

January 2007

GSA LEASING

Initial Implementation of the National Broker Services Contracts Demonstrates Need for Improvements





Highlights of [GAO-07-17](#), a report to congressional requesters

Why GAO Did This Study

The General Services Administration (GSA) provides leased space to over 55 percent of federal employees at an annual cost of \$3.6 billion. In 2004, GSA awarded four contracts for national broker services (NBS).

Performance of the contracts began on April 1, 2005. This report focuses on GSA's administration of the leasing contracts for the first contract year, ending March 31, 2006, and addresses, among other matters, (1) how GSA is attempting to prevent conflicts of interest in the NBS leasing program and to safeguard its information; (2) what, if any, savings have accrued to the government; and (3) how GSA is distributing its leasing workload among the brokers. To address these matters, GAO, among other actions, analyzed the contracts; GSA's contract administration guide; and GSA's policies, procedures, and controls related to these matters.

What GAO Recommends

GAO is making numerous recommendations. For example, GAO recommends that GSA perform a risk assessment of the NBS program; modify the contracts to include additional controls; test, as needed, the adequacy of the brokers' controls; improve controls over broker commissions; develop procedures for quantifying savings; and define the factors needed to establish a record of the brokers' performance. GSA agreed to implement the recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-17.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Mark Goldstein at (202) 512-6670 or goldsteinm@gao.gov.

GSA LEASING

Initial Implementation of the National Broker Services Contracts Demonstrates Need for Improvements

What GAO Found

GSA has developed controls to help prevent conflicts of interest in the NBS leasing program, but has not fully mitigated potential conflicts of interest or federal information security concerns related to safeguarding information and systems used by the brokers on GSA's behalf. For example, while GSA appears to have resolved the 20 conflicts identified by the brokers during the first contract year, it has not modified the contracts to ensure that each contains all of the requirements applicable to the brokers' disclosure of potential or actual conflicts of interest. Further, GSA has not assessed the risk and magnitude of harm that could arise from the brokers' unauthorized access to, or disclosure of, GSA's proprietary information. Until GSA conducts a risk assessment, it cannot (1) modify the brokers' contracts to include additional controls, as appropriate, or (2) test, as needed, the brokers' controls to ensure that they are adequate to safeguard GSA's information. GSA also has not adequately mitigated, as required, the inherent conflict created by allowing the brokers to represent the government while negotiating their commission payment with building owners. Commissions are factored into the cost of the government's rental payments. Absent additional controls, GSA has insufficient assurance that the brokers will not accept excessive commissions; thereby increasing the government's costs. At the end of GAO's review, GSA had not taken action on these issues.

GSA expected the contracts to result in various savings. It anticipated reductions in (1) rent from the brokers' expert knowledge of the commercial real estate market and (2) administrative expenses from reductions in its costs for previous contract fees, administration, and personnel. However, more than 2 years after the contract awards, GSA does not know what, if any, savings have resulted, largely because it has not developed procedures for quantifying most of its expected savings.

GSA distributed its initial leasing workload fairly equally among the brokers during the first year, as required, but program delays, insufficient data, and a lack of procedures have slowed the transition to performance-based distributions. Once a record of performance is available, GSA is to distribute work among the brokers on the basis of their performance. GSA planned to begin performance-based distributions after the first contract year, anticipating that the brokers would have completed a sufficient number and variety of task orders to establish a record of their performance. However, as of March 31, 2006, the brokers had completed only 11 of the 479 task orders issued to them and eligible for a commission payment. GSA now expects to begin performance-based distributions by April 1, 2007—the start of the third contract year—but has not defined how many and what types of task orders are needed to establish a record of performance. Without this information, GSA cannot demonstrate that it has established a record of performance and is ready to move to performance-based distributions. GSA also has not developed needed guidance and procedures, but plans to do so before moving to performance-based distributions.

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Abbreviations

COTR	contracting officer's technical representatives
FAR	Federal Acquisition Regulations
FDIC	Federal Deposit Insurance Corporation
FISMA	Federal Information Security Management Act
GSA	General Services Administration
NBS	national broker services
NIH	National Institutes of Health

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United States Government Accountability Office
Washington, D.C. 20548

January 31, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation and Infrastructure
House of Representatives

The Honorable Eleanor Holmes Norton
Chair
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives

More than half of all federal employees work in space leased from the private sector. The General Services Administration (GSA), as the federal government's principal landlord, is responsible for acquiring much of this leased space. In 2004, GSA leased approximately 155 million square feet in over 7,200 buildings nationwide at an annual cost of about \$3.6 billion, making it the largest U.S. entity leasing space from the private sector.

Formerly, GSA performed lease acquisition, management, and administration functions in-house, relying primarily on its realty specialists. Downsizing initiatives in the 1990s reduced GSA's in-house capacity, and, in 1997, GSA started entering into contracts for real estate services to carry out a portion of its leasing program. By 2003, GSA was accomplishing about 20 percent of its leasing program through these contracts, most of which were regional in scope.¹ However, according to GSA, the contracts were problematic because they were inconsistent across GSA's regions and did not produce the operating efficiencies GSA expected to leverage from its position as the nation's largest leasing entity. To address these issues, GSA awarded four contracts for national broker services (NBS)² in October

¹Twenty-five of these contracts were regional, while 4 covered larger geographic areas (zones). Figure 1 displays GSA's 11 regions.

²GSA refers to the four nationwide broker contracts and its program for administering the contracts as the "National Broker Contracts" and the "National Broker Contract Program," respectively. Since the contracts specify that they are for "national broker services," we use the acronym "NBS" throughout this report to refer to both the contracts and GSA's program for administering them.

2004, and contract performance began on April 1, 2005.³ GSA planned to shift at least 50 percent of its leasing workload to the four awardees (commercial real estate brokerage firms (i.e., brokers)) in the first year of the contracts and to increase their share of GSA's overall leasing program to approximately 90 percent by 2010—the fifth and final year of the contracts. GSA estimated the potential value of each of the four NBS contracts at \$33 million over a 5-year period, for a total of \$132 million.

Under the NBS contracts, the four brokers are eligible to receive commissions for lease acquisition, expansion, and extension services, as well as for expedited transactions for these services, but not for task orders involving a request for market data, which brokers normally perform free of charge. If additional commission-eligible work results from a request for market data, the broker who performed the market data task order is expected to receive the follow-on work. Performing a commission-eligible task order does not necessarily mean that the broker will be paid. For example, while GSA expects building owners (which is the term we use throughout this report for landlords, property owners, and developers) to offer a commission to GSA's broker if they are paying a commission to their own broker, owners may decide not to offer any commissions if, for example, the task order involved minimal work. Furthermore, as discussed in more detail in the body of this report, each broker agreed to forgo a percentage of its commission—in the form of a commission credit—for use in reducing the government's initial rental costs. Commission credits are applicable for most commission-eligible task orders, but not for expedited leasing transactions. Also, commission credits do not apply to task orders for market data, since these tasks are not eligible for a commission.

In entering into the NBS contracts, GSA departed from its prior leasing practices in two important respects. First, GSA provided for compensating the NBS brokers through the commissions paid by building owners, as is typical in the commercial real estate industry. Formerly, GSA paid its brokers through appropriations.⁴ Second, GSA awarded two of the four contracts to dual-agency brokerage firms—firms that represent both building owners and tenants (in this case, GSA acting on behalf of a tenant

³The starting date was delayed by bid protests.

⁴In a legal opinion that we provided at the GSA Administrator's request, we concluded that the proposed NBS contracts would not result in an improper augmentation of GSA's appropriations. See General Services Administration: Real Estate Brokers' Commissions, B-291947 (Aug. 15, 2003).

agency). The other two awardees were tenant-only brokerage firms—firms that represent only the tenant in real estate transactions. Potential conflicts of interest would arise if the government allowed itself to be represented by a dual-agency broker under circumstances where that broker also represented a building owner whose building was offered for lease to the government. An employee of a dual-agency broker, for example, might be tempted to manipulate the transaction or misuse privileged government information to gain an unfair advantage over others, attempting to ensure that the client's building was leased by the government. Even if the dual-agency employee did not seek an advantage, the potential for a conflict of interest exists. To avoid such conflicts, federal contracting requirements ordinarily would prohibit federal agencies from using dual-agency brokers, but GSA waived the requirements, as allowed, to increase competition for the NBS contracts.

Under the NBS contracts, all of the brokers representing GSA work with proprietary and procurement-sensitive information and information systems and have, or soon will have, access to e-Lease (an electronic information system GSA uses to manage its leasing transactions). Improper disclosure of confidential information is prohibited and could create an unfair competitive advantage for a broker. Furthermore, unauthorized access to GSA's information or information systems used by the brokers on behalf of GSA would raise security concerns addressed by the Federal Information Security Management Act of 2002 (FISMA).⁵

This report follows up on a legal opinion that we provided at your request in July 2004, in which we addressed several questions you raised about the nature of the services that GSA was intending to procure through the NBS contracts.⁶ Specifically, this report addresses (1) how GSA is attempting to prevent conflicts of interest in the NBS program and to safeguard information and information systems used by the brokers on GSA's behalf; (2) how the brokers will be compensated for their services and what, if any, controls exist to minimize the government's rental costs; (3) what, if any,

⁵Federal Information Security Management Act of 2002, Title III, E-Government Act of 2002, Pub. L. No. 107-347 (Dec. 17, 2002).

⁶In this opinion, we found, among other things, that (1) the services that GSA proposed to acquire under the contracts are among those commonly offered by brokers in commercial leasing transactions and (2) brokers are commonly paid for their services through commissions paid by building owners. See General Services Administration and Real Estate Brokers' Commissions, B-302811 (July 12, 2004).

savings have accrued to the government; (4) how GSA is distributing its leasing workload among the brokers; (5) how GSA is overseeing the brokers; and (6) how GSA is measuring the brokers' performance.

To address these questions, we analyzed GSA's policies, procedures, and controls related to our six reporting objectives and interviewed cognizant GSA officials, including those responsible for managing the NBS program and for ensuring compliance with FISMA. We also interviewed officials from 10 public- and private-sector entities—3 large, private companies; 4 state agencies; and 3 other federal agencies—that contract for leasing services to determine, among other things, how these parties address conflict-of-interest issues and compensate their brokers. To gain the views and understand the experiences of real estate brokers related to our objectives, we interviewed representatives from 9 large nationwide brokerage firms, including the 4 NBS brokers, and 6 commercial real estate trade associations. Furthermore, to obtain information about how localities regulate conflicts of interest and broker compensation issues, we interviewed regulatory personnel in 4 states and the District of Columbia. We performed our work between November 2004 and December 2006 in accordance with generally accepted government auditing standards. Additional information about our objectives, scope, and methodology, including a detailed discussion of the various methods we used to select entities for interviews, appear in appendix I of this report.

Results in Brief

GSA has developed controls to help prevent conflicts of interest in the NBS program, but has not fully mitigated potential conflicts of interest or federal information security concerns related to safeguarding information and information systems used on GSA's behalf. Some of GSA's controls apply to both tenant-only and dual-agency firms, but additional and more stringent controls apply to the two dual-agency firms. For example, requirements for disclosing any actual or potential conflicts of interest within 3 days of receiving a task order and for keeping GSA's information confidential apply to both types of firms, but requirements for establishing a "conflict wall"—that is, physical and electronic controls that isolate and limit access to GSA's procurement-sensitive information—apply only to the dual-agency firms. In addition, GSA prohibited the same employee within a dual-agency firm from representing both parties in a leasing transaction. According to our analysis, three of the contract requirements that GSA applied only to dual-agency firms, including the requirement for dual-agency firms to disclose conflicts that arise during the performance of work, are also applicable to the two tenant-only firms. GSA agreed with our

analysis in March 2006 and said it would include the requirements in its contracts with the tenant-only firms; however, as of October 31, 2006, it had not done so. As of March 31, 2006—the end of the first contract year—the four NBS brokers had disclosed 20 potential conflicts of interest. These potential conflicts represent about 4 percent of the 479 commission-eligible transactions—known as “task orders”—issued to the brokers in the first contract year.⁷ GSA determined that 9 of the 20 disclosures represented actual conflicts, and GSA took steps, such as reassigning task orders, to resolve the conflicts. GSA also confirmed that the brokers have electronic and physical controls (i.e., a conflict wall) to help prevent information sharing among broker employees. However, more than 1-1/2 years after beginning work under the contracts, GSA had not assessed whether the controls are adequate to preclude unauthorized information sharing. In addition, although GSA had recommended that the two dual-agency brokers implement additional conflict wall controls, it had not taken action to require the brokers to implement the recommended controls. Furthermore, GSA had not assessed whether NBS program controls satisfy federal requirements for safeguarding information and information systems used on GSA’s behalf. More specifically, GSA had not (1) conducted an assessment of the risk and magnitude of harm that could arise from, among other things, the broker’s unauthorized access to, or disclosure of, GSA’s leasing information; (2) modified its contracts with the brokers, as appropriate, to impose additional controls for protecting the information and information systems; or (3) tested, as needed, the adequacy of the four brokers’ controls for safeguarding the information and information systems. GSA was aware that FISMA’s requirements would be applicable when the brokers gained access to e-Lease, but it was not aware that these requirements had been applicable to the information and information systems the brokers have used on GSA’s behalf since April 1, 2005—the start of the first contract year. Additionally, three conflict-of-interest requirements imposed on the two dual-agency firms—but also applicable to the tenant-only firms—had not been included in GSA’s contracts with its tenant-only brokers. To help ensure that controls are adequate to prevent conflicts of interest, we are recommending, among other actions, that GSA extend the applicable conflict-of-interest requirements to tenant-only brokers; assess the adequacy of the dual-agency brokers’ conflict walls; and, as needed, test the four brokers’ controls over information and information systems to determine whether the controls are sufficient for

⁷In total, GSA issued 544 task orders during the first contract year, but 65 of these task orders were for market data. Task orders for market data are not eligible for commissions.

protecting GSA's information from unauthorized access to, or use, disclosure, disruption, modification, or destruction.

Under the terms of their contracts with GSA, the four NBS brokers will be compensated for the majority of their services through commissions paid by building owners, as is typical in the commercial real estate industry. However, at least one important control to help ensure that the brokers do not improperly increase the government's rental costs is lacking. The contracts allow the brokers to collect commissions for lease acquisition, expansion, and extension services as well as for expedited transactions for these services. GSA expects that building owners will pay commissions for these services and, to help ensure that commissions are paid, GSA requires owners to offer a commission to GSA's broker if they are paying a commission to their own listing agent or broker. However, GSA has no obligation to pay its brokers, even if a building owner does not offer a commission to the brokers. Offers that include a payment to the building owner's broker, but not to GSA's broker, must be rejected. In contracting with GSA, the brokers accepted the risk that they would not always receive commissions because they anticipated, first, that nonpayment would be rare and, second, that the volume of government business would more than compensate them for any isolated losses. As of March 31, 2006, the end of the first contract year, too few task orders had been completed to determine whether or to what extent commissions will not be paid, but the financial risk to the brokers appears to be limited, in part, because of the requirement that building owners pay GSA's broker if they intend to pay their own. Specifically, the NBS brokers had completed 11 of the 479 commission-eligible task orders issued by GSA during the first contract year. One of these task orders did not result in a commission payment. The remaining 10 (involving about 460,000 square feet of leased space) resulted in about \$1.2 million in commission payments, of which the brokers are entitled to receive about \$960,000 and the government is entitled to the remainder.⁸ Commission payments are factored into the cost of an agency's rent. GSA oversees the NBS brokers throughout the leasing process and ultimately signs the leases negotiated by the brokers, but GSA does not prohibit the brokers from negotiating commission rates in excess of those specified in its commission agreements because,⁹ according to GSA, it does

⁸Under the contracts, the remaining \$216,000 represents commission credits that are used to offset the initial rental costs of GSA's tenant agencies. We discuss commission credits in the next section of this report.

⁹A commission agreement is included in each solicitation for offers.

not want to influence the commercial real estate market. Allowing the NBS brokers to represent the government while negotiating their commissions, creates, by design, an inherent conflict between the brokers' interest in promoting and negotiating higher commissions and their responsibility to effectively represent GSA's interest in selecting properties that best meet the government's needs, including cost.¹⁰ As a result, the brokers could potentially favor building owners who pay excessive commissions; thereby increasing the rental rates that the government will eventually pay.¹¹ We are recommending that GSA establish additional controls to mitigate the brokers' inherent conflict of interest.

In 2003, before entering into the NBS contracts, GSA expected savings from reductions in rent and agency costs. However—more than 2 years after the October 2004 contract awards—GSA does not know what, if any, savings have resulted largely because, with the exception of savings resulting from commission credits, it has not developed processes for quantifying most of its anticipated savings. GSA expected reductions in rent costs primarily from commission credits—a type of savings commonly realized by entities that contract for commercial leasing services. A commission credit is the percentage of the commission that a broker agrees to forgo in anticipation of the opportunity to do a large volume of business with an entity such as GSA.¹² Commission credits are applicable to most, but not all, of the services that the brokers perform for GSA. GSA uses commission credits to reduce the initial rental payment or payments for its tenant agencies and has processes for quantifying the credits. Specifically, GSA reviews and approves each broker's calculations, enters the credits in GSA's electronic e-Lease system, and conducts periodic peer reviews to help ensure that the proper credit accrues to its tenant agencies. GSA has little information on the amount of savings resulting from commission credits because the vast

¹⁰For another example of an inherent conflict created by design, see, for example, *Goldstein v. Johnson & Johnson*, 251 F.3d 433, 442 (3rd Cir., 2001), where the court dealt with the fiduciary duty of a retirement plan administrator, which depended, in part, on whether “the plan, by its very design, create[d] a special danger of a conflict of interest.”

¹¹While the potential exists for brokers to favor building owners who pay excessive commissions, we have no evidence that this has occurred.

¹²Essentially a volume discount, a commission credit is applicable to some, but not all, of the services that the NBS brokers perform for GSA. The commission credits on GSA's NBS contracts ranged from 26.0 percent to 51.5 percent for applicable services in the first year.

majority of the task orders completed in the first contract year (65 of 76) were not eligible for commissions.¹³ Of the 11 completed task orders for commission-eligible services, 10 resulted in a commission, and, of these, 7 were for services that also can result in a credit to the government. These completed task orders are expected to result in about \$216,000 in commission credits, which GSA will use to reduce the initial rental payments for approximately 418,000 square feet of leased government space. GSA anticipated further reductions in rent costs from what it believed to be the brokers' greater knowledge of the commercial real estate market. Finally, GSA anticipated savings to accrue from reductions in its costs for (1) contract fees, (2) administration expenses, and (3) personnel. As the tasks associated with GSA's previous contracts are completed, GSA will no longer have to pay the fees and administration costs associated with those contracts. Whether GSA will avoid personnel costs is unclear. By shifting its leasing workload to the NBS brokers, GSA initially believed it could avoid hiring additional realty specialists. GSA subsequently identified additional tasks for this position, however, and now believes that it must maintain an adequate (but unspecified) number of realty specialists to oversee the NBS brokers. It is unclear how this change in view will affect future personnel levels and long-term costs. According to GSA, it plans to quantify savings from most of these sources. However, as of October 2006, GSA had not developed procedures or time frames for doing so. We are recommending that GSA develop processes for quantifying the savings, if any, resulting from its use of the NBS contracts.

GSA distributed its initial leasing workload fairly equally among the brokers agencywide, as the contracts require, but program delays, insufficient data, and a lack of program procedures have slowed the transition to performance-based distributions. According to the contracts, GSA is required (1) initially to distribute task orders to the four NBS brokers "as equally as possible," unless their performance is unsatisfactory, and (2) once a record of their performance is available, to base its distributions on the brokers' performance. The contracts further define the initial equitable distribution as "similar size projects in similar geographic areas (e.g., urban or rural) to the maximum extent possible within the existing workload available." In addition, GSA's contract administration

¹³Sixty-five of the 76 task orders were for market data, which are not eligible for a commission credit. A commission credit does not accrue to the government when brokers do not receive a commission. In addition, the government does not receive a credit for expedited leasing transactions, if these transactions are completed on time.

guide specifies that its initial distributions are to be based on square footage “with each firm [broker] receiving equal distribution in all eleven GSA regions and in all markets.” GSA originally planned to start performance-based distributions after the first contract year, anticipating that by then the brokers would have completed a sufficient number and variety of commission-eligible task orders to establish a record of their performance. However, delays in starting up the program—attributable, in part, to bid protests—limited the number of commission-eligible task orders completed by the end of the first contract year to 11, which is a number that GSA considered insufficient to establish a record of performance. GSA now expects to begin performance-based distributions at the start of the third contract year, but has not yet defined how many and what types of task orders are needed to establish a record of performance. Without this information, GSA cannot demonstrate that it has established a record of performance and is ready to move to performance-based distributions. In addition, GSA has not yet developed guidance and procedures for making performance-based distributions, but plans to do so before altering its current distribution approach. We are recommending that in developing these procedures, which GSA describes as a top priority, GSA clarify the number and types of completed task orders needed to establish a record of the brokers’ performance.

According to our analysis of GSA’s data, GSA’s initial distribution among the brokers was fairly equal agencywide, but varied from region to region. In total, for example, each broker received between about 2.3 million and about 3 million square feet of leased space. However, in GSA region 3, broker C received about 11 times more square footage than broker B,¹⁴ and in GSA region 11, which distributed nearly half of the square footage issued in the first contract year, broker A received about 40 percent of the region’s total, while broker C received about 16 percent. According to GSA, such variation reflects, among other factors, differences in the sizes of the task orders available for distribution, changes in its client agencies’ space requirements, and decisions to keep certain projects in-house. GSA views regional variations as unavoidable and—on the basis of our analysis—plans to modify the language of its administration guide to conform to the contracts, specifying that its initial distributions of task orders will be allocated “as equally as possible,” rather than “equal,” across the regions. Our analysis of GSA’s data also found that GSA’s distributions of task orders

¹⁴We identify the four NBS brokers as brokers A through D, as needed, throughout this report to protect their proprietary information.

for market data and expedited leasing transactions varied. Although task orders for market data are not eligible for commissions, they often lead to commission-eligible follow-on work, and disparities in their distribution could create future workload imbalances. Disparities in the distribution of expedited leasing transactions have an immediate impact because the broker retains the entirety of any commission offered by the building owner. On the basis of our analyses, GSA agreed to provide greater management attention of its distribution of task orders for market data and expedited leasing transactions. Finally, GSA had not tracked information on the geographic location (e.g., rural or urban) of task orders and, therefore, did not have data to assess the equitability of its distributions by similar geographic areas, as specified in its contracts with the NBS brokers. We are recommending that GSA begin tracking this information.

To oversee the NBS brokers, GSA has put a new organizational structure in place and implemented numerous management tools designed to help ensure consistent oversight. These actions are intended to address weaknesses in GSA's administration of its earlier contracts for leasing services and to provide consistent direction for its 11 regions. In December 2002, GSA's Office of the Inspector General reported that GSA's administration of the earlier broker contracts was inadequate and inconsistent, thereby hampering GSA's oversight of the contracts. GSA acknowledged these weaknesses and developed a new—and substantially different—organizational structure to help ensure consistent oversight of the NBS brokers. More specifically, GSA established key national and regional management positions, defined the roles and responsibilities of these positions, designated many of its realty specialists as project managers, and redefined the realty specialists' responsibilities to reflect their new roles. In addition, GSA implemented numerous management tools to improve its management and oversight of the NBS program. Two of these tools are used for GSA's entire leasing program—the *Transaction Management Playbook* (a handbook with standardized templates that provide consistent criteria for GSA's client agencies to determine their space requirements) and the e-Lease system (GSA's electronic system for managing its leasing transactions, including transactions completed by NBS brokers). The other tools are unique to the NBS contracts. Specifically, GSA (1) developed national guidance for administering the contracts, (2) created a performance evaluation board that meets quarterly to assess both the regions' and the brokers' performance, (3) established peer reviews to help ensure that its regions implement the NBS contracts consistently, (4) created a program for certifying personnel with

responsibilities for overseeing the NBS brokers, and (5) required the brokers to attend quarterly performance review meetings.

GSA has numerous measures for evaluating the NBS brokers' performance, but several issues, if left unresolved, could lead to inconsistent evaluations and inefficiencies in the evaluation process. GSA's performance measures address the quality, timeliness, and responsiveness of the brokers' work and the brokers' contribution to GSA's meeting long-term performance goals, such as satisfying its client agencies and reducing the government's costs. GSA uses its evaluations of the brokers' performance to, for example, hold performance discussions with the brokers and determine whether to renew its contracts with them. GSA evaluates the brokers' performance of task orders for lease acquisitions, expansions, and extensions, but not for market data. The evaluations occur at the completion of certain task order activities, at the completion of an entire task order, and annually, and the performance measures vary depending on the evaluation stage. GSA records the scores for completed task orders in e-Lease. In addition, at the end of each contract year, the National Contracting Officer is required to prepare and enter an annual evaluation of each broker's performance into a nationwide, government database on contractor performance. The annual evaluation considers, among other factors, the broker's performance on completed task orders and the broker's contribution to GSA's progress in meeting its long-term performance goals for its leasing program. According to GSA's first annual evaluations of the NBS brokers, each met its contract's requirements. However, the evaluations are limited to the brokers' performance of the 11 task orders that were subject to evaluation and completed as of March 31, 2006. Throughout the course of our review, we identified and discussed with GSA officials numerous issues related to GSA's contracts, guidance, and processes for evaluating the NBS brokers' performance, including inapplicable criteria such as GSA's measure for evaluating the brokers' help in reducing the amount of vacant space in GSA's inventory. According to NBS program managers, the brokers cannot influence GSA's progress in this area and, thus—while specified in the contract—GSA does not evaluate them on this measure. NBS program officials acknowledged inaccuracies and inconsistencies, within and between the contracts, the administration guide, and e-Lease, as well as omissions in the guide. However, according to the officials, these issues have not adversely affected GSA's administration of the contracts or GSA's evaluation of the brokers' performance. GSA officials also acknowledged that e-Lease needs to be revised to eliminate factors that GSA's Contracting Officer's Technical Representatives cannot adequately address when they are performing their

assessments. At the completion of our review, GSA had corrected e-Lease, but it had not addressed any of the other issues that we identified. We are recommending that GSA conform its contracts and administration guidance to help ensure that its regions consistently evaluate the brokers' performance.

We requested comments on a draft of this report from GSA. In its written comments, GSA stated that it is pleased with the results of the first year of the NBS program. However, GSA noted that the agency had experienced challenges in implementation due to the magnitude and impact of the program. GSA stated that it had already initiated a number of actions to address issues identified in this report and agreed to “work on the implementation” of our recommendations. GSA's comments are reprinted in appendix IV. GSA also provided technical comments that we have incorporated in this report, as appropriate.

Background

GSA provides workspace for more than 1.1 million federal workers through the Public Buildings Service, the landlord for much of the federal government. When GSA began planning for the NBS contracts in late 2003, the National Office of Realty Services, within GSA's Public Buildings Service, was responsible for the acquisition and administration of GSA's leases.¹⁵ About half of the federal employees are housed in about 1,600 federally owned buildings, while the remainder is located in leased space within over 7,200 privately owned buildings at an annual cost of about \$3.6 billion, according to GSA. Whenever possible, GSA satisfies its tenant agency needs within space that GSA already owns or leases. When suitable space is not available, however, GSA acquires additional space in privately owned buildings. More than 80 percent of GSA's leases are for 20,000 square feet or less. GSA leases a wide variety of space for federal agencies, including office space, laboratories, clinics, border stations, and courthouses, in both urban and rural areas throughout the United States, the District of Columbia, and the U.S. territories. GSA signs leases on behalf of its tenant agencies and collects rent from them. The rental

¹⁵GSA's National Office of Realty Services has been replaced by the Solutions Development Division. This division develops national policy on solutions development processes, protocols, standards, and measures of performance. The division falls under GSA's Office of National Customer Services Management, which is responsible for coordinating the Public Buildings Service's customer relationships and creating and implementing services to GSA's customers.

payments are deposited into the Federal Buildings Fund—which is the principal funding mechanism for GSA's Public Buildings Service to construct and maintain facilities for federal agencies.

Before initiating the NBS contracts, GSA compared the cost of doing business using various contract vehicles,¹⁶ including

- no-cost contracts—under which brokers collect commissions paid by building owners as payment for their services, with no additional payment made by the government;
- fixed price contracts—under which the government guarantees payment of a fixed fee for broker services, to be paid from appropriated funds; and
- the continued use of GSA's previous contracts.

GSA concluded that awarding “no-cost,” nationwide contracts was the best option available because, according to GSA's analysis, such contracts addressed GSA's capacity issues, resulted in the lowest cost, and best addressed GSA's previous contract administration issues. In addition, according to GSA, entering into the contracts would (1) allow its realty specialists—the individuals responsible for carrying out GSA's leasing transactions—more time to manage projects and customer relationships; (2) enable GSA to leverage its national position in the market and take advantage of the best financial terms being offered; and (3) provide consistent services from region to region, leading to better overall service to its customers (tenant agencies). We did not evaluate GSA's 2003 analysis for entering into the NBS contracts.

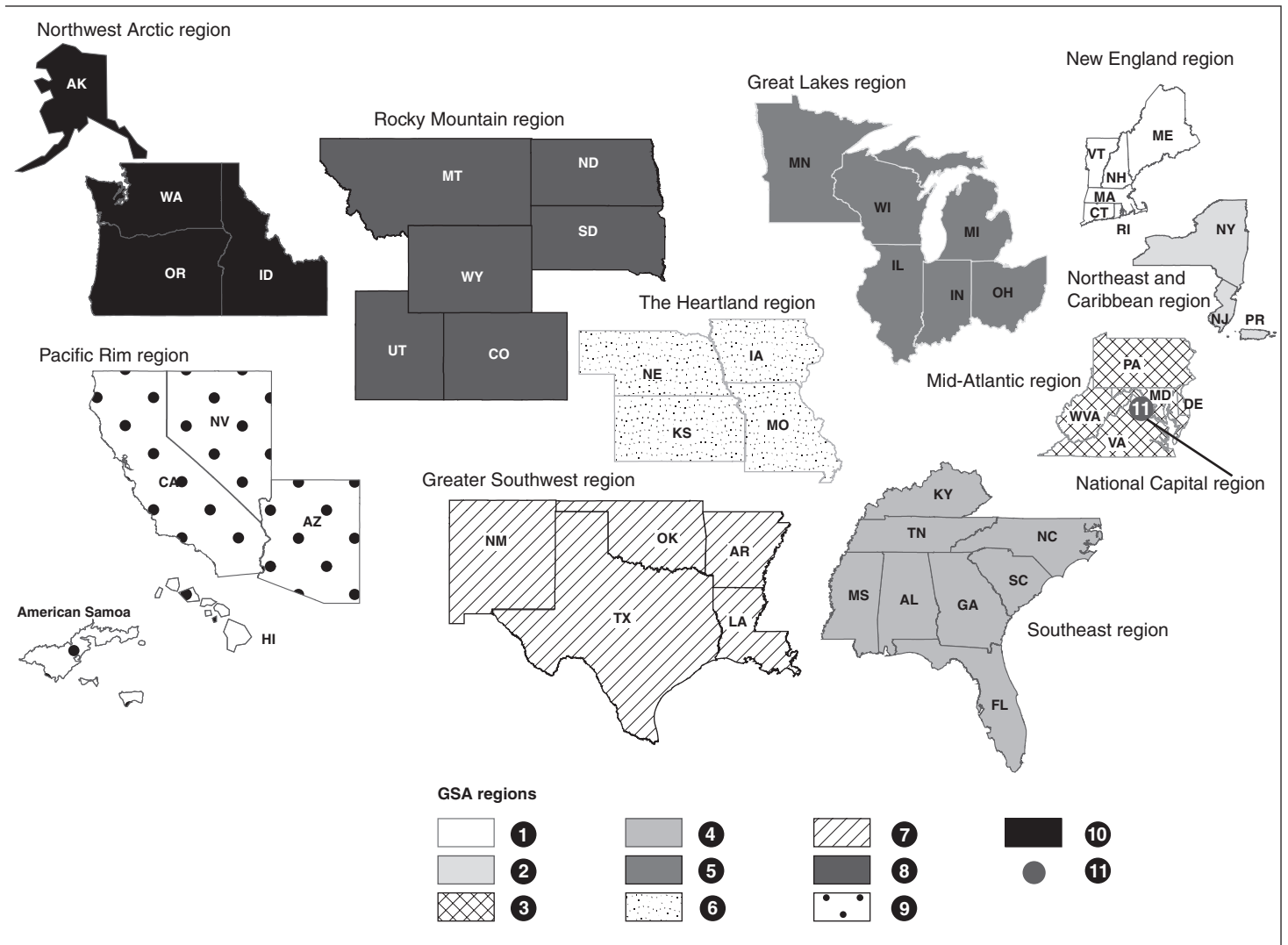
GSA issued its request for broker proposals for nationwide leasing services in March 2004. GSA received 18 offers in response to its request and, on October 4, 2004, awarded four nationwide contracts to the real estate companies of Jones Lang LaSalle; Julien J. Studley, Inc.; The Staubach Company-Northeast; and Trammell Crow Services, Inc. The contracts were expected to begin on December 6, 2004, but were delayed by bid protests related to the awards. Three of the bid protests were withdrawn, and, on

¹⁶GSA, *Business Analysis and Case for National Contracts for Brokerage Services in GSA* (Aug. 25, 2003).

January 31, 2005, GAO issued a decision denying the final protest.¹⁷ GSA held its orientation for the four NBS brokers in March 2005 and initiated the contracts on April 1, 2005. Each of the contracts has a 1-year base period—which expired on March 31, 2006—and four option periods that allow the government, at its sole discretion, to extend the contracts, in annual increments, through March 31, 2010. GSA exercised the first option, extending each of the contracts through March 31, 2007. During the contract period, each broker is expected to provide lease acquisition services for GSA's 11 regions. See figure 1 for the locations of GSA regional offices.

¹⁷In addition to its other responsibilities, GAO resolves disputes (bid protests) concerning the award of federal contracts.

Figure 1: GSA's 11 Regional Offices and the States They Serve



Sources: GAO and Map Resources (map).

In 2004, GSA anticipated that the four NBS brokers would perform at least 50 percent of its expiring lease workload in the first year of the contracts, with yearly increases of 10 percent, culminating in the brokers' performance of 90 percent of GSA's workload by 2010—the fifth and final year of the contracts. GSA estimated the value of each NBS contract at \$33 million, over a 5-year period.

GSA and the brokers who represent GSA use a “solicitation for offers” to obtain offers from building owners (offerors) with available space that may meet GSA’s leasing needs. The solicitation, among other things, describes the government’s space and location requirements and the criteria that will be used to assess the building owners’ offers.

GSA issues work to the NBS brokers through task orders. Under the terms of their contracts, the NBS brokers are required to perform the following types of task orders and activities on behalf of GSA:

- lease acquisitions (i.e., assist tenant agencies with the development of their space requirements, develop project schedules, prepare market surveys, develop and issue GSA’s solicitations for offers to building owners who may have space available for leasing, evaluate the offers, and negotiate the offers with building owners);
- lease expansions (i.e., review the tenant agency’s existing occupancy agreement, conduct an orientation to inform parties about the government’s requirements and criteria for evaluating offers from building owners, and develop the requirements necessary to perform requested alterations related to the expansions);¹⁸
- lease extensions (i.e., determine the appropriate term of the required extension through discussions with GSA and tenant agency personnel and submit a request for the lease extension to the building owner);¹⁹ and
- market data (i.e., provide summary market information, including comparable rental rates, by building type, in the relevant market).

The Federal Acquisition Regulation (FAR) is the principal regulation applicable to the acquisition of supplies and services by federal agencies, including brokerage services. The FAR prescribes, among other matters, requirements related to identifying and avoiding conflicts of interest. The FAR allows the head of an agency, or a designee, to waive FAR subchapter 9.5 requirements, which deal with organizational conflicts of interest, when

¹⁸A lease expansion requires a change or modification to an existing lease.

¹⁹A lease extension is a continuation of the original lease, usually for a short term, with substantially the same terms and conditions.

doing so would allow the government to test new techniques and methods of acquisition and when it is determined that applying a particular FAR requirement would not be in the government's best interest.

The NBS brokers are expressly precluded from performing inherently governmental functions and activities. Inherently governmental functions and activities, including the execution of a lease obligating the government to pay the building owner, must be performed by GSA employees.

Controls Have Not Fully Mitigated Potential Conflicts of Interest or Federal Information Security Concerns

To increase competition for its NBS contracts, GSA took steps to allow dual-agency brokerage firms—that is, firms that simultaneously represent both building owners and tenants, such as GSA (acting on behalf of a federal agency), to be considered for the contract awards. GSA recognized that allowing such firms to offer properties to GSA that other employees of their firms were simultaneously marketing could violate federal conflict-of-interest requirements. Therefore, GSA waived the requirements—as permitted by the FAR—and developed controls to detect and mitigate conflicts of interest. Conflicts of interest arise when a contractor is required to assume conflicting roles that might bias its judgment. This can result in the contractor gaining an unfair or improper advantage over its competitors. Some of the controls, such as requirements for disclosing potential conflicts of interest, apply to both dual-agency firms and tenant-only firms—that is, firms that represent tenants exclusively. Two of the four NBS brokers are dual-agency firms and two are tenant-only firms. Other GSA controls, such as a prohibition against the same broker employee representing both itself and the building owner on the same leasing transaction and requirements for a “conflict wall” to isolate procurement-sensitive information, apply only to dual-agency firms because of concerns that an employee of a dual-agency firm could, among other things, manipulate a transaction to maximize the firm's commission or misuse government information to gain an unfair competitive advantage over other firms. As of March 31, 2006, 20 potential conflicts of interest had been disclosed, 13 of which were determined to be actual conflicts. GSA resolved these 13 conflicts by, among other actions, reassigning them to other brokers. The 20 potential conflicts represent about 4 percent of the 479 commission-eligible task orders issued to the brokers in the contracts' first year. GSA also confirmed that the brokers have electronic and physical controls (i.e., a conflict wall) to help prevent unauthorized information sharing between dual-agency broker employees. However, more than 1-1/2 years after beginning work under the contracts, GSA had not assessed whether the controls are adequate. In addition, GSA had not assessed

whether NBS program controls satisfy federal requirements for safeguarding information and information systems used on GSA's behalf. More specifically, GSA had not (1) conducted an assessment of the risk and magnitude of harm that could arise from, among other things, the broker's unauthorized access to, or disclosure of, GSA's leasing information; (2) modified its contracts with the brokers, as appropriate, to impose additional controls for protecting the information and information systems; or (3) tested, as needed, the adequacy of the four brokers' controls for safeguarding the information and information systems. In addition, three conflict-of-interest requirements imposed on the two dual-agency firms—but also applicable to the tenant-only firms—had not been included in GSA's contracts with its tenant-only brokers.

Dual-Agency Practices Create Potential Conflicts of Interest

Allowing the government to be represented by dual-agency firms creates the potential for organizational conflicts of interest. Concerns about a conflict of interest would arise if the government allowed itself to be represented by a dual-agency firm that was also representing a building owner whose building was being offered for lease to the government. An employee of a dual-agency firm, for example, might be tempted to manipulate the transaction or misuse privileged government information to gain an unfair advantage over other firms, attempting to ensure that the client's building was leased by the government. Even if the employee did not take any such improper action, the potential for impropriety exists. Recognizing this, the FAR requires a federal agency to identify potential organizational conflicts of interest as early as possible during the procurement planning process and to avoid, neutralize, or mitigate any significant conflict before awarding a contract—that is, in this context, before selecting a dual-agency firm as its contractor.

GSA Waived the FAR's Conflict-of-Interest Requirements to Increase Competition

GSA recognized that allowing dual-agency firms to compete for the NBS contracts would create a significant potential for conflicts of interest. GSA could have avoided the threat of potential conflicts by refusing to allow dual-agency firms to compete for the NBS contracts. GSA also could have required firms to disqualify themselves from offering property to GSA that the firms were concurrently attempting to lease. Nevertheless, GSA believed that the government would benefit from including these firms in the competition, in part, because dual-agency firms are common in the commercial real estate market. For this reason, GSA chose to seek a waiver of the FAR's conflict-of-interest requirements and to focus, instead, on conflict mitigation on a transaction-by-transaction basis.

The waiver request—submitted by GSA’s former National Office of Realty Services—cited concerns about limiting competition for the contracts and noted that dual-agency firms are regulated in most states by an ethics board, which monitors brokers for violations and may impose penalties ranging from large monetary fines to license terminations.²⁰ Nevertheless, the request recognized a need to, among other matters, (1) prohibit the same individual from representing both the government and the building owner in the same leasing transaction and (2) establish additional controls over dual-agency firms.²¹ GSA’s Deputy Associate Administrator for Acquisition Policy granted the waiver on November 11, 2003, subject to the implementation of the controls specified in the waiver request.

GSA Developed Numerous Controls to Help Ensure the Impartiality of Brokers When Handling Its Leasing Transactions

To mitigate the potential for conflicts of interest stemming, in part, from GSA’s decision to allow dual-agency firms to compete for the NBS contracts, GSA developed a number of specific controls for both types of NBS brokerage firms. Two of the four NBS brokers are dual-agency firms, and two are tenant-only firms, representing tenants like GSA (acting on behalf of a federal agency), exclusively. For example, GSA applied one control—a requirement to inform GSA of any potential conflicts of interest—to all four NBS brokers, but applied additional controls only to the dual-agency firms, including a requirement that the firms establish

²⁰Each of the five local real estate regulators (four states and the District of Columbia) that we contacted oversee broker conflict-of-interest issues through their licensing process, and each had an enforcement process for responding to complaints. Regulatory penalties included fines and suspension or revocation of a broker’s real estate license. In addition, each of the regulatory entities required brokers to adhere to a code of ethics or standards of conduct, including a requirement for brokers to act as a fiduciary agent for their clients, meaning that each broker is required to act in the best interest of each of its clients. Penalties for violations include fines and loss, or suspension, of a broker’s real estate license.

²¹All of the local regulatory entities we contacted told us they allowed brokers to operate as “full-service” real estate firms within their jurisdictions, meaning that the firms may represent both tenants and building owners, although not necessarily on the same leasing transaction. Three of the five regulatory entities—California, the District of Columbia, and Virginia—allowed the same broker employee in a firm to represent both sides of a commercial leasing transaction, if the employee disclosed that he or she was doing so. These entities also required the brokers to maintain the confidentiality of their clients’ information. Texas allowed commercial dual-agency brokerage firms to serve as intermediaries. However, it did not allow the same employee in a firm to represent both sides of a commercial transaction and restricted firms from providing advice that may favor one party over the other. Finally, while Maryland regulated brokers who perform residential transactions, its regulations did not apply to commercial transactions.

“conflict walls” to help prevent electronic and physical sharing of information between brokers who represent GSA and other employees within the same brokerage firm who represent building owners. GSA also imposed other dual-agency controls, three of which are also applicable to the tenant-only firms.

GSA Required All of the NBS Brokers to Inform GSA of Potential Conflicts

Recognizing that, with knowledge of potential conflicts, GSA could minimize their impact on a task-order-by-task-order basis, GSA required each of the four NBS brokers, including the brokers’ subcontractors, to inform GSA in writing, and within 3 working days after receiving a task order, whether it would have any organizational conflicts of interest in performing work related to an assigned task order.²² The four firms are expected to disclose the following two types of potential conflicts: (1) dual-agency situations—when a brokerage firm represents a building owner with available space that might meet GSA’s needs—and (2) property management responsibilities—when the brokerage firm is the property manager for a building owner who has space that may be suitable for the government. While such conflicts generally would not apply to tenant-only firms, all of the firms are subject to the disclosure requirement. In addition, all broker and subcontractor employees—regardless of the type of brokerage firm—who will be working on a GSA task order must submit, within 3 days of receiving a task order, an individual conflict-of-interest and nondisclosure statement acknowledging that they (1) have read and agreed to follow their contract’s conflict-of-interest requirements; (2) understand that the performance of work related to a GSA task order involves restricted procurement information that—if disclosed—may subject both the discloser and the recipient of the information to contractual, civil, and criminal penalties; and (3) understand that the disclosure of proprietary information submitted by a building owner in response to a solicitation for offers is strictly prohibited and subject to a variety of penalties, including fines or jail time, or termination of the contract.

²²Related to the disclosure of potential conflicts of interest, under the terms of their contracts with GSA, both types of firms also must ensure that (1) none of their personnel (including employees, consultants, and subcontractors) performing work under an NBS contract will participate, in any capacity, in providing any advice or representation to a building owner, representative, lessor, or other third party in connection with any government leasing transaction during the term of the contract and for another 6 months after the conclusion of the broker’s work under the contract and (2) all personnel performing services under a NBS contract will treat any and all information generated and received in connection with their work as proprietary and confidential, continue to do so in perpetuity, and disclose and use such information only in connection with their work under the contract.

As of March 31, 2006—the end of the first contract year—the four brokers had disclosed 20 potential conflicts of interest.²³ The 20 potential conflicts occurred in about 4 percent of the 479 commission-eligible task orders GSA issued for lease acquisitions, expansions, and extensions, as well as expedited leasing transactions for these services during the first contract year.²⁴ Seventeen of the 20 disclosures involved task orders issued to the two dual-agency firms, and the remaining 3 involved task orders issued to the two tenant-only firms. The National Contracting Officer and legal counsel in GSA headquarters are responsible for reviewing the circumstances of each potential conflict of interest to determine whether the circumstances involve an actual conflict.²⁵ If a conflict is determined to exist, GSA has three possible options for accomplishing the work. Specifically, under the terms of GSA's contracts with the brokers, GSA can

- select another broker that does not have a conflict;
- elect to perform the work in-house; or
- issue the task order to the original broker if GSA determines, after considering such factors as the broker's expertise and GSA's capacity to perform the work in-house, that doing so is in the government's best interest.

²³GSA uses a log to record identified conflicts of interest. As of March 31, 2006, the log contained 22 entries. Two of the 22 entries provided information on general advice sought from regional personnel related to GSA's conflict-of-interest requirements. Since the 2 entries did not relate to a potential or actual conflict on a specific leasing transaction, we omitted these entries for our reporting purposes. NBS program officials agreed that the entries should not be construed as relating to potential or actual conflicts of interest.

²⁴GSA also issued 65 task orders for market data during the first year of the contracts. We excluded these task orders from the universe of those with the potential for a conflict of interest because, as discussed in more detail later in this report, they involve limited work and the brokers are not paid for market data.

²⁵Beginning in June 2005, responsibility for dealing with potential or actual conflicts of interest shifted from regional personnel to the National Contracting Officer and legal counsel in GSA headquarters. As shown in appendix II, one potential conflict was identified before June 2005. The circumstances of this potential conflict were investigated and resolved by the Regional Contracting Officer in conjunction with legal counsel in the applicable region.

After reviewing the circumstances of the 20 potential conflicts of interest,²⁶ GSA officials determined that for 7, the circumstances did not involve a potential or actual conflict of interest, and the work proceeded as planned under the original task orders. For the other 13 broker disclosures, however, the circumstances were determined to involve actual conflicts of interest.²⁷ The majority of these conflicts involved disclosures that the brokers represented or managed property for one or more building owners with space that might meet GSA's requirements. One of the 13 conflicts required no alternative action on GSA's part, since the task order was canceled after the agency's space requirements changed. To resolve the remaining 12 conflicts, GSA reassigned 9 of the task orders to brokers without conflicts, and, for the 3 other task orders, required subcontractors of the originally assigned brokers to comply with various conflict-of-interest restrictions. See appendix II for more details on the 20 potential conflicts identified as of March 31, 2006.

GSA Imposed Additional Controls for Dual-Agency Firms

To prevent conflicts of interest when it could not reassign work to another broker or perform the work in-house, GSA prohibited the same employee within a dual-agency firm from representing both GSA and the building owner in the same leasing transaction and required dual-agency firms to establish a "conflict wall" to help prevent electronic and physical sharing of information between broker employees, who represent GSA, and other employees within the same brokerage firm who represent building owners. GSA specified numerous controls related to the dual-agency firms' conflict wall, including the following:

- Establish separate electronic file servers and other electronic safeguards to prevent non-GSA broker employees within the brokerage firm from obtaining access to GSA-related documents, files, and information.
- Ensure that paper files and documents are kept, safeguarded, and maintained in separate, secure locations that preclude access by anyone not working on GSA's contracts.

²⁶We reviewed information about the circumstances associated with each of the 20 potential conflicts of interest and GSA's resolution of the disclosures. However, we did not test the universe of commission-eligible task orders issued to the brokers during the first contract year to determine whether other potential conflicts of interest may have existed.

²⁷The 13 actual conflicts represented about 3 percent of the 479 commission-eligible task orders distributed among the brokers in the first year.

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- Inform all members of the brokerage firm of the existence of the conflict wall.
 - Maintain the conflict wall throughout the term of the contract.
 - Execute, when directed by the National Contracting Officer, certifications confirming the continued existence of the conflict wall and related processes and procedures.²⁸
 - Allow GSA's periodic inspection and verification of the conflict wall during the term of the contract.

The conflict wall and associated controls that GSA established for its dual-agency brokers are in addition to those typically required in the commercial real estate industry. None of the five local real estate regulators (four states and the District of Columbia) that we contacted imposed such requirements. Furthermore, officials from nearly all of the 10 public- and private-sector entities we interviewed that contract for leasing services said they do not require their brokerage firms to establish a conflict wall to safeguard their procurement-sensitive information. In their view, they have adequate recourse, ranging from fines to license revocations, to identify and manage conflicts of interest. The one exception was the Department of Veterans Affairs, which modeled its contracts, including the requirement for a conflict wall, after GSA's contracts. GSA's two dual-agency brokers incurred additional expenses to address GSA's conflict wall requirements. Nevertheless, officials from these firms indicated that they are comfortable with the additional requirements, given the need to ensure the integrity of the government's procurement processes.

GSA Established Other Dual-Agency Controls, Three of Which Are Also Applicable to the Tenant-Only Brokers

GSA established other controls to deal with the potential for dual-agency conflicts. First, before a dual-agency firm can solicit offers from any building owner (offeror), the firm must inform the owner that the firm represents both tenants and other prospective offerors and obtain a signed statement (dual-agency notification statement) indicating that the building owner is aware of the broker's affiliations before making an offer. Second, under the terms of their contract, personnel from a dual-agency firm are

²⁸GSA's organizational conflict-of-interest disclosure statement, requires the brokers to, among other things, certify that a conflict wall is in place, and that personnel involved in carrying out a GSA task order have been advised of all of the conflict-of-interest restrictions contained in their contracts.

not permitted to share in any fees or commissions received by, or payable to, the broker for the broker's representation of a building owner, representative, lessor, or other third party in a GSA leasing transaction. Finally, GSA implemented three additional controls exclusively for its dual-agency firms. These three controls are as follows:

- First, all dual-agency personnel performing work in connection with an issued task order must execute—if directed by the National Contracting Officer—additional confidentiality agreements, nondisclosure agreements, or other documentation deemed necessary to protect the proprietary nature or confidentiality of information related to the task order.
- Second, a dual-agency firm must immediately notify the National Contracting Officer of any conflicts of interest discovered during the performance of work.
- Third, a dual-agency firm must include a conflict-of-interest clause in all of its subcontracts.

While GSA imposed these controls exclusively on the dual-agency firms, none of the controls address situations uniquely faced by these firms. For example, individuals within a tenant-only firm could also discover a conflict of interest after completing their conflict-of-interest and nondisclosure statements, which are required within 3 working days of receiving a task order from GSA. In addition, because a tenant-only firm could also subcontract with a dual-agency firm or be a subcontractor for a dual-agency firm, the need for a special confidentiality agreement or a nondisclosure agreement is also applicable to both types of firms. In March 2006, GSA's legal counsel agreed that the controls are applicable to GSA's tenant-only firms, but noted that the omission of the additional requirements in the contracts is of "low risk to the overall successful implementation of the [NBS] program" because there are numerous contractual and noncontractual remedies if a firm fails to report a potential or actual conflict of interest. The contractual remedies include the right to terminate a task order, or the contract as a whole, and to have the work redone by another broker at the original broker's expense. The noncontractual remedies include debarment or even criminal sanctions if,²⁹

²⁹Debarment places a potential offeror on a list of firms that are ineligible for government contracts. See 48 C.F.R. § 2.101 and subpart 9.4.

for example, a broker's actions violate the False Claims Act.³⁰ GSA officials further noted that brokerage firms have other reasons to properly disclose potential conflicts. They explained that, in their view, it is difficult for firms to hide potential conflicts because the existence of a conflict will eventually surface during the procurement process.³¹ NBS program officials also noted that as long as GSA's task orders are distributed as equally as possible among the brokers—as is initially required under the contracts—the brokers do not have an incentive to avoid disclosing potential conflicts.³² Nevertheless, GSA agreed to include all of the dual-agency conflict-of-interest requirements in its contracts with the tenant-only firms.³³ The contracts allow GSA to issue change orders, which unilaterally modify the contracts, and GSA indicated that it planned to do so “as quickly as possible and in concert with other priority issues requiring its attention.” As of October 31, 2006, the contracts had not been modified.

³⁰See 31 U.S.C. § 3729, et seq., and their criminal counterparts, including 18 U.S.C. §§ 286 and 287, concerning the submission of false claims or conspiracy to obtain payment of any false, fictitious, or fraudulent claims against the United States.

³¹The identity of the parties involved in a leasing transaction would be disclosed in documentation related to the transaction. Thus, as long as individuals are not overtly disguising their involvement in the transaction, their identity would be apparent before completion of the transaction.

³²Representatives from GSA, commercial brokerage firms, and others we interviewed indicated that brokers have a fiduciary responsibility to their clients and, as such, are subject to substantial fines and the revocation or loss of their licenses for ethical violations—penalties that they believe are strong incentives to properly disclose conflicts of interest. While we did not specifically inquire, five of the nine nationwide commercial brokerage firms we interviewed volunteered that they would not put their reputations at stake, lose their business, or risk being reported for ethical violations by their competitors.

³³Other variations exist between GSA's dual-agency and tenant-only conflict-of-interest requirements. For example, GSA's contracts with the dual-agency firms identified several remedies, including the right to terminate work, that GSA could apply if a dual-agency firm failed to identify a conflict of interest. While not specifically applied to the tenant-only firms, these remedies exist elsewhere in the contracts. As a consequence, we are not emphasizing these contractual variations. Nevertheless, NBS program officials agreed to conform all of GSA's conflict-of-interest contractual requirements for both types of brokerage firms.

GSA Confirmed the Existence of the Dual-Agencies' Conflict Walls, but Had Not Assessed Their Adequacy

In October 2005, GSA preliminarily inspected the conflict walls at its two dual-agency brokerage firms, as the NBS contracts allow. A team of four GSA staff, including GSA's Public Buildings Service Information System Security Manager, conducted the inspections, which GSA called "site compliance visits." According to GSA officials, these visits were the "first step" toward a full evaluation of the firms' compliance with GSA's conflict wall requirements. Site compliance visits are intended to validate and ensure that security controls are in place for properly safeguarding federal information managed by contractors. However, because of time constraints, the scope of GSA's review was limited to visual observations and interviews with on-site broker personnel. GSA recorded its observations, indicating that the brokers had physical controls, such as electronic access badges and cabinets with locks and keys, to restrict access to GSA's procurement-sensitive information and had electronic controls to help prevent unauthorized access to files and folders contained on the brokers' file servers.³⁴

While GSA confirmed that the brokers have electronic and physical controls (i.e., a conflict wall) to help prevent the sharing of information among broker employees, it had not assessed whether the controls were adequate to preclude unauthorized information sharing.³⁵ Nevertheless, GSA recommended, among other actions, that the brokers consider implementing the following four additional electronic controls:

- Apply "applicable" federal standards to ensure that (1) the brokers' servers are more secure and (2) applicable security controls are in place.³⁶

³⁴Procurement-sensitive information includes information about the identity of offerors and the details of their offers.

³⁵We also visited the two dual-agency firms and observed their physical and electronic access controls; however, like GSA, we also did not test the adequacy of these controls. We observed that both firms have physical access controls, including separate office space, locks on file cabinets, and access badges, which help ensure control of the firms' physical space. In addition, both firms have electronic controls to limit access to the shared drives they use to store and access GSA information. According to the brokers' information technology personnel, only those staff members who are dedicated to the GSA contract have access to the shared computer drives.

³⁶GSA did not identify which federal standards it viewed as applicable.

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- Implement controls such as folder-level or file-level encryption to limit access to GSA's procurement-sensitive information.
 - Evaluate and modify access controls in accordance with the defined roles and responsibilities of each user to help ensure that users have access only to the information they need to conduct GSA's business.
 - Avoid the use of shared accounts, and enforce accountability of activities performed by users.³⁷

According to NBS program officials, they discussed issues related to GSA's preliminary inspections with GSA's Information Security Manager on various occasions, including whether the recommendations "were appropriate to apply to NBS because some of those requirements were not specifically required" by the contracts. At the completion of our review, GSA had neither resolved this issue nor taken action to help ensure that it could require the two dual-agency NBS firms to implement its inspection recommendations. In addition, although GSA performed follow-up visits with the two dual-agency firms in early August 2006, these visits also did not assess the adequacy of the brokers' conflict wall controls.³⁸

³⁷For example, if an e-mail must be shared among users, GSA recommended that the brokers establish controls to ensure that a user cannot perform an e-mail function without fully accounting for his or her identify.

³⁸In a discussion of GSA's technical comments on a draft of this report, GSA officials told us that the agency's inspections were performed to assess the brokers' adherence to conflict wall requirements. The officials explained that GSA performed the site visits to verify that the brokers had created the required conflict walls and that the physical and electronic controls were being maintained, as required by the contracts. While GSA has confirmed that conflict walls exist, it had not assessed whether the physical and electronic controls established by the brokers are adequate.

GSA Had Not Assessed Whether NBS Program Controls Satisfy Federal Requirements for Safeguarding Information and Information Systems

GSA also had not assessed whether NBS program controls satisfy federal requirements for safeguarding information and information systems. FISMA requires each federal agency to develop, document, and implement an agencywide information security program to protect information and information systems used or operated by contractors on behalf of an agency. This security program is intended to provide assurance that contractors and others are protecting the information and information systems in a manner commensurate with the risk level assigned to the information and systems by the agency. To comply with FISMA, GSA and other federal agencies must periodically assess the risk and magnitude of harm that could result from unauthorized access to, or use, disclosure, disruption, modification, or destruction of, (1) information collected or maintained by, or for, the agency and (2) information systems used or operated by the agency or by another entity, such as a contractor, for the agency. Agencies also must develop risk-based policies and procedures for reducing its security risks to an acceptable level. Such policies and procedures must identify and prescribe appropriate controls for safeguarding information—of varying sensitivity—as well as information systems, such as those containing procurement-sensitive information. Furthermore, after establishing the risk level of various types of information and the controls applicable to each, an agency must periodically test the effectiveness of its information security policies, procedures, and practices to ensure that its employees and other users, such as contractors, are safeguarding its information appropriately.³⁹

³⁹Federal agencies are required to test the management, operational, and technical controls for their applicable information systems. Management controls, such as those related to the assessment of risk, are normally addressed by an agency's information security program management. Operational controls include controls that are executed by people (as opposed to systems). Technical controls include security controls that electronic information systems execute.

FISMA's requirements are similar to GSA's conflict wall requirements in that they call for establishing physical and electronic controls to safeguard agency information. However, FISMA's requirements differ from GSA's in that they are risk-based, can apply to information systems as well as information supplied by GSA or collected for GSA, and are applicable to contractors who act on GSA's behalf—not just the two NBS dual-agency brokers. In addition, GSA's contracts with the NBS brokers allow GSA to inspect the dual-agency brokers' conflict wall controls to assess whether they comply with contract requirements; whereas, FISMA requires agencies to periodically test—at least annually—their information security controls.⁴⁰ Depending on the outcome of the agency's annual risk assessment, the requirement for testing may also apply to the NBS brokers.

In February 2006, NBS program officials, including the National Contracting Officer, acknowledged that FISMA is applicable to the NBS program, but noted that GSA's contracts with the brokers do not include language requiring the brokers to comply with FISMA. At that time, the National Contracting Officer noted that he can unilaterally modify the contracts to add the appropriate requirements. However, before he proceeded, he said, GSA would need to determine, among other actions, how the contractors are using information and information systems on its behalf as well as what risk levels are appropriate to the information and systems involved. As of October 31, 2006, GSA had not completed these actions and had not incorporated the appropriate controls into its contracts to help ensure the brokers' compliance with FISMA, including those related to periodic testing. Moreover, GSA had not budgeted for or scheduled any type of FISMA assessment of the NBS program.

⁴⁰The frequency of the testing depends on the risk level assigned, but must be performed at least annually.

GSA officials also provided two other reasons why GSA had not assessed the four brokers. First, in February 2006, GSA officials, including GSA's Information System Security Manager, told us that they were unaware that FISMA requirements apply to information that is either supplied by GSA or collected by the four brokers for use on GSA's behalf. Consequently, GSA had not assessed the risk and magnitude of harm that could arise from unauthorized access to, or use, disclosure, disruption, modification, or destruction of, the information, including GSA's procurement-sensitive information.⁴¹ According to the Security Manager, GSA inspected the two dual-agency firms to get a basic understanding of their conflict walls and, therefore, did not assess the adequacy of the brokers' controls for safeguarding GSA's information under FISMA. Furthermore, GSA had not inspected any aspect of the controls employed by the two tenant-only firms to safeguard GSA's information.

Second, regarding FISMA's requirements to test, as appropriate, information systems used or operated by the brokers on behalf of GSA, GSA's Security Manager told us that GSA intends to assess the adequacy of the brokers' controls after the brokers gain access to e-Lease. As of February 2006, the assessments were not yet contemplated, because the brokers still did not have access to GSA's electronic interface. NBS officials explained that while GSA had anticipated that the brokers would have access to e-Lease by March 31, 2006, delays had occurred, in part, because of a governmentwide backlog in completing a federal security verification process required for contractors who have access to federal facilities and information systems. Now that the brokers are obtaining access to e-Lease, they said they plan to use e-Lease as a "catalyst" for incorporating FISMA-related controls into each of the NBS contracts prior to the next contract year.⁴² Although FISMA's testing requirements for electronic interfaces with agency information systems did not apply until the brokers had access to e-Lease, it is important to note that FISMA's requirements for ensuring the

⁴¹GSA officials further acknowledged that they did not know how the four firms are using GSA-supplied information. Such information, the officials said, may be provided as either an attachment to an e-mail or in hard-copy form. For example, the officials said they did not know whether the brokers electronically scan GSA's hard-copy information to create electronic files.

⁴²As of July 31, 2006, 9 NBS broker employees had gained access to e-Lease and the sensitive information it contains, while 3 others—who had also completed the security verification process—were in the process of obtaining access. Another 42 NBS broker employees were still completing the security verification process and, thus, also did not yet have access to e-Lease.

adequacy of controls for safeguarding (1) GSA's information and (2) information systems, including broker controls—as appropriate to the agency's assessment of the risk—have been applicable since April 2005, when performance began under the contracts.

Brokers Will Be Compensated through Commissions Paid by Building Owners, but Controls for Minimizing the Government's Rental Costs Are Insufficient

GSA is using commissions paid by building owners to compensate its brokers, as is typical in the commercial real estate industry. GSA's compensation approach has evolved over time and, according to GSA, is the most sensible and cost-effective option for acquiring needed real estate services. Under the NBS contracts, GSA expects building owners to pay commissions and requires them to do so if they are offering a commission to their listing agent or broker. The cost of commissions is factored into the rent paid by tenant agencies. GSA has no obligation to pay its brokers—even if a building owner does not offer a commission to the brokers. Because the vast majority of GSA's leasing transactions issued through March 31, 2006—the end of the first year of the contracts—had not been completed, GSA has little information about the number of transactions that may not result in commission payments. NBS program officials are aware of the potential for conflict between the brokers' interest in receiving higher commission rates and the government's interest in acquiring the most suitable leased space, including its interest in cost matters. As a result, GSA has developed controls to help prevent such a conflict; however, the controls do not adequately mitigate the inherent conflict of interest created by allowing the brokers to represent the government while also negotiating their commissions. Absent additional controls, GSA has insufficient assurance that the brokers will not increase the government's rental costs by favoring building owners who offer them higher commissions.

GSA's Compensation Approach Is Typical in the Commercial Real Estate Industry

Under the terms of their contracts with GSA, the four NBS brokers have an opportunity to obtain substantial payments for their services by collecting real estate commissions that building owners typically pay to tenant representatives (brokers).⁴³ The brokers are expected to negotiate a market-based commission with a building owner on the basis of the firm term of each lease, generally 5 years.⁴⁴ The brokers cannot earn commissions for market research (market data task orders)—a service associated with acquiring leases—but are allowed to earn commissions for

- other lease acquisition services,
- lease expansions,
- and lease extensions.

Like GSA, representatives of the vast majority of the large, private companies; state agencies; and other federal agencies we interviewed that contract for leasing services said they typically use building owner commissions to compensate their brokers. The only exception was the United States Postal Service, which paid fees directly to its brokers for leasing services. Although the Postal Service did not use building owner commissions to pay its brokers, it was considering doing so in the future. Similarly, representatives from the nine nationwide brokers we interviewed told us that they are generally compensated through commissions paid by building owners. Brokers are not normally paid for their market data but, according to representatives from the majority of the 10 public- and private-sector entities we interviewed that contract for leasing services, the payment of building owner commissions for other leasing services is a common and long-standing industry practice.⁴⁵

⁴³Building owners typically factor the cost of the commission into the rent charged to a tenant. Tenants indirectly pay the commission through their rental payments.

⁴⁴The “firm term” of a government lease is the noncancelable portion (term) of the lease—the portion of the lease that the government guarantees to pay, regardless of whether the space is occupied. Commissions cannot be earned for any “option” periods associated with a lease. Options allow the government to extend the duration of a lease at its discretion.

⁴⁵None of the five local real estate regulators that we interviewed (four states and the District of Columbia) oversee the method of compensating brokers or the amount of broker commissions. However, representatives from one regulatory entity (Virginia) volunteered that brokers are typically paid through commissions paid by building owners.

GSA's Compensation Approach Evolved over Time

GSA modified its method of compensating brokers from a public-sector to a private-sector approach in 2004 when it switched its source of compensation from appropriated funds to building owner commissions. According to GSA's 2003 analysis for entering into the NBS contracts, the revised compensation approach is the "most sensible and cost effective option" for securing additional realty resources in view of GSA's expanding workload and diminishing in-house capacity.⁴⁶ The revised approach differs from the approach GSA used under its previous contracts for leasing services. Under its prior contracts, GSA (1) paid real estate brokers a fee from appropriated funds in exchange for a variety of lease acquisition and other services and (2) prohibited brokers from receiving compensation related to GSA's leasing transactions from any other sources.⁴⁷ To minimize the legal issues involved if, for example, the government tried to collect commissions itself, GSA instructed the brokers to ensure that building owners reduced their rental rates by the value of the uncollected commissions. However, this approach was not considered effective because of the perception that some building owners were continuing to factor the cost of unpaid commissions into the rent charged to GSA's tenants. This concern led GSA to ask its General Counsel how it could recover and retain commissions paid by building owners. In a May 1999 opinion, GSA's General Counsel concluded that "GSA may modify the contract[s] to provide that any commission offered to the broker should be accepted and rebated to GSA. GSA should then credit the appropriation used to pay the broker[s] under the contract[s]." GSA implemented the advice in 2000 when it modified the contracts and instructed the brokers to recapture commission fees on behalf of GSA.

⁴⁶As previously discussed, we did not evaluate GSA's analysis to determine if awarding the NBS contracts represented the best option available to the government.

⁴⁷GSA began awarding contracts for leasing services in 1997. Initially, GSA awarded 8 contracts—2 contracts for each of four broad U.S. geographic areas. By August 2003, when GSA developed its analysis for entering into the NBS contracts, the number of contracts had increased from 8 to 29.

GSA's payment approach evolved further in 2003 when the agency contemplated using "no-cost" contracts for the NBS contracts.⁴⁸ Under the proposed contracts (and as awarded), brokers would represent GSA's interests in lease acquisition and related services and receive commissions from building owners, in accordance with industry practices, instead of direct payments from GSA. To ensure that such a compensation approach would not improperly augment GSA's appropriation,⁴⁹ GSA asked the Comptroller General of the United States for a formal legal opinion on this matter.⁵⁰ The General Counsel of GAO, who responded for the Comptroller General, concluded that GSA could enter into the proposed contracts with real estate brokers without augmenting its appropriations, since the proposed contracts did not contemplate the government receiving funds from the brokers.⁵¹

GSA Requires Commissions Payments in Certain Circumstances

In signing their contracts with GSA, the four brokers agreed to provide real estate services and to represent GSA in specific task orders issued by GSA. The brokers further agreed to be compensated by collecting commissions typically paid by building owners in the private sector. To assist its brokers in collecting commissions, on July 3, 2006, GSA issued a policy directive requiring building owners to pay a commission to GSA's broker if the

⁴⁸The term "no cost" is somewhat of a misnomer, since there would be no valid contract without mutual consideration by each party. In this case, the consideration benefiting the broker stems from its right to collect a share of the lease brokerage fees (commission payments) paid by prospective building owners.

⁴⁹Government agencies are prohibited from augmenting their appropriations from outside sources without specific statutory authority.

⁵⁰The Comptroller General is head of the U.S. Government Accountability Office (GAO).

⁵¹The opinion further concluded that the services rendered under a formal contract at no cost to the United States would not constitute an acceptance of voluntary services under 31 U.S.C. § 1342. That statute prohibits federal officers and employees from accepting voluntary services except in certain emergencies, and is intended to prevent agencies from forcing the Congress to appropriate funds to pay volunteers who later submit claims for payment. The opinion held that the services that GSA anticipated obtaining under the NBS contracts were not voluntary "since the brokers' services would be rendered under a formal contract that would presumably specify the no-cost nature of the contract and contain mutually binding rights and obligations on the parties including the exact services to be delivered thereunder in return for the right to represent GSA in their respective markets." See B-291947 (Aug. 15, 2003).

owners were paying a commission to their listing agent or broker.⁵² According to the directive, if a building owner intends to pay its broker a commission or fee and submits its final offer without offering a commission to GSA's broker, the offer must be rejected as technically unacceptable. However, if a building owner does not include a commission to the broker on either side of the transaction, the offer would be acceptable, unless other issues preclude GSA from accepting the offer. GSA will not pay its brokers under any circumstance, even if a building owner does not offer a commission to either broker. For its part, GSA has agreed not to issue task orders to brokers when GSA knows that they will not result in a commission. Consequently, GSA performs leasing transactions involving Indian tribes; airport authorities; and government entities (state, city, or local municipalities) in-house because these entities do not pay broker commissions. Furthermore, because building owners in rural markets are considered less likely to pay commissions, according to GSA's November 2005 guide for administering the contracts, GSA may elect not to issue task orders for particular rural markets if, through experience, it establishes a history of unpaid commission in those markets.

⁵²GSA's guidance on commission payments has evolved over time. GSA's initial solicitation for offers advised potential building owners that "[t]he contractor [broker] will pursue any commission in connection with this lease transaction that it normally would be entitled to pursuant to local business practices...." The NBS brokers believed the language in the solicitation did not adequately protect their interests because it did not clearly express the government's expectation that they would be paid. Responding to the brokers' concerns, in August 2005, GSA revised the solicitation for offers to state that "[t]he Government expects that its contractors [brokers] will be paid a fair market commission on any specific transaction on the same basis as any local business brokerage custom and practice...." According to NBS program officials, the solicitation was revised because they realized that for the contracts to be successful, the brokers must be successful as well. The brokers were not, however, completely satisfied and pursued additional revisions. In considering the additional revisions, GSA reviewed program data indicating, according to the National Program Manager, that lower-than-market commissions were being offered on some task orders. As a result, in July 2006, GSA further revised its solicitation for offers to state that "[b]y submitting an offer, the building owner agrees that if they are paying a commission to a listing agent/broker, then it will pay a commission to the [GSA's] broker that it normally would be entitled to pursuant to local business practices."

Too Few Task Orders Have Been Completed to Determine the Extent of Unpaid Commissions, but the Risk Appears to Be Limited

According to the four NBS brokers, they were aware that commissions might not always be paid when they competed for their contracts. Such risk, they said, is a common feature of their large corporate accounts. The brokers explained that they accepted the risk of unpaid commissions because they anticipated that (1) these situations would be rare and (2) the volume of government business would compensate them for any isolated losses. Furthermore, while the brokers knew that building owners would not always offer a commission—particularly for leased space in rural markets—their past payment experience indicated that they usually collected commissions regardless of the market involved. The brokers' experience together with GSA's July 2006 requirement that building owners pay GSA's brokers if they intend to pay their own, suggests that the brokers' risk of financial loss is limited.

Because the vast majority of the task orders issued through March 31, 2006, had not been completed, GSA and the four brokers had little actual experience for estimating how many task orders would not result in commission payments. Typically, it takes at least 1 year from the initiation of a task order to the final agreement on the terms of a lease, including agreement on the final amount of any commission that will be paid.⁵³ As of March 31, 2006, 11 of the 479 task orders issued by GSA and eligible for a commission had been completed. According to the National Contracting Officer, the building owner did not offer a commission on 1 of the 11 task orders—an expedited lease extension—because it required minimal effort to complete. The remaining 10 completed tasks, involving about 460,000 square feet of leased space, resulted in about \$1.2 million in commission payments from building owners. However, as discussed in more detail later in this report, the brokers are entitled to only a portion of this amount—about \$960,000, while the government is to receive the remainder in the form of commission credits. Table 1 provides a breakdown of issued task orders, including the number that resulted in a commission as of March 31, 2006. Table 2 provides data on the total amount of commissions accrued by the NBS brokers as of that date.⁵⁴

⁵³According to GSA officials, task orders often take from 1 to 4 years to complete, depending on the complexity of the task order.

⁵⁴The brokers receive 50 percent of their commission when the lease is signed. The remaining commission is paid when the tenant occupies the space or by the commencement date of the lease, whichever occurs first.

Table 1: Number of Task Orders Issued and Completed, Including Those Eligible for a Commission Payment, as of March 31, 2006

Description	Number of task orders
Number of task orders issued ^a	544
Commission-eligible task orders issued ^b	479
Completed task orders	76
Completed commission-eligible task orders ^b	11
Completed commission-eligible task orders that resulted in a commission payment	10

Source: GAO analysis of GSA data.

^aRepresents all task orders issued, regardless of type.

^bExcludes 65 task orders for market data, all of which had been completed as of March 31, 2006. However, as previously discussed, brokers do not earn commissions for these services.

Table 2: Total Commission Payments Accrued by Each NBS Broker, as of March 31, 2006

Broker	Commissions accrued ^a
Broker A	\$0.00
Broker B (2 task orders)	575,111.62
Broker C (4 task orders)	374,038.91
Broker D (4 task orders)	11,113.60
Total	\$960,264.13

Source: GAO analysis of GSA data.

^aThe commission data provided by GSA officials were taken from the brokers' monthly reports of commissions accrued, but not necessarily paid, as of March 31, 2006.

GSA Has Controls That May Help, but Are Not Sufficient, to Prevent Brokers from Favoring Building Owners Who Offer Excessive Commissions

NBS program officials recognize that the brokers' interest in receiving higher commission rates conflict with the government's interest in acquiring the most suitable leased space. As a result, GSA has developed controls to help prevent the brokers from favoring building owners who offer higher commissions. These controls include oversight by GSA's contracting officer's technical representatives (COTR), the establishment of a commission review board, and a contracted study on commission rates in major markets. Although these controls may help to prevent the brokers

from promoting and negotiating offers that include excessive commission payments, they do not altogether preclude improper actions.

GSA requires its COTRs to oversee all of the activities the brokers perform on behalf of GSA, from developing the solicitation for lease offers to negotiating a lease. One important activity is determining the commission rate appropriate to each leasing transaction. Early in each task order, the broker provides the COTR with a set of negotiating objectives, including the broker's assessment of the typical commission rate appropriate to the particular task and market. Using market knowledge and commercial data sources on applicable market commissions, the COTR approves or disapproves the commission rate (and the other negotiation objectives) proposed by the broker. Each broker must include the approved commission rate in its commission agreement, which is included in GSA's solicitation for offers. The broker then provides the solicitation to building owners who may be able to meet the government's needs and negotiates a lease agreement with the building owner. According to NBS program officials, offers with excessive commission rates may be rejected. Ultimately, GSA signs the lease, and both the broker and the building owner are required to report to GSA all commissions paid.

At the conclusion of our review, GSA was establishing a board of GSA subject matter experts to function as a resource to, among other things, help ensure that the brokers' commission rates are reasonable. According to NBS program officials, this resource is currently available to GSA's COTRs through the National Program Manager who, upon request, consults with senior GSA regional real estate experts on the appropriate commission rate for a particular market. In addition, GSA contracted for a study of applicable commission rates in major markets to provide additional information for assessing the reasonableness of its brokers' commissions.

These three controls may help to prevent the NBS brokers from improperly favoring building owners who are willing to pay higher commissions; however, in our view, these controls are not sufficient. Specifically, although excessive commissions are subject to negotiation, according to NBS program officials, including the Assistant Commissioner of GSA's Office of National Customer Services Management, the NBS brokers are allowed to negotiate commissions in excess of those specified in GSA's solicitations for offers. According to these officials, GSA does not want to influence commercial real estate markets by specifying a maximum commission rate in its solicitations to building owners.

Although GSA does not want to influence commercial real estate markets, as previously discussed, the FAR requires each agency to avoid or mitigate any conflict of interest, or even the potential of a conflict, in its business relationships. Allowing the NBS brokers to represent the government while negotiating their commissions, creates, by design, an inherent conflict between the brokers' interest in promoting and negotiating higher commissions and their responsibility to effectively represent GSA's interest in selecting properties that best meet the government's needs, including its cost needs.⁵⁵ Although GSA describes the NBS contracts as "no-cost" contracts because the brokers are not paid directly by the government, the brokers' commissions are factored into the rent the government will eventually pay. Thus, by leaving the brokers free to negotiate their commissions with building owners, GSA empowers them to favor owners who will pay the highest commissions, thereby potentially increasing the government's cost. If GSA chooses not to specify maximum commission rates on the basis of local market conditions in its solicitations for offers, GSA must find an alternative approach to mitigate this inherent conflict of interest. One possible approach would be to prohibit the brokers from accepting a commission in excess of the rate approved by the applicable COTR and included in GSA's solicitation for offers. Such an approach would remove the NBS brokers from the negotiation process and, thus, mitigate the existing conflict.

Other Entities Generally Did Not Require or Pay Commissions and Had Controls on Commission Rates, but Some Variation Existed

The majority of the 10 public- and private-sector entities we interviewed that contract for leasing services did not require building owners to pay commissions. The Postal Service negotiated and paid fees directly to its brokers, regardless of whether a building owner would have paid. Two of the remaining 9 entities—New York and Michigan—required building owners to pay commissions to their brokers; the remaining 7 did not. Four of the 7 entities that neither paid their brokers directly nor required building owners to pay—the Department of Veterans Affairs; California; Florida; and 1 large, private company (company #1)—also did not

⁵⁵For another example of an inherent conflict created by design, see, for example, *Goldstein v. Johnson & Johnson*, 251 F.3d 433, 442 (3rd Cir., 2001), where the court dealt with the fiduciary duty of a retirement plan administrator that depended, in part, on whether "the plan, by its very design, create[d] a special danger of a conflict of interest."

compensate their broker if the building owner did not pay a commission.⁵⁶ Officials from the 3 remaining entities—the Federal Deposit Insurance Corporation (FDIC) and 2 large, private companies (companies #2 and #3)—noted that building owners generally paid commissions, but that if they did not, their entities would be willing to pay or had paid their brokers.⁵⁷ Table 3 identifies each entity’s payment approach.

Table 3: Payment Approach Used by the 10 Public- and Private-Sector Entities That Contracted for Leasing Services

Entity that contracted for leasing services	Paid fees directly to its broker	Paid brokers through commissions from building owners	Required building owners to pay commissions	Did not pay their broker if the building owner did not provide a commission	Would be willing to pay or had paid their broker if the building owner did not provide a commission
Federal entity					
United States Postal Service	x				
Department of Veterans Affairs		x		x	
Federal Deposit Insurance Corporation		x			x
State entity					
California		x		x	
Florida		x		x	
Michigan		x	x		
New York		x	x		
Private company					
Private company #1		x		x	

⁵⁶Officials from 3 of the 4 entities told us that they expect their brokers to absorb the financial loss because of the large volume of business they do with their brokers. Florida, however, allowed its broker to excuse itself from a deal if, before starting any work, it found that a building owner was unwilling to pay a commission.

⁵⁷FDIC officials said the agency has paid its broker because of the time, effort, and resources its broker invested to complete a leasing transaction and because the FDIC wanted to maintain a good, long-term relationship with the broker. An official of 1 large, private company told us that his company routinely pays its broker a reduced fee because it does not expect a broker to work for free; while officials from another large company told us that their company generally compensates a broker because it is unfair and unprofitable for the broker not to be paid.

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Entity that contracted for leasing services	Paid fees directly to its broker	Paid brokers through commissions from building owners	Required building owners to pay commissions	Did not pay their broker if the building owner did not provide a commission	Would be willing to pay or had paid their broker if the building owner did not provide a commission
Private company #2		x			x
Private company #3		x			x

Source: GAO.

Finally, excluding the Postal Service, which negotiated and paid fees directly to its brokers,⁵⁸ 7 of the remaining 9 entities had controls to prevent their brokers from favoring building owners that offer higher commissions. Four of the 7 entities—California, Florida, Michigan, and New York—specified commission rates or maximum commission rates in their contracts with their brokers, while officials from the FDIC said that they were directly involved in negotiations between their brokers and building owners to protect their financial interests. Officials from 1 entity—the Department of Veterans Affairs—said that the department is directly involved in negotiations, and that it specifies a maximum commission rate in its contracts with its brokers. One large, private company required its broker to obtain approval of the commission rate before starting work on a transaction. By contrast, officials from the remaining 2 entities—both large, private companies—did not identify any specific controls in this area.

GSA Does Not Know What, If Any, Savings Have Resulted Largely Because It Has Not Developed Processes for Quantifying Most of the Anticipated Savings

In 2003, GSA developed its business analysis for entering into the NBS contracts and concluded that the contracts represented the best option available to GSA, in part, because of the variety of savings that it expected to accrue from the contracts.⁵⁹ In particular, GSA expected reductions in rent from commission credits, which apply to most, but not all of the services rendered by the brokers, and from the brokers' greater knowledge of the commercial real estate market. In addition, GSA expected to reduce its payments for contract fees and administration costs associated with its previous contracts for leasing services and to avoid personnel costs by shifting its leasing workload to the NBS brokers instead of hiring additional

⁵⁸The need for controls to prevent a broker from favoring building owners who pay higher commissions diminishes when an entity pays directly for the services it receives.

⁵⁹*Business Analysis and Case for National Contracts*. As previously discussed, we did not evaluate GSA's analysis.

staff (realty specialists) to perform these leasing tasks in-house. GSA subsequently identified further tasks for its realty specialists, however, and now believes that it must maintain an adequate (but unspecified) number of these personnel to oversee the NBS brokers. It is unclear how GSA's change in view will affect its future personnel levels and long-term costs. As of October 31, 2006—except for savings related to commission credits—GSA had not developed processes for quantifying the savings. Until such time as it does, GSA will not know whether, or to what extent, savings have resulted.

GSA Expected Reductions in Rent from Commission Credits

In responding to GSA's solicitation, each broker was required to specify the percentage of its commissions from building owners that it would forgo to do business with the government. Such credits apply to most, but not all, of the services rendered by the brokers. For example, the government does not receive commission credits for tasks related to market data, since the brokers are not paid for these services. In addition, the brokers do not provide commission credits for expedited lease transactions if the transactions are completed within specified time frames.⁶⁰ Finally, commission credits are not applicable if a building owner does not pay broker commissions.

GSA required the NBS brokers to specify the percentage of their commission that they would credit to the government for each year of the contract. For the first year of the contract—the base year—the four brokers agreed to forgo between 26.0 percent and 51.5 percent of any commissions offered by building owners for applicable leasing transactions. Two of the brokers specified constant rates, while the other two offered to increase the percentage of their commission credit over time if GSA elected to extend its contracts with them. Table 4 identifies the percentage of commission credit offered by each of the four NBS brokers, by contract period.

⁶⁰Expedited transactions for lease acquisitions, expansions, and extensions have an occupancy date of 120 days or less. If a broker completes these transactions within this time frame, the broker is allowed to retain the entire amount of any commission paid.

Table 4: Percentage of Commission Credit, by NBS Broker and Contract Period

NBS broker	Percentage of commission credit, by contract period				
	Base year of contract— Year 1 ^a	Year 2 ^b	Year 3 ^c	Year 4 ^d	Year 5 ^e
Jones Lang Lasalle	26.0%	28.0%	30.0%	32.0%	34.0%
The Staubach Company- Northeast	31.0	31.0	31.0	31.0	31.0
Julien J. Studley, Inc.	51.5	51.5	51.5	51.5	51.5
Trammell Crow Services, Inc.	37.0	37.0	38.0	39.0	40.0

Source: GAO analysis of GSA data.

^aThe base year (year 1) of the contract ran from April 1, 2005, to March 31, 2006.

^bYear 2 represents an option period for the contract year between April 1, 2006, and March 31, 2007. Options allow the government to extend the duration of a contract at its discretion. GSA elected to extend all of the NBS contracts for this period.

^cYear 3 represents an option to extend the contracts between April 1, 2007, and March 31, 2008.

^dYear 4 represents an option to extend the contracts between April 1, 2008, and March 31, 2009.

^eYear 5 represents an option to extend the contracts between April 1, 2009, and March 31, 2010.

The amount of any applicable commission credit is calculated and evaluated when a broker, with oversight from GSA, evaluates the lease offers received from building owners in response to GSA's solicitation for offers. In these offers, building owners are required to specify the broker's commission, if any, as well as other information that the broker and GSA need for the evaluation, such as the lease term, square footage, parking availability, rent, and any allowance for requested tenant improvements. Using a worksheet provided by GSA, the broker enters information from all of the technically acceptable offers received and converts all of the cost information to their present value to ensure consistent cost comparisons.⁶¹ The broker then compares the offers, discusses them with the applicable COTR, and negotiates each offer with the appropriate building owner. If a building owner changes his or her offer, the broker must edit the information in the worksheet and recalculate the offer's present value. The broker compares the building owners' final offers and recommends what he or she considers to be the most-suitable leased space to GSA. If GSA accepts an offer that specifies a commission payment to GSA's broker,⁶² the tenant agency's rent is reduced by the amount of the commission credit—the percentage of the commission that each broker agreed to forgo. The commission credit is applied in the first month of the lease, or if the credit exceeds the tenant's monthly rent, it is applied in the early stages of the tenant's rental payments.

Table 5 illustrates how commissions and commission credits are calculated. This example relates to the acquisition of about 378,000 square feet of leased space during the first year of the NBS contracts. The basic rent for this transaction totaled about \$49 million over the firm term of the lease and the commission rate negotiated between the broker and the building owner was 1.5 percent of the total basic rent.⁶³ Thus, the building owner is required to pay about \$730,400 in commissions. In entering into its contract with GSA; however, the broker who completed this task order

⁶¹The "present value" is the value of a future cash stream in terms of money paid immediately (or at some designated date).

⁶²As previously discussed, a commission credit is not due if a building owner does not pay broker commissions.

⁶³The firm term of a government lease is the noncancelable portion (term) of the lease—the portion of the lease that the government guarantees to pay, regardless of whether the space is occupied. The firm term of a lease is generally 5 years. Commissions are not earned for any "option" periods associated with a lease. Options allow the government to extend the duration of a lease at its discretion.

agreed to return 26 percent of its commission on each applicable task order (during the first year of its contract) in the form of a commission credit to the government, which, in this case, equals about \$189,900. As previously discussed, commission credits are applied in the early stage of the tenant agency's monthly rent. Thus, approximately \$189,900 is to be used to offset the tenant's first month's rent of about \$811,600. After deducting the commission credit from the total commission payable by the building owner, this broker accrued a commission of about \$540,500.

Table 5: Example of How Commissions and Commission Credits Are Calculated

A	B	C	D	E	F	G
Basic rent for the firm term	Monthly rent	Commission rate	Total commission payable by the building owner (A x C)	Percentage of commission that the broker agreed to credit to the government	Commission credit payment (D x E)	Commission payable to the broker (D - F)
\$48,696,180	\$811,603	1.5%	\$730,443 ^a	26.0%	\$189,915 ^a	\$540,528 ^a

Source: GAO analysis of GSA data.

^aCalculations are rounded to the nearest dollar.

On the basis of information we obtained from representatives of the 9 nationwide brokers and 10 public- and private-sector entities we interviewed that contract for real estate services, commission credits are common in the commercial real estate industry. For example, 2 of the 10 public- and private-sector entities—California and New York—either required or had required their brokers to forgo a portion of their commissions for use as commission credits. Two other entities—both large, private companies—required commission credits after their broker had completed a specified volume of leasing transactions. In addition, although the FDIC, the Department of Veterans Affairs, and Michigan did not require credits, they had accepted them in the past. The only exceptions to these practices involved a large, private company; Florida; and the Postal Service, which did not accept commission credits and had not accepted them in the past.

GSA Has Processes in Place to Quantify and Verify Savings from Commission Credits, but Data on These Savings Are Limited

GSA has processes in place to quantify savings from commission credits and to verify that the credits are properly calculated and applied. First, as previously discussed, GSA requires the NBS brokers, using a worksheet supplied by GSA, to calculate the (1) present value of all technically acceptable offers received (all initial and subsequent offers) as well as (2) any associated commission credit applicable to the offers. Each of these calculations must be verified and approved by two GSA employees, including the COTR. Once GSA accepts an offer, the broker includes the amount of any approved commission credit in GSA's leasing agreements with the successful building owner. Such agreements specify, among other things, the amount of any applicable commission payable; the terms of payment by the building owner; including the amount of the rent reduction resulting from the credit, and any other applicable terms and conditions. Second, a regional contracting official enters the commission and the amount of the approved commission credit into GSA's e-Lease system for tracking. Third, the brokers are required to submit monthly reports to GSA's National Contracting Officer that, among other things, specify the percentage and dollar amount of the commission credited to the government in the form of a rental reduction. According to the National Contracting Officer, the brokers' reports are used to cross-check the accuracy of GSA's information. Finally, GSA has begun conducting random file checks as part of its peer reviews to, among other things, further ensure that the commission credit calculations are accurate and that tenant rents are reduced by the proper amounts.

Although GSA quantifies savings from commission credits, little information is available on the amount of these savings because work on the vast number of task orders issued in the first year of the contracts had not progressed far enough for the commissions to be paid. As discussed, the multistep leasing process can take between 1 and 4 years to complete, and it is not until the end of the process that the broker finalizes the amount of any applicable commission and commission credit in GSA's lease agreement with a building owner. As previously discussed, the brokers had completed 11 task orders with the potential for a commission payment as of March 31, 2006. However, only 7 of these 11 task orders were for services that are also eligible for a commission credit. The 7 completed task orders resulted in about \$216,000 in reduced rental payments for approximately 417,000 square feet of leased space. The remaining 4 task orders involved expedited lease transactions that, if completed on time, do not result in a

commission credit to the government.⁶⁴ Table 6 provides a breakdown of issued task orders, including the number that resulted in a commission credit, as of March 31, 2006.

Table 6: Number of Task Orders Issued and Completed, Including Those Eligible for a Commission Credit, as of March 31, 2006

Description	Number of task orders
Task orders issued ^a	544
Task orders issued and eligible for a commission credit ^b	463
Completed task orders ^c	76
Completed task orders that were eligible for a commission credit ^d	7
Completed commission-eligible task orders that resulted in a commission credit	7

Source: GAO analysis of GSA data.

^aRepresents all task orders issued, regardless of type.

^bExcludes 65 task orders issued for market data, which are performed free of charge, and 16 task orders for expedited leasing transactions. The government does not earn a commission credit for expedited leasing transactions, if the transactions are completed within specified time frames.

^cIncludes 65 completed task orders for market data.

^dExcludes 65 completed task orders for market data and 4 completed expedited leasing transactions.

GSA Also Anticipated Rent Reductions from the Brokers' Greater Knowledge of Commercial Real Estate Markets, but Has Not Developed Processes for Quantifying These Savings

According to NBS program officials, GSA anticipated further rent reductions from the brokers' increased knowledge of the commercial real estate market, which the officials indicated was greater than that of its own realty specialists because the brokers are "in the market" more often. NBS program officials explained that commercial brokers have greater exposure to real estate markets than that of its realty specialists. More specifically, they said that GSA's realty specialists see only those offers that are provided in response to its solicitations for space offers, whereas commercial brokers seek out potential spaces and rates offered by all building owners—not just those offered to GSA. NBS program officials expect that the NBS brokers will use their greater knowledge and market

⁶⁴The brokers received commissions for 3 of the 4 completed expedited leasing transactions. The building owner did not pay a commission on the other task order—which was also eligible for a commission—because, according to the National Contracting Officer, the lease extension, required only minimal effort to complete.

exposure to expand the list of potential offerors and to negotiate more favorable rental rates for the government. According to NBS program officials, GSA plans to compare the brokers' negotiated rental rates with information available from industry data sources to assess the reasonableness of the brokers' rates on each NBS task order for lease acquisitions. In addition, GSA intends to compare the brokers' negotiated rates with those negotiated by its realty specialists to determine whether the NBS brokers are achieving lower rental rates. Although GSA has plans to quantify expected savings associated with the brokers' greater market knowledge and exposure, as of October 31, 2006, it had not developed processes for doing so.

GSA Anticipated Further Savings from Reductions in Agency Costs, but Also Has Not Developed Processes for Quantifying the Expected Savings

Besides savings from lower rents, GSA's 2003 business analysis for entering into the NBS contracts indicated that its costs for (1) fees, (2) administration expenses, and (3) personnel would decline because its former contracts for leasing services had expired and its leasing workload would increasingly be shifting to the NBS contracts. First, GSA anticipated reductions in fees associated with the prior contracts. According to GSA's analysis, in 2003, it had 29 fixed price contracts in place, under which GSA compensated the brokers through fees. According to GSA, 20 of these 29 contracts had fees ranging from 1.98 percent to 5.0 percent of the total lease value.⁶⁵ According to NBS program officials, GSA budgeted \$5.0 million in broker fees for its contracts in fiscal year 2005 and \$5.1 million for fees in fiscal year 2006. All of the prior contracts have expired and will not be renewed, according to NBS program officials. However, as of July 31, 2006, an unspecified number of task orders issued before the expiration of these contracts were still incomplete due to the lengthy duration of some task order projects.⁶⁶ As of July 31, 2006, according to NBS program officials, fees paid totaled about \$32.6 million. When all of the remaining task orders under the previous contracts are completed—expected by about March 31, 2007, NBS program officials told us that they intend to assess the amount of expected savings resulting from the elimination of these fees. As of October 31, 2006, however, GSA had not developed procedures for quantifying these savings.

⁶⁵GSA was unable to provide the fees for the remaining 9 contracts.

⁶⁶NBS program officials were unable to provide the number of open task orders under the prior contracts.

Second, GSA expected that using the NBS contracts would significantly reduce its administrative expenses. According to GSA, the previous contracts had differing terms, conditions, and pricing structures, which led to contract administration problems, inconsistencies among its regional offices, and customer-relations problems with its tenant agencies. GSA also noted that the prior contracts did not provide for efficient monitoring and tracking of management and funding data. In December 2002, GSA's Inspector General reported that these contracts generated a significant administrative burden that was disproportionate to the value derived from them. By contrast, according to GSA, the four NBS contracts have, among other things, the same terms and conditions.⁶⁷ GSA considers this uniformity a significant improvement that will simplify its oversight and administration of the contracts. In GSA's 2003 business analysis for entering into the NBS contracts, GSA estimated that the improvements gained by moving to the NBS contracts would reduce its administrative costs by approximately 75 percent. The National Program Manager told us that GSA is developing processes to quantify these savings, but as of October 31, 2006, it had not yet done so.

Finally, GSA expected to achieve further savings by hiring fewer realty specialists over time.⁶⁸ Had the agency decided to perform all of its lease acquisition, management, and administration duties in-house, rather than move to the NBS contracts, GSA's 2003 business analysis indicated that it would have to (1) increase its staff of 450 realty specialists by 300 as well as (2) replace those specialists who retired or left the agency for other reasons.⁶⁹ According to GSA's 2003 analysis, entering into the NBS contracts would enable GSA to acquire needed resources, while avoiding the need to hire additional realty specialists. By July 2006, however, NBS program officials, including the Assistant Commissioner of GSA's Office of National Customer Services Management, no longer held this view. Specifically, these officials emphasized that, while the NBS contracts represent a "powerful tool to hand off much of their task-oriented transactional work to the brokers," GSA will need to maintain an adequate

⁶⁷While the contracts are substantially the same, as previously discussed, some requirements vary.

⁶⁸As previously discussed, GSA planned to have the NBS brokers perform at least 50 percent of its expiring leases in the first contract year—with increases of 10 percent annually, culminating in 90 percent utilization by 2010.

⁶⁹According to NBS program officials, in April 2006, GSA had 509 realty specialists, with 54 of these employees eligible to retire by December 2006.

(but unspecified) number of realty specialists to oversee the NBS brokers. In addition, NBS program officials told us that, subsequent to GSA's development of its 2003 analysis, it had identified other, more strategic tasks for its realty specialists to perform, such as those related to improving its tenant agencies' satisfaction with the leasing process. According to these officials, having realty specialists perform more strategic tasks will result in agencywide operational efficiencies. Furthermore, NBS program officials told us that GSA is developing a new workload capacity model to assist senior managers in projecting GSA's future staffing requirements for realty specialists. Consequently, as of October 31, 2006, it was unclear (1) whether, or to what extent, previously expected savings from hiring fewer realty specialists would be realized or (2) whether, or when, GSA would be able to quantify savings from operational efficiencies associated with its use of the NBS contracts.

GSA Distributed Its Initial Workload Fairly Equally, but Several Factors Have Slowed Its Transition to Performance-Based Allocations

According to the contracts, GSA is to distribute its initial leasing workload as equally as possible, unless a broker is performing unsatisfactorily. GSA's program guidance further indicates that the brokers are initially to receive equitable square footage distributions in each of GSA's 11 regions. Once a record of performance is available, the distributions are to be based on the brokers' performance. GSA originally expected to have a record of performance available by the end of the first contract year, but because of program delays and insufficient data, it postponed the transition to performance-based distributions. GSA now expects to begin performance-based distributions on April 1, 2007, the start of the third contract year, but it has not yet defined what constitutes a record of performance or developed procedures for performance-based distributions. According to our analysis of GSA's year-end data (which was delayed 5 months by problems with data reliability that we believe GSA has since addressed sufficiently for our reporting purposes), GSA initially distributed its task orders fairly equally among the brokers agencywide, but at the regional level, its distributions varied. Such variability is inconsistent with GSA's contract administration guide, but GSA considers the variability inevitable and, on the basis of our analysis, plans to modify the guide. We also found that GSA's distributions of task orders for market data and expedited leasing transactions varied among the brokers, potentially disadvantaging one or more brokers, and that GSA was not tracking information on its distribution of task orders by similar geographic location (e.g., rural or urban), as it would need to do to determine the equitability of its distributions by location.

Workload Is to Be Distributed as Equally as Possible until a Record of the Brokers' Performance Is Available

Initially, the NBS contracts obligate GSA to distribute task orders to the four NBS brokers “as equally as possible,” unless their performance is unsatisfactory. As specified in the contracts, until a record of performance is available, the brokers must be issued “similar size projects in similar geographic areas to the maximum extent possible within the [GSA’s] existing workload available.” The contracts further indicate that the brokers “should assume that the Government intends to have each awardee performing projects on a nationwide basis in both rural and urban areas,” as long as performance is acceptable. In addition, GSA’s November 2005 contract administration guide indicates that, until a performance record is established, distribution is to be based on square footage “with each firm receiving equal distribution in all eleven GSA regions and in all markets.” Equal distribution of square footage is important because task orders for large projects are generally more profitable for the brokers than task orders for small projects. The requirement for equitable distribution applies to all task orders, including those for expedited leasing transactions and market data. For example, according to GSA’s November 2005 administration guide, task orders for market data “should be evenly distributed” among the brokers. Finally, once a record of performance is available, the contracts specify that GSA will distribute work among the brokers in accordance with their performance.

Other contractual requirements also apply to GSA’s distribution decisions, both initially and after the transition to performance-based distributions. First, the contracts allow GSA, when assigning work to the brokers, to consider the existence of a conflict of interest and a broker’s specialized experience or knowledge. Second, under the terms of the contracts, GSA may consider the timeliness and quality of the brokers’ work and can stop issuing task orders to a broker if the quality or timeliness of the broker’s work “is endangering performance of any task order.” Third, as discussed, the contracts specify that GSA will not assign a task order to a broker if it knows that a commission will not be paid. Fourth, the contracts allow the NBS brokers to initiate a complaint if they have concerns about GSA’s distribution of task orders among the brokers.⁷⁰ Finally, while not discussed in the contracts, the amount of the commission credit offered by a broker is not considered when GSA distributes work among the brokers, according to NBS program officials.

⁷⁰The brokers did not exercise this right during the first contract year.

GSA Plans to Develop Guidance and Procedures for Performance-Based Distributions before Altering Its Current Distribution Approach

GSA initially expected to start performance-based task order distributions after the first contract year, which ended on March 31, 2006, anticipating that the brokers would have completed a sufficient number and variety of commission-eligible task orders to establish a record of their performance. However, apart from task orders for market data, which are not eligible for a commission payment, the brokers had completed 11 task orders by the end of the first year. Lacking what it considered a sufficient record of their performance, GSA elected to continue allocating work among the brokers as equally as possible during the second contract year.

As of October 31, 2006, NBS program officials expected to begin performance-based task order distributions by April 1, 2007—the start of the third contract year. Before GSA can move to performance-based distributions, however, it must, according to the National Program Manager, (1) ensure that it has sufficient data on each broker’s performance and (2) develop clearly defined guidance and processes—which GSA describes as a top priority—for allocating additional future work to those brokers who excel relative to the others. GSA has not determined how many or what types of completed task orders are needed to provide sufficient data on a broker’s performance. Without this information, GSA cannot demonstrate that it has established a record of performance and is ready to move to performance-based distributions. NBS program officials indicated that they might need 50 to 100 completed task orders and that, in reviewing task order evaluations, they would look for clearly discernible patterns of performance, including those related to a broker’s customer service and the rental rates negotiated by the brokers. Clearly defined guidance and processes will be particularly important for allocating future work if differences between the brokers’ performance are marginal or if GSA’s ratings of the brokers vary by region. According to NBS program officials, if regional variations exist, GSA will need to develop a process for evaluating the accuracy of the ratings by, among other actions, assessing whether the preparers of the regional ratings are exhibiting “rating bias.”

GSA's Process for Distributing Its Leasing Workload

GSA embarked on the NBS contracts without establishing how it intended to meet its goal of distributing 50 percent of its workload to the NBS brokers during the first contract year, including the number and size (square footage) of task orders.⁷¹ However, in October 2005—6 months later—GSA established two programwide goals for the first contract year—to issue 630 commission-eligible task orders to the four brokers covering 6.8 million square feet of leased space by March 31, 2006.⁷² According to NBS program officials, these goals—which are not contractual obligations—represented about 50 percent of the total expiring leasing workload that GSA expected to accomplish (using in-house and contractor personnel) during the first contract year.⁷³ NBS program officials then used the overall goals to develop and allocate first-year goals for each of its regions.⁷⁴ After receiving their goals, according to NBS program officials, personnel from each region prepared a list of leases expected to expire during the first contract year and preliminarily identified a broker for each of the expected task orders. The regional personnel then sent the list of potential task orders to the National Program Manager, who reviewed and revised them, in coordination with the GSA regional program managers, to

⁷¹As discussed, in 2004, GSA expected that the NBS brokers would need to perform at least 50 percent of its expiring lease workload in the first year of the contract, with 10 percent increases annually, culminating in the performance of 90 percent of GSA's workload by 2010—the fifth and final contract year. These goals are not contractual obligations but, rather, internal goals set by senior GSA management to address GSA's capacity issues.

⁷²In October 2005, GSA expected to accomplish 1,259 leasing transactions covering about 13.6 million square feet—with either in-house or contractor resources—during the first contract year. GSA divided these totals in half to arrive at its first-year goals for the NBS contracts (i.e., 630 task orders involving 6.8 million square feet of leased space).

⁷³We attempted to ascertain the total number of leasing transactions completed by GSA and GSA's brokers as of March 31, 2006. However, according to the National Program Manager, such information was not available. The National Program Manager explained that while GSA had been aware of the need for such an analysis, it did not have adequate resources to prepare it. According to the manager, GSA recently hired one analyst to assist the NBS team and another analyst was recently provided to the team on a “shared basis” to, among other things, prepare such an analysis.

⁷⁴GSA used the same process to develop and allocate goals for the second contract year. For year 2, GSA hopes to award 658 task orders involving about 8,476,000 square feet of leased space. These goals represent about 60 percent of the leasing workload that GSA anticipates will expire through March 31, 2007—the end of the second contract year.

help ensure that each contractor would be assigned an equitable portion of the expected work.⁷⁵

To monitor GSA's actual distributions, the National Contracting Officer compares information received from the regional contracting officers with monthly information from the brokers and, in coordination with other NBS national program officials, redistributes task orders to correct workload imbalances. The brokers' monthly reports summarize, among other things, the status of their activities under the contracts, including the number and size of the task orders issued to them during the month.

While GSA strives to distribute its work equitably, according to the National Program Manager, perfectly equal distribution is nearly impossible to achieve because of, among other factors, the uncertain timing and nature of the space requests submitted by GSA's customer agencies. According to NBS program officials, such factors can create temporary workload imbalances among the brokers at any point in time and for a variety of reasons. For example, because 80 percent of GSA's task orders involve less than 20,000 square feet of leased space, the issuance of a very large task order, such as one involving about 1 million square feet, can create an imbalance among the brokers and, according to the National Program Manager, increase the "challenge" of equalizing work among the brokers during the remainder of the contract year.⁷⁶ Task order reassignments resulting from broker conflicts of interest also create temporary workload imbalances.⁷⁷ Other factors that did not influence task order distributions during the first contract year, such as a broker's specialized knowledge or poor performance warranting the discontinuation of a broker's work on a task order, could also affect future distributions.

⁷⁵GSA's process for distributing its workload differs from that of most of the private- and public-sector organizations we contacted that contract for leasing services. Most of these organizations either acquired leased space through (1) a single broker or (2) multiple brokers who each performed all of the organization's leasing in a given geographic area. Thus, the organizations had no need to allocate work among multiple brokers. The Department of Veterans Affairs, which modeled its contracts after GSA's contracts, also requires equitable distribution until a history of performance is available.

⁷⁶In the first contract year, 8 of the task orders GSA distributed were for more than 200,000 square feet of leased space.

⁷⁷As previously discussed, GSA reassigned 9 task orders involving about 900,000 square feet of leased space to address conflict-of-interest issues. The vast majority of the reassignments, particularly with respect to square footage, affected one of the two dual-agency firms.

Data Reliability Issues Delayed Issuance of GSA's First Year-end Report for the NBS Program

At several points in our review, we identified errors, inconsistencies, and missing data in GSA's monthly and year-end reports for the first contract year as well as in other sources of NBS program-related data. For example, over the 2-month period between late April and late June 2006, we identified errors in six of GSA's evolving "year-end" reports, including the omission in an April report of a task order involving nearly 1 million square feet of leased space—about 10 percent of the total square footage of task orders issued to the brokers during the first contract year. The omission was caused by a computer programming error and incorrectly indicated a significant imbalance in the workload allocated to the brokers. Unaware that the report was inaccurate, on April 28, 2006, the National Program Manager issued a memorandum to various NBS program officials, citing concerns about the disproportionately low square footage issued to one broker relative to the others and alerting the officials to the possible need to stop issuing task orders to two of the three remaining NBS brokers with much larger square footage allocations until the affected broker was brought into "parity" with the others.

We discussed GSA's various data reports, including issues related to data reliability, with NBS program officials. The officials acknowledged the errors, inconsistencies, and missing data, indicating that these problems had occurred for a variety of reasons. For example, because the regions were not specifically prohibited from creating a new task order for a modification to an existing task order—rather than revising the existing task order—GSA's reports frequently overstated the number of task orders actually issued to the NBS brokers. In addition, information on the "useable" square footage related to the lease was sometimes incorrectly recorded in terms of the "rentable" square footage, which overstated the amount of GSA's square footage distributions.⁷⁸ Finally, inaccuracies occurred because, among other reasons, (1) inaccurate codes were used to record the type of task order issued (miscoding errors) and (2) the regions were late in submitting documentation needed by the National Contracting Officer to record task orders in the NBS database "as of" March 31, 2006. According to GSA, while it learned many lessons in the first contract year,

⁷⁸The "useable" square footage of a lease relates to the amount of space actually occupied by a tenant agency. However, tenant agencies' rent payments are based on the "rentable" square footage within a building. The rentable square footage includes the space the agency occupies (useable) as well as the agency's portion of a building's common space (i.e., its access to elevator lobbies; building corridors; restrooms; and support areas, such as telephone and electrical closets).

the hardest lesson learned was that its data collection processes, as specified in the contracts and administration guide, were unclear and incomplete.

GSA took a variety of actions to address these and other issues related to the reliability of its data, including the computer programming error that resulted in the omission of nearly 1 million square feet of leased space. In particular, between April 1, 2006, and July 31, 2006, GSA implemented new processes for accounting for the NBS task orders. The new processes include the establishment of both electronic and physical systems for recording and filing documentation of GSA's task orders in headquarters—rather than solely in the National Contracting Officer's office in Vancouver, Washington. According to the National Program Manager, all of the source documentation for the first contract year has been scanned and filed—both physically and electronically. In addition, documentation related to the second contract year is being scanned and filed in headquarters as the task orders are signed.⁷⁹ A variety of data validation procedures have also been instituted. For example, a program analyst in headquarters now receives documentation related to the regions' task orders and audits the data to help ensure that the required data elements have been accurately reported in GSA's database. Moreover, a senior program manager must now randomly review and test the data and, at the end of each month, validate the accuracy of the data against information supplied by the brokers and GSA's regions. GSA also has (1) assigned additional personnel to the NBS program, including a program analyst in headquarters, to help implement its new processes and (2) provided guidance to its regions clarifying, among other matters, the appropriate use of task order modifications, the need to report useable—not rentable—square footage related to a particular task order, and the need for timely submissions of documentation related to the regions' task orders. More specifically, with respect to the last action, the National Contracting Officer recently directed all of the regions to immediately send electronic documentation of each leasing transaction to him and other NBS program staff when the regions sign a task order.

After completing these and other remedial actions, on September 1, 2006—about 5 months after the completion of the first contract year—GSA provided us with its “final and correct” year-end report for the NBS program. According to the National Program Manager, the revised report

⁷⁹Regional personnel sign the task order just prior to its issuance to a broker.

“accurately reflects exactly what GSA accomplished” through the NBS program in the first contract year. Accurate and timely data are essential because, under the terms of its contracts, GSA is initially obligated to distribute its workload as equally as possible among the brokers. While GSA’s corrected year-end data were untimely, given GSA’s efforts to correct problems in its reports, we now believe these data are sufficiently reliable for use in reporting aggregate programwide and regional information on the number and size of task orders distributed to the brokers.

GSA’s Agencywide Distributions among the Brokers Were Fairly Equal for the First Contract Year

GSA’s agencywide distributions of task orders among the brokers during the first year of the NBS contracts were fairly equal. According to GSA’s “final and correct” year-end report, GSA distributed between 114 and 123 commission-eligible task orders to each broker, with each broker receiving from about 2.3 million to about 3.0 million square feet. In total, GSA distributed 479 commission-eligible task orders, or about 24 percent fewer than its goal of 630 for the contract year. However, GSA far exceeded its goal for square footage, distributing about 10.4 million square feet to the brokers compared with its goal of 6.8 million square feet. Table 7 provides GSA’s aggregate program data for the first contract year.

Table 7: Distribution of Commission-Eligible Task Orders Agencywide, by NBS Broker, as of March 31, 2006

Broker	Number and percentage of commission-eligible task orders^a	Size (square footage) and percentage of square footage^a
Broker A	123 (26%)	2,967,000 (28%)
Broker B	114 (24)	2,339,000 (22)
Broker C	123 (26)	2,805,000 (27)
Broker D	119 (25)	2,308,000 (22)
Total	479^b	10,418,000

Source: GAO analysis of GSA data.

^aPercentages and square footage totals do not sum because of rounding.

^bThe total includes 16 task orders for expedited services and excludes 65 task orders for market data as of March 31, 2006. Task orders for market data are not eligible for a commission payment.

Our knowledge of the program suggests several possible reasons why GSA did not meet its internal goal for the number of task order distributions. For example, in the early stages of the contracts, GSA experienced difficulties

getting its task orders “out the door.” The slow pace of GSA’s initial distributions was partially attributable to bid protests, which created uncertainty about when contract performance would begin and delayed GSA’s early identification of task orders that could be distributed to the brokers. In addition, according to the National Program Manager, GSA’s 4-month delay in setting and allocating numeric goals for its regions created confusion among regional personnel attempting to implement the contracts. Furthermore, at the outset of the contracts, GSA revised its work processes, requiring GSA personnel to do more initial work to establish client agencies’ needs. According to NBS program officials, the revised processes were unfamiliar and, thus, slowed the initial pace of its task order distributions.

Regions’ Workload Distributions for the First Contract Year Varied

GSA’s workload data show variations in both the number and square footage of the regions’ distributions. For example, according to our analysis of the data shown in table 8, region 6 distributed about 57 percent of all of its square footage to broker A, while region 10 allocated 53 percent of its square footage to broker C. Thus, in both regions, a single broker received more square footage than the other three brokers combined. Likewise, while brokers C and D each received about 25 percent of region 8’s square footage, broker B received about 40 percent of the region’s total and over three times the amount allocated to broker A (about 11 percent). Similarly, in region 2, brokers B and C received about 72 percent of the region’s square footage, while the remaining two brokers, combined, received about 28 percent. Data for region 11, which distributed about 48 percent of all the square footage issued by GSA in the first contract year, also showed variability in its square footage distributions.⁸⁰ For example, broker A received task orders involving about 1,889,000 square feet, while broker C received about 805,000 square feet (about 38 percent and 16 percent of the region’s total, respectively). Table 8 provides aggregate data on the number of task orders issued to the brokers, by region, as of March 31, 2006.

⁸⁰Region 11 is the National Capital Region.

Table 8: Distribution of Square Footage, by Region and Broker, as of March 31, 2006

Region	Broker A	Broker B	Broker C	Broker D	Total ^a
1	33,000	33,000	75,000	41,000	181,000
2	51,000	131,000	118,000	48,000	348,000
3	113,000	82,000	911,000	80,000	1,187,000
4	179,000	211,000	168,000	195,000	753,000
5	196,000	193,000	211,000	201,000	802,000
6	97,000	23,000	27,000	23,000	169,000
7	131,000	135,000	128,000	177,000	572,000
8	41,000	148,000	90,000	93,000	372,000
9	205,000	316,000	194,000	173,000	889,000
10	31,000	11,000	79,000	27,000	149,000
11	1,889,000	1,054,000	805,000	1,249,000	4,997,000
Total^a	2,967,000	2,339,000	2,805,000	2,308,000	10,418,000

Source: GSA data provided to GAO.

^aTotals do not always sum because of rounding.

Such variation in the regions' workload distributions, particularly with respect to square footage, is inconsistent with GSA's administrative guidance. As previously discussed, GSA's November 2005 contract administration guide indicates that, until a record of performance is established, distributions are to be based on square footage "with each firm receiving equal distribution in all eleven GSA regions. . . ." However, the variation in distributions occurred for reasons that, at least in the short term, GSA may not be able to address. For example, during the first year, a few very large task orders caused imbalances, according to the National Program Manager. In region 3, for instance, broker C received a task order for about 900,000 square feet that, by itself, accounted for about 76 percent of the square footage the region distributed to the four brokers during the year. Similarly, in region 8, broker B received a task order for 148,000 square feet, representing about 40 percent of the region's workload for the year. Imbalances also occurred when task orders had to be reassigned to address conflict-of-interest issues. Other reasons for imbalances cited by the National Program Manager were changes in customer agency requirements, which resulted in the cancellation of task orders, and decisions to keep certain projects in-house. Given the variations in the size and number of available task orders and the uncertainties associated with customer agencies' requirements, NBS program officials have concluded that the administration guide's requirement for "equal" distribution by

region is impracticable and have said that GSA plans to revise the guide to require distribution to be done “as equally as possible.” This revision will have the additional benefit of conforming the language in the guide to the language in the contracts.

Several Distribution-Related Matters Warrant Additional Management Attention

Several matters related to the distributions of GSA’s task orders warrant additional attention by GSA program managers. For example, like GSA’s regional distributions of task orders to the brokers, GSA’s distributions for market data and expedited leasing transactions during the first contract year resulted in variations among the brokers. NBS program officials confirmed that, during the initial period of the contracts, all of GSA’s task orders are initially expected to be distributed as equally as possible among the brokers. However, with respect to task orders for market data and expedited leasing transactions, this expectation did not materialize. Specifically, according to GSA’s final and correct year-end report as of September 1, 2006, GSA distributed 65 task orders for market data to the NBS brokers during the first contract year. The distributions ranged between 12 and 23 task orders. Broker A received about 35 percent (23) of the task orders, while, collectively, brokers C and D received 38 percent (25) of the task orders—2 more than the total number of task orders for market data distributed to broker A. Table 9 provides GSA’s year-end information for distributions of task orders for market data, by NBS broker.

Table 9: Distribution of Task Orders for Market Data, by NBS Broker, as of March 31, 2006

Broker	Distribution of task orders for market data	Percentage that each broker received^a
Broker A	23	35%
Broker B	17	26
Broker C	12	18
Broker D	13	20
Total	65	-

Source: GAO analysis of GSA data.

^aPercentages do not sum because of rounding.

GSA’s data for the first contract year also demonstrate variation in the number of task orders for expedited leases that GSA distributed among the brokers. According to GSA’s data, 16 task orders for expedited leasing

transactions were issued to the four NBS brokers. The distributions ranged from 3 task orders (to two brokers) to 6 task orders (to one broker). Broker C received 6 of the 16 task orders for expedited leasing transactions, or about 38 percent of the total. Furthermore, the 6 task orders represented about 64 percent of the total square footage allocated to the four brokers. Table 10 provides GSA's year-end data on distributions of expedited leasing transactions, by NBS broker.

Table 10: Distribution of Expedited Task Orders, by NBS Broker, as of March 31, 2006

Broker	Number and percentage of expedited task orders issued^a	Square footage and percentage of expedited task orders issued^a
Broker A	3 (19%)	22,830 (18%)
Broker B	4 (25)	11,657 (9)
Broker C	6 (38)	82,705 (64)
Broker D	3 (19)	12,635 (10)
Total	16	129,827

Source: GAO analysis of GSA data.

^aPercentage totals do not sum because of rounding.

According to GSA, the differences in its distributions of task orders for market data and expedited leases represented about 15 percent (81) of the task orders (544) it issued in the first contract year.⁸¹ While these distributions were relatively small compared with GSA's overall task order distributions, at a minimum, they suggest disparities among the brokers that could—without additional oversight—disadvantage a particular broker or brokers relative to the others. Such disparities could also cause a broker or brokers to initiate a complaint about GSA's task order distributions. Equitable distributions of GSA's market data task orders are important because the brokers are expected to receive the follow-on work associated with these task orders. Thus, disparities in these allocations can create imbalances among the brokers—a scenario that has already transpired, according to the National Program Manager. Equitable distributions of task orders for expedited leasing transactions are equally

⁸¹This information includes 65 task orders for market data as well as the 479 commission-eligible task orders GSA distributed to the brokers in the first contract year. Sixteen of the 479 task orders were expedited.

important because the brokers do not provide a commission credit for these services and receive the entirety of any commission offered by the building owner. During the first contract year, broker C received about \$371,645 for the four expedited leasing transactions it completed.⁸² This sum represented about 39 percent of the total compensation received by the four brokers in the first contract year.

GSA did not specifically track data on its expedited leasing transactions; however, in response to our inquiries, it has decided to do so for the second contract year. According to the National Program Manager, these data will help GSA measure the amount of the commission sharing GSA receives. In addition, she indicated that these data will serve as a useful management tool to help ensure that the regions are not overusing expedited task orders as a means to overcome inadequate planning. Regarding task orders for market data, NBS program officials noted that these task orders represent an optional step in GSA's planning for leases and, thus, that there is no guarantee that they will result in a follow-on, commission-eligible task order. Nevertheless, in response to our inquiries, GSA has expanded its monthly program reports to track these task orders. According to GSA, the expanded reports should help ensure that follow-on, commission-eligible task orders are issued whenever possible for the ensuing years of the contracts.

Finally, our analysis of GSA's year-end data showed that although GSA collects data on the number and size of the task orders distributed to the four NBS brokers, both agencywide and by region, it does not collect data on the geographic area (e.g., rural or urban) covered by the task orders. As specified in the contracts, until a record of performance is available, the brokers must be issued "similar size projects in similar geographic areas to the maximum extent possible within the [GSA's] existing workload available." The contracts further indicate that the brokers "should assume that the Government intends to have each awardee performing projects on a nationwide basis in both rural and urban areas," as long as performance is acceptable. According to NBS program officials, GSA assumes that task orders involving large amounts of space are in urban areas. However, according to GSA, more than 80 percent of its task orders involve less than 20,000 square feet and, therefore, information on square footage appears to be of limited value in assessing the equitability of GSA's task order

⁸²None of the other NBS brokers completed task orders for expedited leasing transactions during the first contract year.

distributions by similar geographic area. NBS program officials acknowledged that GSA does not collect information on the geographic location of its task order distributions. At the conclusion of our review, the officials said GSA could collect such information but did not agree to do so.

GSA Implemented a New Organizational Structure and Numerous Management Tools to Help Ensure Consistent Oversight of the NBS Brokers

To oversee the NBS brokers, GSA put a new organizational structure in place and implemented new management tools. These actions are intended to address weaknesses in GSA's administration of its earlier contracts for leasing services, including the need to improve its oversight of its real estate brokers, and to provide consistent direction to its regions.

Inspector General Identified and GSA Acknowledged Problems with GSA's Administration of Prior Contracts

GSA's administration of the 29 contracts that preceded the 4 NBS contracts was inadequate and inconsistent, according to a December 2002 report by GSA's Inspector General. For example, the Inspector General found that, GSA had not clearly defined the (1) authorities, roles, and responsibilities of key contracting personnel or (2) requirements for administering specific task orders. The Inspector General recommended, among other things, that GSA establish nationwide contract administration requirements, specify procurement roles and responsibilities, and use standardized templates as guides for administering future task orders to brokers. GSA has acknowledged problems with its administration of the previous contracts.⁸³ In its March 2003 plan for implementing the NBS contracts, for example, GSA acknowledged that the 29 contracts in place at that time had become burdensome and costly to administer because of variations in the contracts' terms, conditions, and pricing structures. In addition, the contracts did not provide for efficient monitoring and tracking of necessary management and funding data. Furthermore, according to GSA, variations in the contracts had resulted in inconsistent contract administration

⁸³GSA began awarding contracts for leasing services in 1997, when it no longer had the resources to carry out all of its leasing responsibilities in-house.

between its regions and from contract to contract, leading to confusion and dissatisfaction among customers.

GSA Implemented a New Organizational Structure to Help Ensure Consistent Oversight of the NBS Brokers

GSA's new organizational structure for overseeing the NBS brokers includes key national and regional management positions with responsibilities for overseeing and administering the contracts. According to NBS program officials, the new positions are held by personnel with expertise in procurement and in real estate and lease acquisitions—two areas of expertise that are critical to properly overseeing and administering the NBS contracts. Additionally, since its regions are largely autonomous, GSA created national management positions to help ensure consistency in its oversight of the NBS contracts. Table 11 describes the responsibilities of the key national and regional management positions that oversee the NBS brokers.

Table 11: Responsibilities of Key National and Regional Management Positions

Key position	Responsibilities
National	
National Program Manager	<ul style="list-style-type: none"> • Provide overall oversight of the NBS contracts, including oversight of the 11 GSA regions that manage the contracts. • Serve as the National Contracting Officer's representative for all technical matters related to federal lease acquisition policies and procedures. • Serve as the headquarters contact for customers, GSA senior management, and the private sector. • Develop and maintain NBS contract administration guidance and training. • Monitor the regions' use of the NBS contracts, budgets, and workload data through coordination with the Regional Program Managers. • Serve as Chairman of the Performance Evaluation Board. • Participate in peer reviews, as needed.

(Continued From Previous Page)

Key position	Responsibilities
National Contracting Officer	<ul style="list-style-type: none">• Serve as GSA's representative with full authority to award and administer the NBS contracts.• Take actions on behalf of GSA to amend, modify, or allow deviation from, among other things, the contracts' terms, conditions, requirements, specifications, details and delivery schedules.• Make final decisions on disputed deductions from contract payments for unsatisfactory performance.• Terminate the contracts for convenience or default.• Issue final decisions on contract questions or matters under dispute.• Monitor the contractors' subcontracting submissions and reports for compliance with the contracts' subcontracting goals.• Coordinate the brokers' annual evaluations with other NBS personnel and record the ratings in a governmentwide database on contractor performance maintained by the National Institutes of Health.• Serve as a member of the Performance Evaluation Board.• Oversee the Regional Contracting Officers to ensure that they are using the NBS contracts effectively.• Participate in peer reviews, as needed.
Regional	
Regional Program Manager	<ul style="list-style-type: none">• Oversee the region's NBS contracts and interface with the National Program Manager.• Disseminate guidance and reinforce direction and training from the National Program Manager to help enhance consistency in contract usage within the region.• Serve as the region's overall coordinator for budget and workload projections and workload distribution.• Serve on quarterly evaluation panels and monitor broker performance data.• Serve as the region's point of contact for the brokers, customers, GSA senior management, and the private sector.• Take timely action to alert the National Program Manager to potential broker performance problems within the region.• Serve as a member of the Performance Evaluation Board.• Participate in peer reviews, as needed.
Regional Contracting Officer	<ul style="list-style-type: none">• Serve as the region's point of contact for coordinating contract issues with the National Contracting Officer.• Issue and administer the region's task orders and monitor the task orders issued by other officials within their region.• Maintain a log of all activity on the region's task orders and approve task order issuance.• Provide guidance and direction from the National Contracting Officer to regional personnel.• Serve as a member of the Performance Evaluation Board.• Participate in peer reviews, as needed.

Source: GAO analysis of GSA data.

Recognizing the need for redundancy in key positions, GSA also designated alternates for its National Program Manager and National Contracting Officer positions to help ensure consistent implementation—at the national level—when, for example, the principal personnel are absent. Some of GSA's regions have also followed suit, designating part-time alternates for key regional positions. As of December 31, 2005, 6 of GSA's 11 regions had part-time alternates for their regional program managers, while 7 had part-time alternates for their regional contracting officers.

As of December 31, 2005, GSA also had designated 158 of its realty specialists as COTRs and redefined their responsibilities, making them project managers for task orders issued to the NBS brokers. According to NBS program officials, these personnel are among the agency's most-qualified realty specialists. To qualify as a COTR, a realty specialist must have at least 4 years' experience in this position. The COTRs are responsible for, among other things, monitoring the NBS brokers' day-to-day performance and ensuring that the brokers comply with the terms and conditions of their contracts and adhere to their project schedules. When a broker's performance is not adequate, the COTR has the authority to request that specific tasks be redone or improved. The COTRs also have other responsibilities, including reviewing and inspecting deliverables to ensure compliance with contract requirements, ensuring that defects or omissions are corrected, resolving problems encountered in the performance of the brokers' work, reporting performance problems, preparing performance assessments, and discussing their assessments with the brokers.

At the end of 2005, GSA had allocated 323 staff to oversee and administer the NBS contracts. Table 12 provides a breakdown of GSA's full-time and part-time positions as of December 31, 2005.

Table 12: Staff Allocated Full Time and Part Time to Oversee and Administer the NBS Contracts, as of December 31, 2005

Position	Full time	Part time
National Program Manager	1	-
Alternate National Program Manager	-	1 ^a
National Contracting Officer	1	-
Alternate National Contracting Officer	-	1
Regional Program Manager	4	7
Alternate Regional Program Manager	-	6
Regional Contracting Officer	3	8
Alternate Regional Contracting Officer	-	7
Regional Ordering Official ^b	-	3
Contracting Officer's Technical Representative	13	145
Realty Specialist	1	112
Additional support	-	10
Total	23	300

Source: GAO analysis of data supplied by the National Program Manager.

^aThis position has since become full time.

^bAccording to GSA's November 2005 administrative guide, regional ordering officials have full authority to issue and administer task orders in accordance with normal contracting procedures. Among their other responsibilities, regional ordering officials coordinate with the applicable Regional Contracting Officer to help ensure consistency in a region's issuance and administration of task orders. According to the NBS program officials, GSA allowed regional ordering officials in certain regions to accommodate variations in its regions' organizational structures.

GSA's current organizational structure differs substantially from its prior organizational structure and is intended to result in enhanced and consistent oversight of the NBS brokers and GSA's 11 regions. First, as table 13 shows, the current structure is more hierarchical, with both full-time and part-time national and regional management positions, whereas the former structure had no management positions. Second, the current structure includes full-time staff positions, whereas the former structure consisted only of part-time positions. Finally, of the total staff positions, more than half (174 of 323) have at least part-time oversight

responsibilities.⁸⁴ Formerly, the vast majority of the staff assigned to GSA's contracts (the realty specialists) lacked any oversight authority.⁸⁵

Table 13: GSA's Staffing for the NBS Contracts, as of December 31, 2005, and for the Prior Contracts, as of December 31, 2003

Staffing	NBS contracts		Prior contracts	
	Full time	Part time	Full time	Part time
National management	2	2	0	0
Regional management	7	31	0	0
Contracting Officer's Technical Representative	13	145	-	-
Contracting Officer	0	0	-	13
Realty Specialist	1	112	-	378
Additional support	-	10	-	-
Total	23	300	0	391

Source: GAO analysis of data supplied by the National Program Manager.

Management Tools Are Designed to Address Problems with Prior Contracts and Result in More Consistent Contract Administration

GSA implemented numerous management tools to improve its management and oversight of its leasing program and to avoid the problems that its Inspector General identified in its administration of its 29 prior contracts. Two of these tools apply to GSA's agencywide leasing program, while five are uniquely applicable to GSA's administration of the NBS contracts.

Agencywide Management Tools

GSA has developed two new tools for managing its leasing program agencywide. The first of these tools is GSA's *Transaction Management Playbook*, which is essentially a handbook, or guide, for helping GSA's tenant agency customers determine their space requirements and accomplish their leasing goals. The handbook provides standardized templates for handling typical interactions between GSA and its customers,

⁸⁴The positions with part-time oversight responsibility as of December 31, 2005, were as follows: the Alternate National Program Manager, 28 regional contracting officials, and 145 COTRs.

⁸⁵We did not determine whether the NBS staffing levels were adequate.

such as those related to identifying and confirming the customers' space requirements and discussing alternative leasing (space) options.

The second agencywide tool is the electronic e-Lease system, which GSA introduced to manage all its real estate leasing transactions. E-Lease addresses contract administration issues identified by GSA's Inspector General and enables personnel throughout the agency to electronically manage their lease acquisitions. In addition, the COTRs use e-Lease to electronically oversee the tasks performed by the NBS brokers. According to GSA, e-Lease automates various GSA business-oriented processes, allows seamless data exchange, contains standardized business templates, and enforces process efficiencies. One of the goals for e-Lease is to guide the COTRs as they make the transition from their former responsibilities as realty specialists to their new responsibilities as project managers. E-Lease identifies the tasks the brokers must perform and submit to the government for approval. Upon receiving access to e-Lease,⁸⁶ the NBS brokers are expected to submit their completed tasks through this electronic interface. The COTRs are required to examine certain tasks and can accept the tasks or reject them until they meet their approval.⁸⁷ In addition, as we discuss later in this report, the COTRs are responsible for evaluating certain activities and task orders completed by the brokers and for recording their evaluations in e-Lease. E-Lease also allows GSA to generate a variety of summary reports to support national and regional oversight of the contracts, including reports summarizing the brokers' performance. Finally, e-Lease contains links to relevant guidance and to GSA's leasing forms and templates that the brokers are required to use—consistent with the Inspector General's recommendation for standardized templates.

Management Tools Uniquely Applicable to the NBS Contracts

GSA developed and implemented five tools that are uniquely applicable to GSA's management and oversight of the NBS brokers. The first tool is GSA's *National Broker Contract Administration Guide*, which—as of October

⁸⁶As previously discussed, as of July 31, 2006, 12 NBS broker employees had completed the federal security verification process required for contractors that have access to federal facilities and information systems. Nine of the 12 brokers had access to e-Lease, while 3 were in the process of obtaining access. Another 42 broker employees, according to NBS program officials, were still completing the verification process. NBS program officials were unsure when the remaining brokers' would complete the process and gain access to e-Lease.

⁸⁷An e-mail message will be automatically sent to the broker once a task is accepted or rejected.

31, 2006—had been last updated in November 2005. The guide is designed to provide specific procedures and formats to GSA staff for consistently administering task orders to the NBS brokers across GSA's 11 regions. As the Inspector General recommended, the guide also (1) specifies the roles and responsibilities of key national and regional personnel responsible for overseeing and managing the NBS contracts and (2) provides procedures and standardized templates, including checklists, for issuing and managing task orders issued to the NBS brokers.

Second, GSA created a Performance Evaluation Board, which meets quarterly, to coordinate information from the regions about the NBS brokers' performance. Members of the board include the National and Regional Program Managers and the National and Regional Contracting Officers. In addition, GSA's small business technical advisor may attend if the brokers' performance related to subcontracting issues is being evaluated. According to GSA's November 2005 administrative guide, the board provides regional input on the contractors' quarterly and annual performance and provides its analysis to the National Contracting Officer. As of July 31, 2006, the board had held five quarterly meetings, during which it discussed, among other topics, the brokers' performance, by region; broker conflict-of-interest issues; and estimates of the upcoming volume of work expected to be issued to the brokers. The results of these meetings are used to provide feedback to the NBS brokers and support workload assignments, as well as to identify weaknesses and recommend improvements in the regions' use and administration of the contracts.

The third tool—regional peer reviews—is intended to make the lease acquisition process more consistent and to strengthen GSA's contract administration among GSA's regions. The reviewers include one official from the national program office and a regional contracting officer and a regional program manager from a region other than the region being reviewed. Generally, according to NBS program officials, the reviews, which are based on a checklist to help ensure consistency, involve verifying whether a region's work satisfies the specifications of the contract in such areas as training, task order issuance, file management and documentation, quality control, and the reporting of commission credits. Peer review personnel also identify regional deviations from the approved leasing process and make recommendations for improvement. For example, the peer reviewers have recommended, among other things, the need for (1) additional regional staff to carry out the NBS program, (2) better documentation of regional contracting officers' project schedule approvals, and (3) improvement of the accuracy of regional workload projections. As

of July 31, 2006, GSA had either completed or initiated peer reviews at 8 of its 11 regions and expected to complete reviews at each of the remaining 3 regions by the end of October 2006.

Fourth, GSA has implemented a voluntary certification program to help ensure that its regional personnel have the requisite experience and skills for overseeing the NBS brokers. The certification program establishes training requirements for regional program managers, regional contracting officers, the regional COTRs, and the National Program Manager. These requirements are in addition to the general qualifications for each of the positions and include the completion of one or more contract management courses.

Finally, under their contracts, GSA required the NBS brokers to attend quarterly meetings with the National Contracting Officer and other GSA representatives. GSA uses the quarterly meetings to provide feedback on the brokers' performance as well as to solicit feedback from the brokers regarding GSA's implementation of the contracts. At two quarterly meetings that we attended, GSA's feedback emphasized the importance of achieving consistent and adequate performance across all of GSA's 11 regions to ensure the brokers' future participation in the contracts. NBS program officials also provided feedback to each of the brokers on their performance as of December 31, 2005, while the brokers relayed their thoughts and concerns about GSA's oversight and their working relationships with GSA's regions and NBS program officials, as of that date. For example, one broker's representative said that her firm had established an excellent working relationship with one GSA region but had difficulty with other regions where, according to the representative, task orders were issued without documentation that brokers needed to perform the work. Brokers' representatives were asked to document their problems in their required monthly reports to the National Contracting Officer.⁸⁸

⁸⁸The monthly reports summarize, among other things, the status of the brokers' activities under the contracts.

GSA Has Numerous Measures for Evaluating the Brokers' Performance, but Issues Could Result in Inconsistent and Inefficient Evaluations

GSA has numerous measures for evaluating the NBS brokers' performance, including criteria related to quality, timeliness, responsiveness, and long-term performance goals for, among other things, satisfying its client agencies and reducing the government's costs. GSA evaluates a broker's performance at the completion of certain task order activities, at the completion of an entire task order, and annually, using evaluation criteria that vary depending on the evaluation stage. GSA's first annual evaluations of the NBS brokers indicate that each of the brokers met contract requirements. However, the evaluations are somewhat limited since, as of March 31, 2006, the brokers had completed 11 task orders subject to evaluation. During the course of our evaluation, we identified numerous issues related to GSA's contracts, guidance, and processes for evaluating the NBS brokers' performance, including the use of inapplicable evaluation criteria, with NBS program officials, which, in our view, could lead to inconsistent and inefficient evaluations of the brokers' performance and inconsistent contract administration across GSA's 11 regions. NBS officials acknowledged inaccuracies and inconsistencies within and among the contracts, the administrative guide, and GSA's e-Lease system as well as omissions in the guide. However, according to the officials, these issues have not adversely affected either GSA's evaluations of the brokers or its administration of the contracts. As of October 31, 2006, only the issue related to e-Lease had been corrected.

GSA Has Numerous Measures for Evaluating the NBS Brokers' Performance

GSA has numerous measures for evaluating the NBS brokers' performance, including criteria related to quality, timeliness, responsiveness, and long-term performance goals for, among other things, satisfying its client agencies and reducing the government's costs. GSA uses its evaluations to, for example, hold performance discussions with the brokers. According to NBS program officials, these discussions are intended to help maximize the brokers' performance on future task orders. Once a history of the brokers' performance is established, GSA intends to use the evaluations to allocate work among the brokers. Finally, GSA plans to use the evaluations to determine whether to renew its contracts with the brokers (i.e., exercise contract options) and to document problems that endanger successful performance under the contracts.

Applicability of the Performance Evaluation Criteria Depends on the Stage at Which the Evaluation Occurs

The performance evaluation criteria that GSA uses, as well as the individuals that perform the evaluations, vary depending on the stage at which an evaluation occurs. GSA evaluates the brokers on lease acquisitions, expansions, and extensions at three stages—at the completion of selected activities associated with a task order, at the completion of the entire task order, and annually. GSA does not evaluate the brokers on their performance of task orders for market data. The first stage of an evaluation occurs when a broker completes selected activities within a task order. At this stage, the applicable COTR rates the broker on five factors—technical quality, document quality, timeliness, responsiveness, and quality of assigned personnel—using a scale of 0 (for “unsatisfactory” performance) to 5, (for “outstanding” performance).⁸⁹ The COTR records the rating scores for each activity sequentially in GSA’s electronic e-Lease system as the activities are completed. The number of activities that are evaluated for a task order depends on the type of task order performed. Lease acquisitions require the most work from a broker and, therefore, are evaluated most frequently, at six milestones; lease expansions require less work and are evaluated at three milestones; and lease extensions require the least work and are not rated until completion of the entire task order. Table 14 shows the frequency of GSA’s evaluation, by type of task order performed.

Table 14: Frequency of Evaluations, by Type of Task Order Performed

Activity/Milestone	Lease acquisition services	Lease expansion (alteration) services	Lease extension services
Broker holds an orientation and develops a schedule for the project	X	X	
Broker prepares advertisement, market analysis, and survey	X		
Broker develops and issues GSA’s solicitation for offers and amendments, if required	X		
Broker evaluates offers	X		

⁸⁹The qualitative descriptors for scores 0 to 5 are as follows: unsatisfactory, poor, fair, good, excellent, and outstanding, respectively.

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Activity/Milestone	Lease acquisition services	Lease expansion (alteration) services	Lease extension services
Broker prepares lease documents	X		
Broker manages postaward services	X		
Broker develops a scope of work for build out (alteration work)		X	
Broker evaluates offers for building alterations		X	
Broker requests lease extension			X
Broker evaluates lease extension offers			X
Broker prepares negotiation objectives for the lease extension			X
Broker prepares supplemental lease agreement for the extension			X
GSA evaluates completed task order	X	X	X

X = Task order includes this activity/milestone.

Bold X = Activity is evaluated.

Sources: GAO discussions with NBS program officials and information in GSA's November 2005 administrative guide.

Note: GSA also issues task orders for market data; however, these tasks are not evaluated.

The second stage of evaluation occurs at the completion of each task order for lease acquisitions, expansions, and extensions. The timing of these evaluations is not addressed in either GSA's contracts with the brokers or its November 2005 guide for administering the contracts. However, according to GSA's e-Lease training manual, the evaluations are required within 30 days after a broker submits all task order deliverables for GSA's final review. At this point—as specified in e-Lease's final task order evaluation screen as of July 31, 2006—the applicable COTR is required to rate each broker on nine criteria, using the same 0 to 5 rating scale. Five of the nine evaluation criteria—technical quality, document quality, timeliness, responsiveness, and quality of assigned personnel—are the same as those used to rate task order activities. The remaining four evaluation criteria, however, assess the extent to which the broker has helped GSA meet certain long-term performance goals for its leasing

program.⁹⁰ Table 15 identifies the four long-term goals applicable to the NBS brokers' performance, by fiscal year, as of July 31, 2006.

Table 15: Long-term Performance Goals Applicable to the NBS Brokers' Performance, by Fiscal Year, as of July 31, 2006

Long-term performance goals applicable to the brokers' performance	Fiscal year						
	2005	2006	2007	2008	2009	2010	2011
Goal #1: Award leases at average rental rates of not less than "x" percent (see target percentages at right) below industry averages for comparable office space.	-8.25%	-8.5%	-8.75%	-9.0%	-9.35%	-9.5%	-9.5%
Goal #2: Deliver leased space when the customer needs it—as measured by the percentage of tenant agency contacts involved in the leasing transaction who, when surveyed, said that their lease space was available when needed. ^a	75	82	84	86	88	90	90
Goal #3: Satisfy GSA customers with the leasing transaction—as measured by the percentage of tenant agency contacts who, when surveyed, rated the overall leasing process as satisfactory. ^a	85	85	85	85	85	85	85
Goal #4: Satisfy GSA's customers with their space—as measured by the percentage of tenants surveyed who were satisfied with their leased space. ^b	70	72	74	76	78	80	80

Source: GAO analysis of GSA data.

Note: The federal fiscal year begins on October 1st each year and ends on September 30th of the following year. Thus, fiscal year 2006 began on October 1, 2005, and ended on September 30, 2006.

^aInput for this measurement comes from GSA's realty transaction survey. We discuss this survey in more detail later in this report.

^bInput for this measurement comes from GSA's tenant satisfaction survey. We discuss this survey in more detail later in this report.

Specifically, at the completion of each task order, the COTR was required—through at least July 31, 2006—to rate each broker on four additional factors related to the achievement of three of GSA's long-term goals in

⁹⁰Federal agencies are required to develop long-term goals for, among other things, reducing costs and increasing satisfaction with their programs. The Office of Management and Budget oversees executive branch agencies, such as GSA, and evaluates the agencies on their progress in achieving their long-term goals. GSA has numerous long-term goals for its leasing program, but only four of these goals can be affected by the brokers' performance under the NBS contracts.

GSA's electronic e-Lease system.⁹¹ The four additional evaluation factors, as specified in GSA's e-Lease's final evaluation screen were as follows:

- Average lease rate meets GSA's fiscal year target (goal #1).
- Space delivered within customer time frame (goal #2).
- Leasing transaction meets GSA's customer satisfaction target (goal #3).
- Is lease rate above market value (goal #1)?

The third and final stage of evaluation occurs annually and is prepared by the National Contracting Officer, with input from others. According to the National Contracting Officer, the annual evaluation takes into consideration a broker's evaluations on all task orders completed during the year; the broker's help in achieving GSA's applicable long-term leasing goals; and other factors, such as the broker's compliance with subcontracting requirements. Input for GSA's annual ratings comes from a variety of sources. For example, GSA analyzes (1) market data to compare its lease costs with those for comparable properties in applicable markets (long-term leasing goal #1) and (2) the results of its realty transaction surveys, which measure the extent to which its tenant agency contacts were satisfied with completed leasing transactions (long-term leasing goals #2 and #3). Input for the fourth long-term goal—the percentage of customers (tenants) satisfied with their space—comes from GSA's tenant satisfaction survey, which is distributed to employees at one third of GSA's leased and owned properties every year.⁹²

As specified in both the brokers' contracts and GSA's November 2005 guide for administering the contracts, at the end of each contract year, GSA must enter the results of the brokers' annual performance evaluations into the National Institutes of Health's (NIH) Contractor Performance System—a nationwide government database used to collect, maintain, and disseminate contractor performance evaluation data to government

⁹¹The fourth long-term goal applicable to the brokers' performance—the percentage of tenants satisfied with their leased space—is evaluated annually, not at the completion of a task order.

⁹²According to GSA officials, employees of all tenant agencies are surveyed once every 3 years.

agencies.⁹³ The NIH system records annual contractor performance information related to eight evaluation factors. For four of the eight NIH evaluation factors—quality, cost control, timeliness, and business relations—the contractor’s performance is rated using a scale of 0 (for “unsatisfactory” performance) to 5 (for “outstanding” performance).⁹⁴ To address the remaining four evaluation factors, the NIH system asks each agency to record yes or no answers to a series of questions related to small business subcontracting plans, small disadvantaged business goals, and customer satisfaction. The specific questions include:

- Did the contractor make a good faith effort to comply with its subcontracting plan consistent with the goals and objectives, reporting, and other aspects of the plan?
- If this is a bundled contract,⁹⁵ did the contractor meet the goals and objectives for small business participation?
- Did the contractor make a good faith effort to comply with its subcontracting plan consistent with the goals and objectives, for small disadvantaged business participation, monetary targets for small disadvantaged business, and required notifications?
- Would you recommend the selection of this firm again?

The National Contracting Officer entered the brokers’ annual evaluations into the NIH system on July 19, 2006. According to NBS program officials, each of the brokers met requirements for the first year of their contract. However, the ratings are limited, since as of March 31, 2006, the four brokers had completed 11 task orders subject to evaluation.⁹⁶

⁹³Data from this system are transmitted to NIH’s Past Performance Information Retrieval System. This system is accessible to federal contracting officers and can be used to review a contractor’s past performance before awarding a new contract.

⁹⁴This is the same rating scale used in GSA’s electronic e-Lease system. As a result, the qualitative descriptors for scores 0 to 5 are also unsatisfactory, poor, fair, good, excellent, and outstanding, respectively.

⁹⁵A bundled contract consolidates requirements for goods or services. See, for example, 48 C.F.R. § 2.101.

⁹⁶As previously discussed, the brokers also completed 65 task orders for market data as of March 31, 2006. However, these task orders were not evaluated because they involved minimal work and the brokers are not compensated for these services.

Issues with GSA's Contracts, Guidance, and e-Lease Related to the Brokers' Performance Could Hamper Consistent Contract Administration

We identified numerous inaccuracies, inconsistencies, and omissions among and within GSA's contracts, guidance, and e-Lease system for evaluating the NBS brokers' performance, which could hamper achievement of one overall NBS program goal—consistent contract administration across GSA's 11 regions. Without clear, written, and unambiguous direction, including criteria and procedures for evaluating the brokers, it is unclear how GSA will ensure consistency in its regions' evaluations of the brokers' performance. The following are some of the issues we identified.

First, GSA's contracts with the brokers and GSA's November 2005 administrative guide for the program both include one long-term goal that is not applicable to the brokers' performance—regardless of the stage of GSA's evaluation. Specifically, both the contracts and the guide indicate that the brokers will be evaluated on the extent to which they assist GSA in reducing the amount of vacant space in GSA's inventory. According to the National Program Manager, GSA included the long-term measures in its contracts at the suggestion of the Office of Management and Budget, which wanted to ensure that the brokers would be held accountable for helping GSA meet its long-term leasing goals. However, because the brokers cannot influence GSA's progress in achieving this goal; GSA does not evaluate them on this measure.

Second, during the course of our review, GSA's e-Lease system and its November 2005 administrative guide each specified one or more inapplicable measures for evaluating the brokers' completed task orders. As discussed, through at least July 31, 2006, the COTRs were required to rate the brokers' assistance in achieving three of GSA's long-term performance measures in e-Lease's final evaluation screen.⁹⁷ Measuring a broker's assistance in these areas, however, relies on data that generally are not available when the COTRs complete their final task order evaluation. For example, while GSA uses market data to compare its lease costs with those for comparable properties in applicable markets,⁹⁸ these data are retrieved semiannually and, thus, the results—even if provided to the

⁹⁷GSA revised the final e-Lease evaluation screen on July 31, 2006. However, the revisions had not been implemented (i.e., "rolled-out" to GSA staff) as of that date.

⁹⁸GSA retrieves market data from commercial real estate associations, such as the Society for Industrial and Office Realtors. This society is one of several commercial real estate associations with a retrievable database on market data.

COTRs—generally would not be available when a COTR evaluates a completed task order. Likewise, the results of GSA’s realty transaction surveys—which are used to determine whether the tenant agency (1) received its leased space when it was needed and (2) is satisfied with the overall leasing transaction—are not available until about 60 days after the COTR prepares the required final evaluation in e-Lease.⁹⁹ GSA’s November 2005 administrative guide also identifies an inapplicable measure—“the negotiated rate”—for assessing a broker’s performance at the completion of each task order. According to NBS program officials, this measure refers to GSA’s long-term goal of achieving rental rates below industry averages for commercial office space. While GSA analyzes these data semiannually for all its completed leasing actions agencywide, according to NBS program managers, such data (1) are always available and (2) are supposed to be used by the COTR to determine that the rental rate is reasonable for a particular market before signing a lease with a building owner.

Third, as shown in appendix III, the evaluation criteria specified in GSA’s relevant program sources, including the NBS contracts and GSA’s administrative guide varies and, in our view, could create confusion among those responsible for overseeing and evaluating the brokers’ performance. For example, while GSA’s November 2005 administrative guide for the NBS contracts notes that the brokers’ performance criteria and requirements are contained in section C.9 of the contracts, the guide specifically indicates that the brokers’ performance on completed task orders will be evaluated for technical quality, documentation quality, timeliness, responsiveness, quality of assigned personnel, and the negotiated rental rate. As shown in appendix III, this represents only a portion of the numerous evaluation factors specified in the contracts for completed task orders and includes a measure—the negotiated rate—that cannot, in our view, be adequately assessed at the completion of a task order due to the unavailability of complete data. Similarly, referring to the NIH evaluations, GSA’s guide for administering the contracts indicates that GSA will enter

⁹⁹According to GSA officials, the realty transaction survey is typically conducted 90 days after the lease is signed and is distributed to GSA’s point of contact at tenant agencies—which is the individual most familiar with the particular leasing transaction. This survey uses a 1- to 5-point rating scale. A score of 1 means that the individual surveyed was “very dissatisfied,” while 5 means that the individual was “very satisfied.” The survey instrument does not provide survey recipients with any qualitative descriptors for scores 2 through 4. However, GSA views scores of 4 and 5 as indicative of a customer’s satisfaction with the overall leasing transaction.

annual ratings related to three measures—the brokers’ (1) technical performance, (2) compliance on subcontracting plans, and (3) help in achieving GSA’s long-term leasing goals—but is silent about the other five measures for which GSA’s contracts indicate ratings will be entered into NIH’s system.

Finally, although GSA’s contracts with the brokers specify the applicable NIH criteria, including those related to “customer satisfaction” and “business relations,” the performance-related terminology used elsewhere in the contracts does not conform to the terminology used for the NIH evaluations. This makes it difficult to determine how the various terms align and, consequently, how GSA will collect required information for the annual NIH evaluations. The lack of conformity in evaluation terminology is further exacerbated by the fact that neither the contracts nor GSA’s administrative guide discuss how any of the performance measures specified in the contracts will be used as input for the NIH annual evaluations. Consequently, it is unclear how GSA intends to collect information needed to assess, among other things, NIH’s measures.

Throughout the course of our evaluation, we discussed these and other issues within and among GSA’s (1) NBS contracts, (2) administration guidance, and (3) e-Lease evaluation screen for completed task orders with NBS program officials. The officials acknowledged the inaccuracies, inconsistencies, and omissions; however, according to the officials, these matters have not adversely affected GSA’s administration of the contracts. The officials noted that any conflict between the contracts and the administrative guide is unintentional, and that the requirements in the contracts take precedence over GSA’s program guidance. NBS program officials acknowledged that GSA will need to conform the contracts and the guide before proceeding with GSA’s performance-based work allocations. However, as of October 31, 2006, neither the contracts nor GSA’s guidance had been revised in any of the areas previously identified.

Regarding e-Lease, NBS program managers explained that when they requested that e-Lease be modified for the NBS program, their vision was to construct it as a reflection of the NIH Contractor Performance System, including the NIH annual evaluation criteria. However, over time, they said that e-Lease had lost the “reporting intent originally envisioned,” and that it had not evolved sufficiently to be fully used by NBS managers for assessing the brokers’ performance. Thus, while e-Lease can be used by regional personnel to aggregate each region’s rating information, the National Contracting Officer, with input from others, must then consider

performance related to a variety of other evaluation criteria to develop an annual rating of each broker's performance. While additional actions would be needed to reflect GSA's original vision for e-Lease, GSA recently revised e-Lease to eliminate factors that the COTRs cannot assess when they complete their evaluations of completed task orders.

Conclusions

GSA has implemented controls to prevent conflicts of interest in its NBS leasing program and appears to have resolved the conflicts that have been disclosed thus far. However, GSA has not (1) assessed the effectiveness of its controls; (2) modified the NBS contracts to require additional recommended controls; or (3) as applicable, ensured compliance with FISMA's requirements. GSA's lack of action in these areas raises questions about the adequacy of its efforts to address potential conflict-of-interest issues and to protect its procurement-sensitive information. More specifically:

- Because GSA's initial (October 2005) and follow-up (August 2006) visits to the two dual-agency brokers were limited in scope, GSA does not know, more than 1-1/2 years after beginning work under the NBS contracts, whether the brokers' internal controls are adequate to preclude unauthorized disclosures. GSA's October 2005 recommendations for additional controls, which GSA based on visual inspections and interviews alone, suggest that, in GSA's view, the controls were not sufficient to protect GSA's proprietary information. Until GSA performs a complete evaluation of the dual-agency brokers' controls, it cannot be sure that it has identified, and made recommendations to address, any remaining weaknesses.
- Because GSA has not revised its contracts with the tenant-only firms to include, at a minimum, the three controls that currently apply only to dual-agency firms but address situations also faced by tenant-only firms,¹⁰⁰ these firms may not be aware of all requirements applicable to their disclosure of potential or actual conflicts of interest.

¹⁰⁰These three controls require brokers to (1) execute additional agreements to safeguard proprietary information, (2) notify GSA of any conflicts of interest discovered during the performance of work, and (3) include a conflict-of-interest clause in all of their subcontracts.

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- GSA has not complied with FISMA's requirements for safeguarding information and information systems used on behalf of GSA—requirements that have been applicable since April 2005, when work began on the NBS contracts. Until GSA complies with these requirements—including (1) fully assessing the risk and magnitude of harm that could result from the misuse of information and information systems used on behalf of GSA; (2) requiring the establishment of controls appropriate to the assessed risk for each of the four brokers and their subcontractors; and (3) as needed, testing the effectiveness of the controls—it cannot ensure that the information and information systems used by the brokers on its behalf are being safeguarded appropriately. Moreover, until GSA conducts the required FISMA risk assessments, it cannot modify the NBS contracts to establish appropriate, risk-based controls.

Because so few commission-eligible task orders have been completed, GSA has little information on the extent to which broker commissions will not be paid. However, the risk of nonpayment appears to be limited, in part, because of the requirement that building owners pay GSA's broker if they intend to pay their own. As the program continues, it will be important for GSA to monitor commission payments to ensure that the brokers are being compensated for their services, where required. Such monitoring will be even more important to test the efficacy of GSA's controls for preventing the brokers from favoring building owners who offer them excessive commissions. Actions such as the board of subject matter experts that GSA is establishing and its contract to determine applicable commission rates in major markets should be useful in assessing the reasonableness of the brokers' negotiated commission rates. However, in our view, additional controls still will be needed to ensure that the brokers do not improperly increase the government's rental costs. Specifically, until such time as GSA establishes effective controls to mitigate the brokers' inherent conflict of interest by, among other possible actions, precluding them from accepting commissions in excess of the rate approved by the COTR and included in GSA's solicitation for offers, there will remain at least the perception that the brokers might favor—at the government's expense—building owners who pay higher commissions.

Although GSA expected savings to accrue to the government from the use of the NBS contracts, both from reductions in (1) rent attributable to commission credits and the brokers' greater knowledge of the commercial real estate market and (2) agency costs (for fees, administrative expenses, and personnel), as of October 31, 2006, GSA had not developed processes

to quantify most of the expected savings. Until such time as it does, GSA will not know whether, or to what extent, using the NBS contracts has resulted in savings and will not be able to set targets for future savings, including those related to improvements in agencywide operational efficiencies that GSA now expects will result from the use of the NBS contracts.

GSA has taken numerous actions to improve the reliability of its data for the NBS program. These actions should assist GSA in its efforts to distribute its initial workload as equally as possible among the brokers. Furthermore, recognizing that variations in its regional distributions among the brokers are unavoidable, GSA has agreed to modify the language of its administration guide to conform to the contracts, specifying that its initial distributions of task orders will be done “as equally as possible,” rather than “equal,” across its regions. GSA also has agreed to provide greater management attention of its distributions of task orders for market data and expedited leasing transactions, which should help ensure that its distribution of these task orders do not disproportionately advantage one or more of the brokers. However, as of October 31, 2006, GSA had not agreed to collect data needed to assess the extent to which its distributions to the brokers were for similar geographic areas (e.g., rural or urban)—a distribution criterion specified for the initial period of the contracts. Finally, while GSA intends to develop guidance and procedures for implementing performance-based distributions before altering its current distribution approach, as of October 31, 2006, it had not committed to clarify the number and types of task orders needed to establish a record of the brokers’ performance before embarking on performance-based distributions.

With just over 1 year of experience under the NBS contracts, it is too early to assess the effectiveness of GSA’s new organizational structure and management tools for overseeing the NBS program. Such an assessment, however, will be essential for a variety of reasons. For example, given diminishing in-house resources, the NBS contracts are critical to the success of GSA’s overall leasing program. GSA expects to use the NBS contracts to accomplish 90 percent of its workload by 2010. Furthermore, over 55 percent of federal employees rely on GSA to provide workspace at a cost of about \$3.6 billion annually. Thus, as acknowledged in GSA’s 2003 analysis for entering into the NBS contracts, “no part of day-to-day operations has a greater financial consequence than the acquisition of real estate by lease.” While both the new organizational structure and the management tools hold promise of stronger, more consistent contract

management and oversight than GSA formerly provided, no program evaluations or audits have yet demonstrated their effectiveness. Given the magnitude of the program and its importance to GSA's entire leasing program, it will be critical to continually assess whether the changes GSA has implemented have improved its oversight of its brokers and its regions, as intended.

Finally, inaccuracies, inconsistencies, and omissions among and within its contracts, the administrative guidance, and the e-Lease system, raise questions about how GSA will ensure consistency in its regions' evaluations of the brokers' performance. Various problems—such as inapplicable evaluation criteria; variability in the criteria identified for use at different evaluation stages by the contracts, GSA's administrative guide, and e-Lease; inconsistencies between GSA's and NIH's performance-related terminology; and omissions in GSA's administrative guide—make it difficult for GSA to clearly demonstrate to the brokers and others what it is evaluating at the various rating stages and how its evaluations align with NIH's annual governmentwide evaluations. Moreover, despite GSA's position that these issues have not adversely affected its management of the contracts, at a minimum, they create unnecessary obstacles for personnel conducting the evaluations. Avoiding unnecessary obstacles is particularly important because GSA is relying on realty specialists, many of whom have little previous experience in contract administration, including evaluating the quality of services provided by the brokers. Moreover, the administrative guide prescribes procedures and formats for them to follow to promote consistent task order administration among GSA's 11 regional offices. Thus, it is essential that the NBS contracts, administrative guide, and e-Lease system conform, and that each provides an accurate and a consistent and clear approach to performance evaluation. While issues involving the implementation of an evaluation approach for a program of this size are not surprising, as of October 31, 2006, with one exception involving the final e-Lease evaluation screen, GSA had not taken action on the issues we identified.

Recommendations for Executive Action

To improve GSA's overall management of the NBS program, we recommend that the Administrator of GSA take the following 11 actions:

1. Assess the adequacy of the two dual-agencies' conflict wall controls and recommend actions, if applicable, to correct any identified weaknesses.

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2. Modify the two dual-agency contracts to ensure that GSA can enforce recommendations resulting from its conflict wall inspections.
 3. Establish consistent dual-agency and tenant-only conflict-of-interest contract requirements, including, at a minimum, the three conflict-of-interest requirements that address situations also faced by the two tenant-only firms.
 4. Assess the risk and magnitude of harm that could result from unauthorized access to, or use, disclosure, disruption, modification, or destruction of, GSA information collected or maintained by the four brokers (and their subcontractors) and the information systems used by the brokers on behalf of GSA.
 5. Modify the four NBS brokers' contracts to include controls appropriate to the assessed risk to ensure that the brokers and their subcontractors safeguard information and information systems in accordance with FISMA.
 6. Test the effectiveness of federal information security policies, procedures, and practices related to the NBS program, including, as appropriate, broker controls for safeguarding GSA's information.
 7. Establish additional controls to mitigate the inherent conflict of interest created by allowing the brokers to represent the government, while also negotiating their commissions with building owners.
 8. Develop processes for quantifying expected savings from (1) rent reductions attributable to the brokers' greater knowledge of the commercial real estate market and (2) agency savings associated with reduced fees, administration expenses, personnel costs, and operational efficiencies associated with using the NBS contracts.
 9. As part of GSA's effort to prepare for performance-based distribution decisions, clarify the number and types of completed task orders needed to establish a record of the brokers' performance.
 10. Begin collecting data on GSA's distributions of task orders for rural and urban areas (i.e., similar geographic areas) during the initial period of the contracts.

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11. Clarify the NBS contracts and the administrative guide to ensure that the evaluation measures used are applicable to the brokers' performance at each stage of evaluation. Regarding the brokers' required annual performance evaluations, revise the terminology in GSA's contracts and administrative guide, as appropriate, to conform to NIH's required evaluation factors. In addition, ensure that the various evaluation stages and processes are properly and adequately described in GSA's administrative guide.

Agency Comments

We provided a draft of this report to GSA for its review and comment. In its written comments, GSA stated that it is pleased with the results of the first year of the NBS program. However, GSA noted that the agency had experienced challenges in implementation due to the magnitude and impact of the program. GSA stated that it had already initiated a number of actions to address issues identified in this report and agreed to "work on the implementation" of our recommendations. GSA's comments are reprinted in appendix IV. GSA also provided technical comments, which we incorporated as appropriate.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the report date. At that time, we will send copies to interested congressional committees, the Administrator of GSA, the four NBS brokers, and each of the other entities that we interviewed. Copies will also be made available to other interested parties on request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-2834 or GoldsteinM@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.

A handwritten signature in black ink, appearing to read 'M. Goldstein', with a long horizontal flourish extending to the right.

Mark L. Goldstein
Director, Physical Infrastructure Issues

Objectives, Scope, and Methodology

Our objectives were to determine (1) how the General Services Administration (GSA) is attempting to prevent conflicts of interest in its national broker services (NBS) program and to safeguard information and information systems used by the brokers on GSA's behalf; (2) how the brokers will be compensated for their services and what, if any, controls exist to minimize the government's rental costs; (3) what, if any, savings have accrued to the government; (4) how GSA is distributing its leasing workload among the brokers; (5) how GSA is overseeing the brokers; and (6) how GSA is measuring the brokers' performance.

To address our overall reporting objectives, we obtained, among other materials, information on (1) GSA's leasing practices, including data on the volume and cost of GSA's annual leasing; (2) time frames for completing GSA's leasing transactions (task orders); (3) the number and identity of the NBS contract bidders; (4) the bid protests resulting from GSA's contract awards, including information about the protests' resolution; and (5) GSA's organizational structure and programmatic responsibilities. Specific to each of our objectives, we also reviewed and analyzed, among other things, GSA's NBS contracts; contract amendments through March 31, 2006—the end of the first contract year; GSA's September 2005 guide for administering the contracts, as well as its updated November 2005 guide;¹ and previous reports by GSA's Office of the Inspector General and our Office of General Counsel related to GSA's contracting for leasing services. In addition, we identified and analyzed GSA's policies, procedures, and controls related to our six reporting objectives and discussed the policies, procedures, and controls with cognizant GSA officials, particularly those responsible for managing the NBS program and for ensuring compliance with requirements in the Federal Information Security Management Act of 2002 (FISMA). We also interviewed officials from 10 public- and private-sector entities—3 large, private companies; 4 state agencies; and 3 other federal agencies—that contract for leasing services to determine, among other things, how these parties address conflict-of-interest issues and compensate their brokers. To gain the views and understand the experiences of industry representatives related to our objectives, we interviewed representatives from nine large nationwide brokerage firms, including the four NBS brokers, and from six commercial real estate trade associations. Furthermore, to obtain information about how localities regulate conflict-of-interest and broker compensation issues, we

¹As of October 31, 2006, GSA's most recent version of the *National Broker Contract Administration Guide* was issued in November 2005.

interviewed regulatory officials from four states and the District of Columbia. We performed our work between November 2004 and December 2006 in accordance with generally accepted government auditing standards. A detailed description of our scope and methodology for assessing each of our reporting objectives and for selecting other entities for interviews follows.

Scope and Methodology for Assessing Our Reporting Objectives

First, to determine how GSA is attempting to prevent conflicts of interest in its NBS program and to safeguard information and information systems used by the brokers on GSA's behalf, we reviewed and analyzed, among other things, federal conflict-of-interest requirements contained in the Federal Acquisition Regulation; GSA's internal request to deviate from these requirements, as well as GSA's November 11, 2003, approval of the waiver request; GSA's NBS program guidance; GSA's contracts with the NBS brokers; and GSA's contract amendments through March 31, 2006. Our analysis focused on the policies, procedures, and controls GSA established for both the two dual-agency NBS firms and the two tenant-only NBS firms. We interviewed NBS program officials about GSA's policies, procedures, controls, and contractual remedies in the event that the NBS brokers do not disclose actual or potential conflicts and queried the officials about the number, nature, and disposition of conflicts of interest identified through March 31, 2006. In addition, we interviewed representatives from 10 public- and private-sector entities (3 large, private companies; 4 state agencies; and 3 other federal agencies) that also contract for leasing services and regulators in 4 states and the District of Columbia to compare their conflict-of-interest controls with those used by GSA. We also interviewed the four NBS brokers to obtain their perspectives on GSA's conflict wall requirements. We included information obtained from these entities, where relevant and applicable, in the body of this report. Through discussions with GSA's Public Buildings Services Information Security Manager, we also obtained and reviewed the results of GSA's October 2005 site compliance (inspection) reports of the two dual-agency brokers' conflict walls and discussed, among other matters, (1) information related to the scope of the inspections, (2) GSA's recommendations for broker improvements, (3) the status of GSA's efforts to ensure that the brokers adopt its recommendations, and (4) the timing of GSA's future conflict wall inspections. With NBS program officials, we also discussed information related to GSA's August 2006 follow-up site visits to the two dual-agency brokers. In addition, we visited the dual-agency firms and observed their physical and electronic access controls; however, we did not test the adequacy of these controls. To assess GSA's compliance with requirements

for protecting information and information systems used by the brokers on GSA's behalf, we reviewed and analyzed FISMA and discussed, among other matters, the status of broker interfaces with GSA's electronic e-Lease system; recommendations resulting from GSA's October 2005 conflict wall inspections; the results of GSA's annual FISMA review, dated October 11, 2005; and the status of action to incorporate appropriate FISMA controls into GSA contracts with the brokers.

Second, to ascertain how the four NBS brokers will be compensated for their services and what, if any, controls exist to minimize the government's rental costs, we reviewed and analyzed, among other materials, the NBS contracts; contract amendments through March 31, 2006; GSA's administration guidance; a December 2002 GSA Inspector General report on GSA's prior use of 29 contracts for leasing services;² a May 1999 opinion from GSA's General Counsel concerning the process for rebating broker commissions under GSA's prior contracts; and two GAO legal opinions related to GSA's proposal to enter into the NBS contracts.³ We also reviewed GSA's 2003 business analysis for entering into the NBS contracts,⁴ including GSA's description of private sector compensation practices. However, we did not evaluate GSA's analysis. In addition, we assessed GSA's policies, procedures, and controls related to the terms of payment for broker services and, through discussions with NBS program officials, obtained data on the number and amount of commissions accrued by the NBS brokers as of March 31, 2006, as well as the reason why a commission was not paid. Through discussions with NBS program officials, we also ascertained how GSA intends to ensure that its (1) leasing rates under the NBS program are reasonable and (2) brokers do not improperly increase the government's rental costs by favoring building owners who may offer them higher commissions. To obtain broker views on the risk of unpaid commissions, we interviewed representatives from nine nationwide brokerage firms, including the four NBS brokers. In addition, to compare, among other matters, the compensation method used under the NBS

²GSA, *Review of PBS' [Public Buildings Services] Use of Brokerage Contracts for Lease Acquisition Services*, Report Number A020135/P/W/R03003 (Dec. 11, 2002).

³See General Services Administration and Real Estate Broker's Commissions, B-302811 (July 12, 2004). See also B-291947 (Aug. 15, 2003). As discussed in the body of this report, GAO did not render an opinion about the contracts' terms or the advisability of entering into the NBS contracts.

⁴GSA, *Business Analysis and Case for National Contracts for Brokerage Services in GSA* (Aug. 25, 2003).

contracts with those used by other entities as well as the controls others use to help ensure that their brokers do not favor building owners who offer higher commissions, we interviewed representatives from 10 other public- and private-sector entities that contract for real estate services. Finally, to obtain information on the views and experiences of others related to commercial real estate compensation practices, we interviewed representatives from nine nationwide commercial real estate brokerage companies, including the four NBS brokers; six national commercial real estate associations; and regulators from four states and the District of Columbia. We included information obtained from these entities, where relevant and applicable, in the body of this report.

Third, to determine what, if any, savings have accrued to the government from GSA's use of the NBS contracts, we reviewed and analyzed, among other materials, GSA's 2003 business analysis for entering into the NBS contracts, including its description of various expected savings; the brokers' response to GSA's request for contract proposals, particularly the brokers' offers related to the amount (percentage) of their commission they agreed to forgo and, instead, credit to the government—in the form of a commission credit—for commission-eligible task orders; and GSA's policies, administration guidance, procedures, and controls related to commission credits. We discussed GSA's policies, procedures, and controls for, among other things, tracking savings from commission credits as well as the status of GSA's efforts to quantify savings from other sources with NBS program officials. In addition, we obtained data on commission credits as of March 31, 2006, and—through discussions with NBS program officials—attempted to obtain similar information on GSA's other expected savings. However, as discussed in the body of this report, such information was not available. To ascertain whether other entities require commission credits and experience savings from using contracts for leasing services, we interviewed, among other parties, representatives from 10 public- and private-sector entities that contract for real estate services. In addition, through interviews with officials from nine nationwide brokers, including the four NBS brokers, we ascertained their views on the extent to which commission credits are used in the commercial real estate industry. We included information obtained from these entities, where relevant and applicable, in the body of this report.

Fourth, to ascertain how GSA is distributing its leasing workload among the NBS brokers, we reviewed and analyzed, among other materials, the contracts and amendments through March 31, 2006; GSA's November 2005 guide for administering the NBS program; and GSA's monthly and year-end

data reports on its distribution of task orders among brokers. With NBS program officials, we discussed among other matters, GSA's policies, procedures, controls, processes, and first-year goals for distributing its workload; GSA's plans to transition to performance-based workload allocations; and the results of GSA's year-end distributions, including the challenges associated with attempting equal distributions and the possible reasons for the variability in GSA's regional distributions among the brokers as of March 31, 2006. At several points throughout our review, we identified errors, inconsistencies, and missing data in GSA's monthly and various year-end data reports for the first year of the contracts as well as other sources of NBS program-related data. We discussed GSA's various data reports, including issues related to data reliability, with NBS program officials. We also discussed why these problems had occurred and the scope and status of GSA's actions to correct them. On the basis of GSA's efforts to correct its data, we believe the data provided to us on September 1, 2006, are sufficiently reliable for use in reporting aggregate programwide and regional information on the number and size of task orders distributed to the brokers. Finally, through interviews with representatives from 10 public- and private-sector entities that contract for leasing services, we determined how others distribute their leasing workload among brokers. We included information obtained from these entities, where relevant and applicable, in the body of this report.

Fifth, to determine how GSA is overseeing the four NBS brokers, we reviewed and analyzed, among other materials, the NBS contracts and amendments through March 31, 2006; GSA's November 2005 guide for administering the NBS program, including its descriptions of the authorities, roles, and responsibilities of key national and regional NBS program officials; relevant training material, such as briefing slides related to GSA's NBS certification program and e-Lease system; GSA's March 2003 plan for implementing the NBS contracts; GSA's December 2002 Inspector General's report on GSA's administration of its 29 prior contracts for leasing services; information about the evolving role of GSA's realty specialists; and GSA's policies, procedures, and controls for overseeing the NBS brokers. We discussed with NBS program officials, among other matters, GSA's actions to address issues identified in the December 2002 Inspector General report, including GSA's implementation of new management tools intended to enhance its oversight of the brokers; the evolving role of GSA's realty specialists; and GSA's new organizational structure for overseeing the NBS brokers. To identify changes in GSA's contract oversight, we obtained, among other documentation, information on the number of GSA staff assigned, by position, to oversee its brokers over time.

Finally, to ascertain how GSA is measuring the brokers' performance, we reviewed and analyzed GSA's contracts with the NBS brokers; the contracts' amendments as of March 31, 2006; printouts of GSA's e-Lease evaluation screens as of July 31, 2006; GSA's administrative guide for the NBS program; relevant training material, such as manuals and briefing slides related to GSA's e-Lease evaluation screens; the long-term performance goals established for GSA by the Office of Management and Budget, including information on the surveys that GSA uses to measure its progress in meeting these goals; information about the National Institutes of Health's Contractor Performance System—the nationwide government database used to collect, maintain, and disseminate contractor performance evaluation data to government agencies; and the four brokers' first annual ratings for the period ending March 31, 2006. During the course of our review, we identified and discussed inconsistencies among and within (1) the NBS contracts, (2) GSA's administrative guide, and (3) GSA's e-Lease evaluation screens related to the applicability of various evaluation criteria with NBS program officials and, through discussions with them, ascertained the status of GSA's actions to correct the inconsistencies. We also discussed, among other matters, GSA's evaluation processes and information about the brokers' performance for the first year of the NBS contracts. In addition, to obtain, among other things, information on the extent of feedback provided to the brokers by GSA we attended two quarterly meetings held between GSA and each of its brokers to discuss, among other matters, each broker's interim performance, as of December 31, 2005. We also interviewed representatives from 9 nationwide brokerage firms, including the 4 NBS brokers, and representatives from 10 other public- and private-sector entities that contract for leasing services to obtain their views about GSA's performance measures. We included information obtained from these entities, where relevant and applicable, in the body of this report.

Methodology for Selecting Other Entities for Interviews

To obtain the views of other entities that contract for leasing services, including information on how they (1) compensate their brokers and (2) identify and manage their brokers' actual or potential conflicts of interest, we interviewed officials from 10 public- and private-sector entities—3 large, private companies; 4 state agencies; and 3 other federal agencies. While each of these entities contracts for leasing services, none of them are directly comparable to the volume of GSA's annual leasing transactions. In addition, we interviewed industry representatives at 9 nationwide brokerage firms and 6 real estate associations and contacted officials from 5 local real estate regulators. We included information

obtained from these parties, as relevant and appropriate, in the body of the report. We attempted to interview officials from other large, private companies and nationwide brokerage firms; however, our requests for interviews were unsuccessful. While additional interviews may have provided more information, it is unclear whether that information would have been materially different from information obtained during our interviews of the officials previously described. Therefore, given our scope and reporting objectives and the number and range of relevant parties we successfully interviewed, we concluded that the absence of information from these additional sources did not materially affect our findings, conclusions, and recommendations. Our method for selecting entities for interviews follows.

Selection of Entities That Contract for Leasing Services

To obtain the views of other entities that also contract for leasing services, we interviewed officials from 10 private- and public-sector entities. First, to identify large, private companies that contract for real estate services, we reviewed the client lists of the 16 nationwide brokerage firms that bid on GSA's NBS contracts and identified 83 private sector clients.⁵ We then sorted the brokers' corporate clients on the basis of the volume (square footage) of lease transactions reported to GSA. From the volume, we developed a list of the brokers' top 10 corporate clients and attempted to interview 3 to 5 of them—starting with those with the greatest volume. In total, we contacted 7 of the 10 large, private companies, but only 3—Ford Motor Land, Tyco International, and SBC Telecom—granted us interviews. The 3 large, private companies ranked third, fourth, and sixth, respectively, on our list of 10 large, private companies with the greatest volume of leasing transaction, with transactions ranging from 48 million to 189 million square feet in the preceding 3-year period.

Second, to obtain the perspectives of state agencies that contract for leasing services, we—once again—reviewed the client lists of the 16 nationwide brokerage firms that bid on GSA's NBS contracts and, on the basis of these lists, identified 13 states that contract for leasing services.

⁵GSA required bidders to supply information on their clients as part of its solicitation for the contracts, including the volume of their business in the 3 years preceding the solicitation. Eighteen brokerage firms bid on the NBS contracts; however, 2 of the 18 did not meet GSA's requirement for being national in scope. To meet this criterion, each broker was required to demonstrate that it had provided leasing services, over the prior 3-year period, on behalf of at least two tenants with nationwide geographic and volume requirements similar to those required by GSA.

However, these lists did not contain complete information on the volume (size, number of transactions, or dollar value) of the states' contracted leasing services. Since we could not rank the states on the basis of the volume of their transactions, we selected 4 states on the basis of their geographic location and interviewed the appropriate officials from each of these states—California (West), Florida (South), Michigan (North), and New York (East).

Finally, absent a single source of information for identifying and selecting other federal agencies that also contract for leasing services, we used multiple methods. For example, we reviewed and analyzed (1) GSA's *Federal Real Property Profile, Overview of the United States Government's Owned and Leased Real Property, as of September 30, 2004*, report; (2) GSA's database on federal procurements;⁶ (3) the client lists of the 16 nationwide brokerage firms that bid on the NBS contracts; and (4) discussions with GAO colleagues and agency contacts familiar with federal real property, including the director of the Federal Facilities Council,⁷ a member of the Federal Real Property Council Committee,⁸ and GSA's previous NBS National Program Manager. However, each of these sources had limitations, particularly with regard to whether the federal agency actually contracted for its leasing services and, if so, the volume of its leasing transactions. Consequently, based on our discussions and analyses of available sources, we developed a list of federal agencies that may contract for a portion of their leasing services and contacted officials from 3 agencies—the Department of Veterans Affairs, the United States Postal Service, and the Federal Deposit Insurance Corporation—that we could confirm had contracts for leasing services.

Selection of Industry Representatives

To gain the views and understand the experiences of industry representatives related to our objectives, we interviewed representatives from 9 nationwide brokerage firms and 6 national commercial real estate

⁶GSA's Federal Procurement Data System tracks information about federal contracts.

⁷The Federal Facilities Council is an association of 25 federal agencies with responsibilities related to, among other things, the acquisition, maintenance, operation, management, and disposition of federal real property.

⁸Pursuant to Executive Order 13327, the Administrator of General Services, in consultation with the Federal Real Property Council, is responsible for maintaining a database on real property owned and leased by federal agencies.

associations. Four of the 9 nationwide brokerage firms were awarded NBS contracts,⁹ while the remaining 5 were unsuccessful bidders.¹⁰ To identify the 5 unsuccessful nationwide brokers, we reviewed GSA's list of 16 nationwide brokers that submitted proposals for the NBS contracts and eliminated the 4 successful NBS bidders that we otherwise intended to interview. To prevent any bias in our selection method, we randomized the remaining list of 12 nationwide brokers and categorized them—in the same random order—according to whether, as a result of our research, they appeared to be dual-agency or tenant-only firms. Starting at the top of each randomized list, we contacted each broker in turn. Our goal was to hold between three to five interviews with the 12 unsuccessful nationwide bidders. In total, we were granted interviews with representatives of 5 of these 12 firms—4 dual-agency firms and 1 tenant-only firm. To gain a fuller understanding of the possible differences between dual-agency and tenant-only broker views, we attempted to interview at least one more tenant-only broker from the randomized list of unsuccessful, nationwide bidders, but our multiple requests for an interview were not successful. Similarly, while we attempted to obtain the views of representatives from 3 nationwide brokerage firms that did not bid on the NBS contracts, our requests for interviews were also unsuccessful. Finally, to obtain the views of representatives of national associations that promote the real estate industry, we identified relevant real estate associations, using the Internet, and identified 12 possible real estate associations.¹¹ From discussions with GAO colleagues familiar with the real estate industry, we narrowed the list from 12 to 6 associations that, in our collective view, were most likely to have relevant information for our reporting objectives. We interviewed officials from each of these six associations—(1) Building Owners and Managers Association International, (2) CoreNet Global, (3) the Institute of Real Estate Management, (4) the National Association of Industrial and Office Properties, (5) the Society of Industrial and Office REALTORS®, and (6) the Real Estate Roundtable. However, with the exception of the Institute of Real Estate Management, the associations' representatives

⁹Jones Lang LaSalle; Julien J. Studley, Inc.; The Staubach Company–Northeast; and Trammell Crow Services, Inc. As discussed in the body of this report, two of these firms are dual-agency brokers, while the remaining two represent only tenants.

¹⁰These five unsuccessful bidders were CB Richard Ellis, the Equis Corporation, Grubb and Ellis, NAI Global, and Spaulding and Slye Colliers. The Equis Corporation is a tenant-only firm, while the four others are dual-agency firms.

¹¹The 12 associations serve as a resource to a variety of parties, including real estate brokers, managers, and building owners.

were unable to supply relevant information related to our reporting objectives.

Selection of Local Real Estate Regulators

To obtain the perspectives on how localities regulate broker conflict-of-interest and compensation issues, we reviewed and analyzed GSA's 2004 federal real property profile and identified the top five jurisdictions—California, the District of Columbia, Maryland, Texas, and Virginia—with the most square footage of federally leased space and interviewed representatives from these jurisdictions.¹² According to GSA's 2004 federal real property profile, about 35 percent of all federally leased space is located within these five local jurisdictions.

¹²Specifically, we spoke to the Assistant Chief Counsel for the California Department of Real Estate; the Program Liaison for the District of Columbia's Board of Real Estate; the Assistant Attorney General, Counsel to the Maryland Real Estate Commission; the Chief Executive Officer of the Texas Real Estate Commission; and the Executive Director of the Virginia Real Estate Board.

Potential Conflicts Identified and GSA's Resolution of the Potential Conflicts, as of March 31, 2006

	Date potential conflict identified	Broker and square footage involved	Description of potential conflict	GSA's resolution of potential conflict
1	5/25/05	Broker A 5,000 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA canceled the task order because the customer agency changed its space requirements.
2	7/13/05	Broker A 2,800 square feet	The broker disclosed that it managed at least one building with space that might meet GSA's needs.	GSA determined that there was no conflict.
3	7/25/05	Broker A 200,000 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.
4	7/29/05	Broker B 4,700 square feet	The broker disclosed that it managed at least one building with space that might meet GSA's needs.	GSA determined that there was no conflict.
5	8/1/05	Broker A 10,000 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA determined that there was no conflict.
6	8/8/05	Broker A 400,000 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.
7	8/10/05	Broker B 14,566 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA determined that there was no conflict.
8	8/17/05	Broker C N/A ^a	The broker requested advice on whether its work on another type of contract for another agency represented a conflict of interest.	GSA determined that there was no conflict.
9	9/9/05	Broker A 8,598 square feet	The broker disclosed that its subcontractor represented at least one building owner with space that might meet GSA's needs.	GSA required the subcontractor to sign a nondisclosure agreement and agree not to negotiate on behalf of a property owner on a GSA transaction in the same market for the term of the contract and subcontract.
10	10/20/05	Broker A 80,000 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.
11	10/26/05	Broker B 26,851 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA determined that there was no conflict.
12	11/14/05	Broker B 6,500 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.

**Appendix II
Potential Conflicts Identified and GSA's
Resolution of the Potential Conflicts, as of
March 31, 2006**

(Continued From Previous Page)

	Date potential conflict identified	Broker and square footage involved	Description of potential conflict	GSA's resolution of potential conflict
13	12/08/05	Broker C 12,000 square feet	The broker disclosed that it could not find a subcontractor who could meet the conflict wall requirements and wanted to decline the task order.	GSA advised the broker that it could not decline the task order. The broker subsequently identified a subcontractor without a conflict.
14	12/14/05	Broker A 2,664 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.
15	12/15/05	Broker C 1,999 square feet	The broker disclosed that it wanted to use a subcontractor that represented at least one building owner with space that might meet GSA's needs, although not as an exclusive agent.	GSA determined that this was not a conflict, but required the subcontractor to confirm that it had a conflict wall in place.
16	12/20/05	Broker B 80,000 square feet	After initiation of the task order, the broker disclosed that it might have a future conflict due to a possible merger.	GSA determined that there currently was no conflict; but advised the broker to report a potential conflict, if one materialized.
17	1/11/06	Broker B 6,500 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.
18	1/12/06	Broker B 5,115 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.
19	2/16/06	Broker A 192,050 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.
20	3/01/06	Broker A 10,699 square feet	The broker disclosed that it represented at least one building owner with space that might meet GSA's needs.	GSA reassigned the task order to another broker without a conflict.

Source: GAO analysis of GSA data.

Note: As of March 31, 2006, GSA's conflict log listed 22 potential conflicts of interest. However, 2 of the entries involved GSA regional inquiries requesting general advice from the National Contracting Officer. NBS officials agreed that the 2 entries should be omitted as potential conflicts of interest.

^aAccording to the National Contracting Officer, the potential conflict did not relate to a specific task order; therefore, the amount of square footage is not applicable.

Applicable Performance Evaluation Criteria by Stage of Evaluation, as Specified by Various Sources

Evaluation stage/criterion specified for evaluation	GSA's contracts with the NBS brokers	GSA's November 2005 administration guide	GSA's e-Lease electronic evaluation screens as of July 31, 2006	National Institutes of Health's Contractor Performance System
Completion of activities within each task order				
Technical quality	X	X	X	
Document quality—quality of documentation submitted to the Contracting Officer's Technical Representative	X	X	X	
Timeliness	X	X	X	
Responsiveness on activity—keeping appropriate parties informed of project status	X	X	X	
Quality of personnel assigned		X	X	
The negotiated rate		X		
Completion of each task order				
All criteria specified above for completed task order activities	X	X	X	
Extent to which the brokers helped GSA meet its long-term performance goals (specifically, as follows A-D)				
A: Average lease rate meets GSA's fiscal year target	X		X ^a	
B: Leasing transaction meets GSA's tenant satisfaction target	X		X ^a	
C: Space delivered within client time frame	X		X ^a	
D: Percentage of nonrevenue producing (vacant) space in GSA's leasing inventory	X			
Is lease rate above market value?			X ^a	
Overall responsiveness on task order—coordination with GSA, tenant agencies, city and state officials, offerors, and others	X			
Quality of personnel assigned	X			
Quality of documents submitted to the Contracting Officer and others	X			
Compliance with subcontracting plans	X			

**Appendix III
Applicable Performance Evaluation Criteria
by Stage of Evaluation, as Specified by
Various Sources**

(Continued From Previous Page)

Evaluation stage/criterion specified for evaluation	GSA's contracts with the NBS brokers	GSA's November 2005 administration guide	GSA's e-Lease electronic evaluation screens as of July 31, 2006	National Institutes of Health's Contractor Performance System
Annual evaluation				
All criteria specified above for completed task orders	X			
Extent to which broker has helped GSA meet its long-term performance goals		X		
Compliance with subcontracting plans		X		
Technical performance of services		X		
Quality of product or service				X
Cost control				X ^a
Timeliness of performance				X ^a
Business relations				X ^a
Did the contractor make a good faith effort to comply with its subcontracting plan?				X
Did the contractor meet the goals and objectives for small business participation?				X
Did the contractor make a good faith effort to comply with its subcontracting plan consistent with the goals and objectives, for small disadvantaged business participation?				X
Is/Was the contractor committed to customer satisfaction?				X ^a
Would you recommend the selection of this firm again?				X ^a

Source: GAO analysis of GSA contracts and guidance and GSA and National Institutes of Health information systems.

^aThis measure relates to one or more of GSA's long-term goals for its leasing program.

Comments from the General Services Administration



GSA Administrator

January 8, 2007

Mr. Mark Goldstein
Director, Physical Infrastructure Team
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Goldstein:

The U.S. General Services Administration (GSA) appreciates the opportunity to comment on GAO Draft Report GAO-07-17, *"GSA Leasing: Initial Implementation of the National Broker Services Contracts Demonstrates Need for Improvements."*

In October 2004, GSA awarded the National Broker Services (NBS) contract for commercial real estate leasing services, the largest contract of this type in the history of the Public Buildings Service (PBS). By awarding a limited number of broker services contracts under one national contract, our goal was to provide consistent, high-quality services nationwide to Federal agencies that rely on GSA for lease acquisition. With one contract year complete, we are pleased with the contract performance, understand that there are areas that can be improved upon and remain confident that this contract will yield value for Federal customer agencies and the American taxpayer. As is expected in the initial stages of a program of this magnitude and impact, we have experienced challenges in implementation. The GAO report confirms many findings of our own, and GSA already has launched a number of improvement actions to address identified issues.

The report cited a number of findings and 11 recommendations directed towards GSA's administration of NBS contracts. GSA agrees to work on the implementation of GAO's recommendations. I have also included additional comments and changes for GAO's consideration prior to issuing its final report in an enclosure to this letter.

Again, thank you for the opportunity to comment on the draft report. Should you have any questions, please contact me or Mr. David L. Winstead, Commissioner, Public Buildings Service, on (202) 501-1100. Staff inquiries may be directed to Mr. Anthony E. Costa, Deputy Commissioner, Public Buildings Service, at the same number.

Cordially,

A handwritten signature in black ink, appearing to read "Lurita Doan".

Lurita Doan
Administrator

Enclosure

GAO Contact and Staff Acknowledgments

GAO Contact

Mark L. Goldstein (202) 512-2834 or at goldsteinm@gao.gov

Staff Acknowledgments

In addition to the contact named above, Kathleen Turner, Assistant Director; Nancy Boardman; Derrick Collins; Dwayne Curry; Elizabeth Eisenstadt; Brandon Haller; Bert Japikse; Anjalique Lawrence; and Edith Sohna made key contributions to this report.

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