet for headquarters, 200,000 square feet for the Operations Center and Annex, 195,000 square feet in the regional offices, and 110,000 square feet in the district offices. The headquarters and several of the field office leases will expire soon (*e.g.*, headquarters in 2003, Atlanta and Salt Lake in 2001, Chicago, Philadelphia, and Miami in 2002). For these offices, OAPM will renegotiate lease agreements for existing space or issue solicitations for new space.

SCOPE AND OBJECTIVES

Our objective was to determine whether real property leasing procedures complied with applicable guidance and were efficient and effective. During the audit, we reviewed lease documentation, interviewed OAPM, OGC, and regional staff, and surveyed administrative contacts in the field offices. We also identified internal controls related to leasing (see the Appendix). We did not review any procurement sensitive documents.

The audit was performed between January and March 2001, in accordance with generally accepted government auditing standards.

AUDIT RESULTS

We found that procedures for the leasing of real property generally complied with applicable guidance and were efficient and effective. Our recommendations for enhancing management of the leasing program are presented below.

LEASING GUIDANCE

The Commission regulation governing leasing (SECR 5-8, The Space Management Program, dated August 23, 1996) needs to be updated to reflect current leasing procedures. The role of the Associate Executive Director of OAPM as head of the leasing program is not reflected in the guidance. Also, the Memorandum of Understanding (MOU) between OAPM and OGC on leasing matters is not cited in the regulation.

Recommendation A

OAPM should update the regulation governing leasing (SECR 5-8) as discussed above.

OGC CONTRACT REVIEWS

The MOU between OAPM and OGC provides that OGC will review all real property leases or contracts above the small purchase threshold. However, the MOU does not

require OGC to document its review. Documentation would help ensure that the review is conducted, and provide evidence of its scope and results.

Recommendation B

OGC should document its review of real property leases by including a memorandum in the leasing file.

BILLING REVIEWS

The building owner sends annual bills for base rent, taxes, and operating expenses (*e.g.*, cleaning services, supplies, materials, maintenance, trash removal, landscaping, water, sewer, heating, and electricity) to the Comptroller's Office for payment. That office forwards them to OAPM, which reviews the bills for accuracy in accordance with the terms of the lease, and as appropriate authorizes payment(s).

Our review of lease documentation for the Philadelphia, New York, and Boston field offices indicated that billing reviews need to be enhanced. For example, in one case an owner requested \$225,871.54 in unpaid fees, as a result of billing errors.

Recommendation C

In consultation with the Comptroller's Office, OAPM should review existing procedures for processing annual bills and supporting documentation from building owners. If appropriate, OAPM staff should be provided additional guidance and training, so billing errors can be detected and corrected in a timely manner.

TRAINING REQUIREMENTS

GSA leasing specialists complete, at a minimum, five basic training courses in real property leasing, government contract negotiating, cost and price analysis of leasing proposals, real estate law, and real estate appraisal principles. OAPM has not established training requirements for its leasing staff. One member of the staff has not had any leasing coursework while at the Commission, according to the employee.

Recommendation D

To ensure that leasing staff have necessary expertise, OAPM should establish training requirements for them, using GSA standards as a guide.

BUILDING MAINTENANCE SERVICES

In response to our survey, several administrative contacts in the field offices indicated that building maintenance services (such as carpet cleaning) need improvement. They were unsure of follow-up procedures with the building manager when services were not provided as stated in the lease. The field office staff would apparently benefit from additional guidance and training.

Recommendation E

OAPM should provide the field offices with additional guidance and training on follow-up procedures for building maintenance services.

APPLICABILITY OF PUBLIC BUILDINGS ACT

Section 606 of the Public Buildings Act of 1959 (40 U.S.C. 606) requires Congressional committee approval of leases with annual rental (excluding services and utilities) exceeding \$1,500,000. Although the annual cost of the lease for the Northeast Regional Office (signed in 1992) exceeded this threshold, OAPM did not obtain Congressional committee approval. The statute providing the Commission with independent leasing authority (15 U.S.C. 78d) is unclear as to whether the Public Buildings Act applies to the Commission.

Recommendation F

OAPM should request OGC's opinion as to whether the Public Buildings Act of 1959 applies to the Commission. If it does, OAPM should bring the Commission into compliance with the Act.

In its informal response to the draft report, OPAM indicated that it has requested an opinion from OGC on this issue.