

GAO

Report to the Chairman, Subcommittee
on the District of Columbia
Committee on Appropriations
House of Representatives

May 2000

DISTRICT OF COLUMBIA

Management Issues Concerning Two District Leases



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

General Government Division

B-284655

May 2, 2000

The Honorable Ernest J. Istook, Jr.
Chairman, Subcommittee on the District of Columbia
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

This report responds to your concerns regarding alleged waste and mismanagement in the District of Columbia (the District) government's leasing practices. Your request focused on millions of dollars spent on two leases, one for two buildings to be used as homeless shelters that have been vacant since 1992 and the other a reportedly underutilized multiuse facility initially used as a drug treatment clinic. As agreed with the Subcommittee, the objectives of our work on the two leases were to determine (1) whether the person or persons who approved the leases were authorized to do so; (2) the current status of the properties, leases, costs, and utilization; and (3) the steps the District has taken or is taking to ensure that leased properties, in general, are effectively managed and utilized. Our work was limited by the age of the leases and the documentation available in the contract files.

Results in Brief

Authorized individuals approved both leases. The District is currently trying to purchase the two buildings used as a homeless shelter for the tentative purpose, after renovation, of providing transitional housing for women and families. The multiuse facility is currently fully utilized. The District has spent millions for the homeless shelter and the multiuse facility while they were vacant or underutilized. While these two cases do not provide a sufficient basis for drawing overall conclusions about the District's past or current property management practices, major legislative reforms have been enacted by the federal government and most recently passed by the Council of the District of Columbia affecting the District's property management system

We determined that authorized individuals approved both leases. The then Mayor of the District signed the lease for the homeless shelters. Although District officials were unable to provide us with a signed copy of the lease for the multiple use facility, we concluded that it was also a properly authorized lease. In that case, the Director, Department of Administrative

Services (DAS), also an authorized leasing official, signed an acknowledgment form, which is an integral part of the lease.

The homeless shelter buildings have been vacant since January 1992 and are currently boarded up. The District has spent over \$2 million in rent while the space has been vacant and is liable for over \$1 million to restore the two buildings. The Department of Human Services (DHS) decided to cease using the buildings as homeless shelters because neglect of maintenance of the buildings had rendered them unfit as shelters. This neglect of maintenance apparently resulted from disagreement over whether the problems were maintenance related or structural in nature. Reportedly because of the difficulty of finding property owners willing to lease properties for use as homeless shelters, the District agreed to a lease that required the District to provide all maintenance except for those items that were considered structural defects, which were the lessor's responsibility. The District had spent \$3.4 million in rent from December 19, 1986, through fiscal year 1999, including about \$2.3 million since the buildings have been vacant. The lease calls for at least another \$1.9 million, in current dollars, in rent over the 6 years remaining on the lease. Further, the terms of the lease require the District at the termination of the lease to restore the buildings to the condition they were in at the beginning of the lease term. The District is thus responsible for renovation costs to bring the buildings back to their 1986 condition. Since it has been estimated that the costs to restore the buildings would exceed \$1 million, District property management officials have concluded that it is advantageous to purchase the properties. They have negotiated an agreement with the owner, and are awaiting approval by city officials.

The multiuse facility is currently utilized by three District agencies, although half of the rented space remained vacant for more than 3 years. We visited the facility in February 2000 to verify its utilization. From August 1990 until the spring of 1994, according to a District official, the second floor of the building was vacant because the District had agreed to lease the whole building, even though DHS had informed them of its reduced program funding for the drug treatment facility. We were not able to determine from the files whether there were other periods of underutilization. From August 1990 through fiscal year 1999, about \$11.9 million was paid in rent for the space. For the remaining 10 years of the lease, at least another \$13 million, in current dollars, is to be spent in additional rent for this space.

The District has taken some steps, and plans to take additional ones, to help it to more effectively manage and monitor its real property holdings.

For example, it has established an Office of Property Management (DC/OPM) to provide more centralized control over the District's real property holdings, and is acquiring new information systems to provide it with improved management support tools. Further, DC/OPM is acquiring the ability to do property utilization studies internally and plans to contract for condition assessments and utilization studies of District facilities.

In addition, Congress has passed legislation that requires the District to take additional steps, such as developing a comprehensive plan for the management of real property assets, to further strengthen its real property operations. On April 5, 2000, the Council of the District of Columbia passed an emergency and permanent version of the Omnibus Government Real Property Asset Management Reform Act of 2000 to improve management of real property assets, including, for example, fully centralizing asset management authority.

Background

The District leased properties for homeless shelters because of the enactment of the District of Columbia Right to Overnight Shelter Initiative of 1984, D.C. Law 5-146, which gave every homeless person in the District the right to overnight shelter. After the enactment of this law, the number of homeless families assisted by the District increased about three-fold from fiscal year 1984 through fiscal year 1990.¹

One of the primary reasons for leasing properties for apartment-style homeless shelters was that District officials believed that this would be a better and less costly solution to the growing homelessness problem than its then ongoing practice of renting hotel rooms.² On December 19, 1986, the District entered into a 20-year lease, with a beginning monthly rent of \$16,308.33, for the apartment properties located at 1480 Girard Street, NW, and 2809 15th Street, NW, for use as homeless family shelters. The lease for the two apartment buildings called for housing 23 families. Combined, the two buildings were to have eight 2-bedroom apartment units, eight 3-bedroom units, seven 4-bedroom units, and two offices—one in each

¹The provision guaranteeing overnight shelter was rescinded with the enactment of the District of Columbia Emergency Overnight Shelter Amendment Act of 1990, D.C. Law 8-197, effective March 6, 1991.

²At the time when the District considered leasing properties for homeless shelters, each hotel room cost about \$48.50 per day, while the apartment rooms were estimated to cost about \$8.00 per day. In addition, the apartments were intended to provide family-like living conditions for the homeless.

building.³ The terms of the lease included an option for the District to purchase the premises at specific times during the lease.⁴

The lease for the drug treatment clinic took effect on May 10, 1989, for a 20-year term beginning on August 1, 1990, with an option for an additional period of up to 10 years. Lease payments commenced on August 1, 1990, when first floor modifications were completed, at a monthly rate of \$89,913. An addendum to the lease agreement required the District to pay as rent 100 percent of the increase in annual real estate taxes above those imposed for the first year. The lease runs through July 2010.

The Council of the District of Columbia's Government Operations Committee conducted an investigative hearing on this lease on March 7, 1997. The hearing identified such issues as the high cost of the lease, DHS' paying for space it did not need, and inadequate documentation of the leasing process. The Chairman of the Committee said she wrote to the then Mayor recommending the lease be terminated. No further action on these matters is indicated in the file.

Scope and Methodology

To obtain the relevant information about the acquisition of the three leased properties, we reviewed the contract files and District law, and we interviewed DC/OPM officials. We focused on the pertinent characteristics of the leases—lease term, rental rate, lease provisions, who signed the lease, whether the signer was appropriately authorized, and other historical information on the administration of the lease. While a key issue was whether problems experienced with the homeless shelter facilities were structural or not, the information in the lease files was not sufficient for us to determine the nature of the problems and, therefore, whether the District or the lessor would have been responsible for their correction.

To determine the payments made since the inception of the contracts, we reviewed payment records and interviewed officials in DC/OPM and the Office of Finance and Resource Management (OFRM).

³In March 1988, the use of apartment-style units was mandated by D.C. Law 7-86, the Emergency Shelter Services for Family Reform Act of 1987, enacted on March 11, 1988. At the time the lease was executed, the law allowed for the use of hotel or motel rooms rather than apartments if (1) unforeseen circumstances left no alternative and (2) the placement was for no longer than 15 calendar days.

⁴The District was permitted to exercise this option during the last month of the 5th, 10th, and 15th years following the lease commencement date and during the final month of the lease. The price the District would pay to purchase the buildings was stipulated as the amount equal to 96 percent of the fair market value of the premises at that time as determined by an appraisal of the premises.

To determine the current status of the properties and their use, we interviewed DC/OPM and DHS officials. We also contacted the District's Office of the Inspector General to determine whether it had done any work relating to the leases being reviewed. We toured the multiuse facility, but viewed the apartment properties only from the outside because the buildings were boarded up and vacant. We did not review the current proposal to buy the building since it is an ongoing procurement action.

To identify the steps the District has taken or is taking to ensure that real property holdings are effectively managed and utilized, we interviewed officials in DC/OPM and reviewed their action plan to deal with these issues. We also reviewed recent legislative actions taken by Congress and the District Council relating to the imposition of real property management requirements on the District government.

We did not attempt to determine whether the leasing procedures that were in effect at the time the leases were awarded were followed. The leases in question were both awarded over 10 years ago, and the files contain minimal documentation of the leasing process. The current administration was not involved in these efforts and has little knowledge regarding the history of these lease acquisitions. Concerning the multiuse facility, we did not evaluate issues previously reviewed by a Committee of the Council of the District of Columbia concerning the cost of the lease, how it was obtained, DHS' paying for space it did not need, and the inadequacy of the documentation of the leasing process, because these issues were outside the scope of our work.

We did our work between July 1999 and February 2000 at the District government headquarters in Washington, D.C., and at DC/OPM, OFRM, and DHS. Our work was done in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Chairman of the District of Columbia Financial Responsibility and Management Assistance Authority (the Authority), the Mayor of the District of Columbia, and the Chairman of the Council of the District of Columbia. Their comments are discussed at the end of this letter.

Both Leases Were Approved by Authorized District Officials

We determined that authorized individuals approved both leases. In December 1986, the then Mayor of the District signed a 20-year lease for the two apartment buildings planned for use as temporary shelters for homeless families. He was authorized by the D.C. Code to sign contracts on behalf of the District.⁵ The lease had also been approved by the Assistant Corporation Counsel and the Office of the Deputy Mayor for Financial Management as required on the lease form. For the multiuse facility, neither District officials nor the lessor was able to provide us with a signed copy of the lease. However, the lease was reviewed and approved by the Assistant Corporation Counsel and the Deputy Mayor for Financial Management as required on the lease form. In addition, the Director, DAS, who had contracting authority at the time, had signed a form on May 10 1989, witnessed by a Notary Public, acknowledging that he had entered into the lease on behalf of the District. Regardless of whether the lease was actually signed, we determined that it was an appropriately approved lease because the acknowledgement form is an integral part of the lease.

Current Status of the Family Homeless Shelters and the Multiuse Facility

Both homeless shelter buildings are deteriorated and vacant, and the District has spent millions to rent them and the lease calls for additional millions. According to District officials, the District has negotiated with the lessor to buy the buildings, and the proposal is awaiting review and approval by appropriate District officials. The multiuse facility is currently fully utilized.

Family Homeless Shelters Are Vacant and Deteriorated

These two buildings have been vacant since January 1992; due to the neglect of maintenance, the buildings deteriorated to the point where they were unfit for use as shelters according to a memorandum in the contract file. The District is still making the monthly lease payments but is trying to buy the buildings.

Reportedly, because of the difficulty of finding landowners willing to lease properties to the District for use as homeless shelters, the District agreed to a lease for these properties in which it deleted several standard provisions and replaced them with ones that put additional responsibility on the District. For example, one of the provisions the District agreed to was to make all repairs necessary to keep the premises in good order and repair, except for the lessor's obligations to make structural repairs to the building walls and foundations. The District's responsibility for repairs include, but is not limited to, painting the building inside and out at least

⁵District of Columbia Code 1981, section 1-336, leasing authority. This section of the D.C. Code authorized the Mayor to enter into lease agreements. D.C. law 11-259, section 301, dated April 12, 1997, substituted the Director of the Office of Contracting and Procurement for the Mayor of the District of Columbia.

once every 3 years; promptly repairing all doors, glass, and leaks; and paying for maintenance of paved walks and the parking lot, including keeping paving free of potholes.

This provision apparently resulted in disagreement over whether needed repairs were maintenance related or structural in nature, which contributed to the deterioration of the properties. We could not determine from the file whether the problems were structural or maintenance related.

The contract file contained numerous internal District memorandums and letters from the lessor, beginning in 1987 and continuing through 1991, documenting the deteriorating condition of these two buildings throughout the period they were in use. Documents in the contract file dated June 1987 noted that shortly after occupancy the basements at both buildings were flooded, the subflooring was badly deteriorated, the tile on the lower-level apartment floors was buckled, the exit doors at 2809 15th Street did not close properly, and inferior materials were used in the building renovations. Other documents indicated that maintenance problems continued throughout the occupancy period, without evidence of management attention.

Documents in the contract file showed that in June, September, and October 1987, and in June 1988, the lessor took steps to fix some of the problems. For example, the lessor installed sump pumps in both buildings, repaired floors in several apartments, did electrical work, and built a concrete apron to prevent lower-level flooding. The lessor also hired an architectural firm and an engineering firm that had experience in water runoff management and, under their guidance, did exterior corrective work. In addition, the lessor repaired items, such as a ceiling in one apartment and the front doors to both buildings, that he claimed were the District's responsibility under the terms of the lease since they were not structural problems.

In June 1987, the lessor informed the District that, as a goodwill gesture, he had made repairs, but noted that, in the future, he would no longer make such repairs, which were the responsibility of the District. The lessor stated that unless the District had a qualified repair crew to make continuous repairs, the properties would eventually become uninhabitable. He also noted that the District's on-site manager, a social worker, was helpless without a repair system for support.

An official in the Office of Facilities Management within DHS informed us that, at the time, the District did not have much experience in running a

homeless program and did not consider the need for a full-time maintenance staff for the homeless shelters.

Vacant Family Homeless Shelters Could Cost the District Additional Millions

From December 19, 1986, through the end of fiscal year 1999, the District paid \$3.4 million in rent for the homeless shelter buildings, including about \$2.3 million since January 1992, when the buildings became vacant. Over the remaining 6-year term of the lease, we estimate the District would have to pay, in current dollars, at least \$1.9 million more in additional rent. Further, another provision of the lease states that the District must surrender the premises at the end of term or other termination of the lease in as good condition as they were at the beginning of the term, except for reasonable use and damage by the elements. According to a District official, the costs to restore the buildings were estimated to be more than \$1 million.

District's Efforts to Dispose of the Family Homeless Shelters

According to documents in the contract files, beginning in April 1992, the District started exploring legal options to terminate the lease for these two buildings. For example, the DHS Attorney-Advisor noted the following legal options, among others, in an April 1992 memorandum to the Corporation Counsel:

- eminent domain, in which the District could seize property for any public or quasi-public use;
- fraud, in which a party to the negotiations perpetrated a fraud by making misrepresentations or false promises during negotiations; and
- equitable estoppel, in which an officer or agent of a municipality irregularly or defectively exercises power granted to him and executes a contract not in the best interests of the municipality.

The memorandum noted that, if the District initiated a condemnation proceeding to secure the leased property, the owners could challenge the proceeding as an attempt to circumvent the provisions of the lease, and then seek damages for expenses incurred and the loss of benefits of the lease. If a complaint were initiated against the lessors for fraud, the memorandum noted, the District might find it difficult to prove intent to defraud.

In commenting on the April 1992 DHS memorandum in August 1994, the Deputy Corporation Counsel indicated that the District could notify the lessor of the alleged structural defects and request repair within a reasonable time. The Deputy Corporation Counsel further stated that, if the lessor did not repair the structural problems after such notice, the District could argue that this constituted a breach of the lease, and thereby

terminate the lease. Alternatively, he said the District could argue that the landlord's continued failure to correct structural problems resulted in the District's being constructively evicted from the building, and that this could be the basis for the District's refusing to pay additional rent. Neither the DHS Attorney-Advisor memorandum nor the Corporation Counsel memorandum indicated what the structural problems were.

The Corporation Counsel's memorandum also noted that, with regard to the assertions that the properties were deficient at the beginning of the lease, the issuance of the certificates of occupancy weigh against the District. We could not find any documentation in the contract files indicating that any legal proceedings were ever undertaken against the lessor.

A May 1995 memorandum from DAS to the owner presented two options regarding the property, namely, an early termination of the lease or contracting with the owner to complete necessary repairs to the property. There was no response to this solicitation in the contract files, and there were no more memorandums or letters addressing this issue in the files.

A District official told us that the Office of Property Management has negotiated an offer to buy the buildings outright from the owner.⁶ This offer is currently under review by the District's Chief Financial Officer (CFO). As part of its review, the CFO is to determine whether funds are available to buy the buildings. To acquire the buildings, the District would also need the approval of the City Council. Assuming the District gets the necessary approval to purchase the buildings, a District official estimated the purchase could be finalized by spring of 2000.

DC/OPM officials said they believed that it would be more advantageous to purchase the properties than to continue to pay the monthly rent to the landlord as well as renovation costs to bring the buildings back to their original condition. After purchase, there is a tentative plan to restore the buildings and use them for transitional housing for women and families.

Multiuse Facility Is Currently Fully Utilized

The multiuse facility is currently fully utilized, although half of the rented space initially remained vacant for several years. Payments have been made on a monthly basis to the owner of the building since August 1990. Initially, DHS requested the entire building, but changed its request to the

⁶As part of a District contract to provide general real estate services, such as negotiating leases and locating properties, a real estate management firm assisted the District in getting the respective parties together and negotiating the terms of the proposal presented to the owner.

first-floor space because of reduced program funding. However, DAS rented the entire building and said that DHS would have to pay for both floors of the building because, according to an October 1990 internal memorandum, DHS had verbally agreed to find another DHS tenant for the second floor. Modifications to the second floor started in the summer of 1993. The lessor provided an amount for the basic modification.⁷ In the spring of 1994, more than 3-½ years after the lease began, the 2nd floor modifications were completed, and the space was occupied by the District's Addiction, Prevention, and Recovery Administration (APRA). Since the modifications to the second floor cost more than the allowance, the additional cost was paid by APRA. The District has paid the rent for the entire building since the commencement of the lease.

When we visited the clinic in September 1999, the building had two full-time tenants:

- APRA, which is part of the Department of Health, and
 - the Woodridge Clinic, which is part of the Public Benefit Corporation.
- At that time, a job training program called A Real Chance, which is part of DHS, was in the process of moving out of the building, and the Family Services Administration Administrative Offices, also part of DHS, had not yet moved in. The latter group moved into the building in December 1999. We visited the building again in February 2000 and verified that the building was fully utilized.

The building contains a total of 59,942 square feet. The breakdown of space is as follows: 14,506 square feet are assigned to Family Services Administration Administrative Offices, 37,309 square feet are assigned to APRA, and 8,127 square feet are assigned to the Woodridge Clinic. The space in the building includes a number of meeting rooms that a District official said are used by the tenant agencies to support their programs. He informed us that even though the meeting rooms are not constantly in use and may not be utilized to full capacity when they are used, they nevertheless are an integral part of the drug treatment program. He said he considered the building to be fully utilized.

Through fiscal year 1999, the District had paid a total of \$11.9 million for the space. We estimate that over the remainder of the 20-year term of this lease, which expires in July 2010, the District would pay, in current dollars, approximately \$13 million more in rent.

⁷There was a lessor's allowance for the modifications to the second floor. It was the same amount as the allowance for the first floor.

Actions Taken or Planned to Address Property Management Weaknesses

The District and Congress have implemented plans to help the District improve its property management. The Council of the District of Columbia has passed legislation that would require the District to take additional steps that should further strengthen its management of real property assets.

The District's Efforts to Improve Real Property Management

The District has taken some steps, and plans to take additional steps, to help it more effectively manage and monitor its real property holdings through the addressing of operational problems.

The District established the DC/OPM in October 1998 to provide more centralized control over its real property holdings. DC/OPM serves as the District's facility manager and also handles its real property acquisition. DC/OPM is in the process of acquiring new information systems that are intended to provide it with the management support tools needed to establish visibility and gain control over the District's owned and leased real property inventory. DC/OPM has also hired a contractor to do a due diligence review of all active leases, to ensure that only correct information is loaded into the new lease management system. Further, DC/OPM is acquiring the ability to do property utilization studies internally and plans to contract for condition assessments and utilization studies of District facilities.

Congress' Efforts to Improve the District's Real Property Management

In addition, the fiscal year 2000 District of Columbia Appropriations Act required the District to take several actions, including submitting a comprehensive plan for the management of the District's real property assets as well as quarterly reports with details about all its real estate leases.⁸

This act requires that, beginning 60 days after its enactment, the District cannot use funds appropriated under the act to enter into a lease for real property, purchase real property, or manage real property unless the following conditions are met:

- the Mayor and the D.C. Council certify that existing real property is not suitable for the purposes intended;
- surplus property is made available for sale or lease as determined by the Mayor, unless members of the Council override the Mayor's determination;
- the Mayor and D.C. Council implement a program to do a periodic survey of all District property to determine whether it is surplus to the District's needs; and

⁸ P.L. 106-113, 113 STAT. 1524-1526 (Nov. 29, 1999).

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- the Mayor and D.C. Council, within 60 days of the enactment date of the act, submit a comprehensive plan for the management of District real property assets and begin implementing the plan.

According to a DC/OPM official, the District submitted the required comprehensive plan to Congress on January 31, 2000.

Further, this act provides that, if the District enacts legislation to reform the practices and procedures with regard to entering into real property leases and the disposition of surplus real property, the legislation enacted by the District will supersede the requirement noted immediately above.

In addition, the act requires the District to prepare a quarterly report, covering all property leased by the District, that includes

- the location of the property;
- the names of the owners of record;
- the names of the lessors;
- the rate of payment and period of time covered by the lease;
- the extent to which the property is or is not occupied by the District as of the end of the reporting period; and
- if the property is not occupied by the District as of the end of the reporting period, the plan for occupying and utilizing the property, or efforts by the District to terminate or renegotiate the lease.

According to a DC/OPM official, the District delivered the initial report on January 31, 2000.

Council of the District of Columbia's Proposal to Improve Real Property Management

The Council of the District of Columbia has proposed legislation to reform, consolidate, and amend District laws related to the procurement, leasing, management, and disposition of real property assets owned or leased by the District and to repeal certain redundant or unnecessary laws relating to real property.

Among other things, the legislation proposes the following:

- The Chief Management Officer shall be the exclusive authority for all procurement, leasing, and disposition of real property assets, as well as exercising contracting and management authority with regard to real property assets.

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- Within 18 months after the effective date of the legislation, the Director, DC/OPM, shall submit to the Mayor a detailed inventory of owned or leased real property assets. The inventory shall be maintained in a centralized automated database.
 - After submission of the initial inventory, the Director, DC/OPM, shall submit to the Mayor, no later than 90 days prior to the expiration of each fiscal year, an annual update of the inventory.
 - The Mayor shall submit to the Council, for information purposes, a copy of the initial inventory and each annual update.
 - Within 18 months after the effective date of the legislation, all real property assets owned or leased by the District shall be classified or reclassified, as appropriate, within one of the following categories: (1) fully utilized, (2) underutilized, or (3) surplus.
 - Within 18 months after the effective date of the legislation, and at least every 3 years thereafter, each real property asset shall be audited to verify the inventory of real property assets and determine the appropriate classification of each asset.

An emergency and permanent version of the Omnibus Government Real Property Asset Management Reform Act of 2000 was passed by the Council on April 5, 2000, and as of April 5, was awaiting approval by the Mayor and the Authority.

Agency Comments and Our Evaluation

On March 28, 2000, we received written comments from the Executive Director of the Authority (see app. I). The Authority raised some specific issues about the lease of the two buildings for homeless shelters and general issues about the overall leasing practices.

Concerning the homeless shelter lease, the authority said that, because of the District's incomplete and unclear records, the report does not contain sufficient information to properly analyze the District's initial decisionmaking process. We agree the District's files did not contain sufficient records to fully recreate the initial decisionmaking process, but we were able to answer the more limited objectives of this report.

The Authority also raised several questions about the District's current plans to purchase the two homeless shelters that were not answered by the report. The questions included what options were considered, why the District chose to purchase the property and what the terms of the negotiation are, how the fair market value of the property would be arrived at, and how the property will be used after it is purchased. Further, the Authority concluded that because the District had not ascertained the cost

of repairs to the property, it could not have evaluated the variables of the available options. We believe that the Authority raises important questions concerning the current procurement activity, but we could not address them for this report because they involve an ongoing procurement. However, based on new information recently provide by the District, we included the District's estimate of the renovation costs of the two buildings and the District's tentative plan for restoration and use of the buildings.

Concerning the District's overall leasing practices, the Authority concluded that the District needs to continually monitor its owned and leased properties and utilization of space, and that DC/OPM needs to be given the tools needed to thoroughly analyze property before it is leased, purchased, or sold. The Authority said that it is clear from the report that the District (1) needs to improve its recordkeeping for leases, (2) should complete substantial due diligence before entering property obligations, (3) must ascertain and provide for the long-term budgetary impact of leases, and (4) should arrange to occupy the entire leased space before it signs the lease. Although our work on the two leases does not provide a sufficient basis for drawing such overall conclusions from the District's current leasing practices, we agree in principle with these observations and note that Congress, the Council of District of Columbia, and DC/OPM have all taken recent actions to improve the District's real property management.

On April 6, 2000, we received written comments from the Chairman of the Council of the District of Columbia (see app. II). The Chairman did not express an opinion on the report, but did advise us that the Council had taken action on the Omnibus Government Real Property Asset Management Reform Act of 2000, which will take effect upon approval by the Mayor and the Authority. This information has been included in the report. The Chairman also provided comments from the Chair of the Council's Government Operations Committee that provided information on a Committee investigation of the lease for the multiuse property. This information has been incorporated into the report where appropriate.

On April 6, 2000, DC/OPM's Deputy Director for Portfolio Management, responding for the Mayor, provided oral comments on the draft report. He told us that District basically agreed with the contents of the report, but had no knowledge of the accuracy of the information concerning DHS. He also provided some additional information that has been included in the report where appropriate.

We are sending copies of this report to Senator Kay Bailey Hutchison, Senator Richard J. Durbin, and Senator George V. Voinovich and to

Representative Tom Davis, Representative Eleanor Holmes Norton, and Representative James P. Moran in their capacities as Chair or Ranking Minority Member of Senate and House Subcommittees with jurisdiction over District of Columbia matters. We are also sending copies to the Honorable Anthony A. Williams, Mayor, District of Columbia; Ms. Alice Rivlin, Chair, District of Columbia Financial Responsibility and Management Assistance Authority; Mr. Charles C. Maddox, Esq., Inspector General, District of Columbia; and other interested parties. Copies will also be made available to others upon request.

If you have any questions about this report, please call me or Ron King on (202) 512-8387. Key contributors to this assignment were Tom Keightley and Michael Yacura.

Sincerely yours,

A handwritten signature in black ink, reading "JayEtta Hecker". The signature is fluid and cursive, with the first name "JayEtta" and the last name "Hecker" clearly distinguishable.

JayEtta Hecker
Associate Director, Government
Business Operations Issues

Comments From the D.C. Financial Management and Assistance Authority

District of Columbia Financial Responsibility
and Management Assistance Authority
Washington, D.C.

March 28, 2000

Ms. JayEtta Hecker
Associate Director
Government Business Operations Issues
United States General Accounting Office
Washington, D.C. 20548

Re: United States General Accounting Office Draft Report to the
Chairman, Subcommittee on the District of Columbia, Committee on
Appropriations, House of Representatives DISTRICT OF COLUMBIA
Management Issue Concerning Two District Leases, March 2000 (the
"Report")

Dear Ms. Hecker:

By letter of March 14, 2000 to Alice M. Rivlin, you requested comments from the District of Columbia Financial Responsibility and Management Assistance Authority (the "Authority") regarding the Draft Report. The Authority is pleased to have the opportunity to do so.

The Authority's comments focus on the following: (1) specific issues raised by the Report's discussion of the lease of two buildings for a homeless shelter (the "homeless shelter"),¹ and (2) general issues raised by the Report. The Authority has not reviewed the leases or any of the supporting materials, so the Authority's comments are based solely upon the contents of the Report.

Specific issues raised by the homeless shelter lease

It appears that a 20-year lease was signed for the homeless shelter in order to satisfy a need for temporary shelters for homeless families. Yet, because the District of Columbia's (the "District") records are incomplete, it is unclear whether studies were conducted to determine if a long-term lease was appropriate and cost-effective. Thus, the Report does not contain sufficient information to properly analyze the District's initial decision-making process.

Despite this lack of information, it is fair to assume that when the District agreed to assume all non-structural maintenance obligations at the homeless shelter, the District

¹ The other lease discussed in the Report, the lease of the multiuse facility, seems to present no issues not otherwise addressed by the homeless shelter lease, except for the underutilization of the space, which issue should be resolved by the District's procedures established in the Fiscal Year 2000 District of Columbia Appropriations Act and by proposed District Council legislation (Bill No. 13-408).

Appendix I
Comments From the D.C. Financial Management and Assistance Authority

did not make concurrent provision to provide and pay for the maintenance obligations.² This is a fair assumption because by January 1992, only six years into the twenty-year lease, the property had deteriorated to the point that it was unfit for habitation³.

It is clear that the homeless shelter was in a serious state of disrepair by 1992. Because the Report contains no reference to any maintenance on the property since the District vacated it in 1992, it is fair to assume that the property's condition has continued to decline. However, because the District must return the property to the landlord in its substantially original condition, it appears that the District will have to spend a considerable sum to rehabilitate the property. Thus, the District is considering buying the property, but the Report contains no information regarding the District's offer. This is important because the District has an option to purchase the property at 96% of the fair market value, but the Report does not state whether the fair market value is in its present condition or in the condition that the District was obligated to maintain the building. If the District is able to purchase the property at its true fair market value (in its deteriorated state) then the cost of making the repairs to the property should bring the District to a situation where it has a usable building for which it has paid true value or the District can sell the property for what it paid for the property. However, if the District pays the "repaired" market value, then the District is faced with the decision of whether to demolish the buildings and take a loss if the purchase price and demolition costs are greater than the remaining rent payments and the residual value of the lot, keep and repair the property (or repair and sell the property) and pay twice for the repairs, or sell the property at its unrepaired fair market value and take a loss. The Report does not contain any discussion of what options were considered by the District, why it chose to negotiate to purchase the property and what are the terms of the negotiations.⁴ Without that information, it is impossible to evaluate the wisdom of the District's proposed solution.

What the Report brings to light, however, is the fact that the District may have not yet cured its possible initial failure to analyze the long-term impact of its actions at the homeless shelter. The Report states that the District has not ascertained the cost of repairs to the property. Thus, the District cannot evaluate the variables of purchasing and renovating, purchasing and selling, purchasing and tearing down, repairing and reoccupying, or repairing and offering to buy out the lease for less than the remaining rental obligation.

² The Authority does not agree with the Report's categorization of the District's repair obligations as a risk "normally taken by the landlord." In long-term, whole-building leases, it is quite common that the tenants assume all property maintenance except for maintenance and repair of structural deficiencies and latent defects.

³ This assumption is reinforced by the fact that the landlord carried out a number of initial repairs to the property, although the landlord claimed that the repairs were the District's responsibility.

⁴ The only alternative solutions raised by the District and discussed in the Report are several 1992 legal memoranda, but there is no indication whether or not there was any consideration thereof. There is a single reference to a 1995 memorandum to the landlord.

Finally, there is no indication in the Report that the District has done anything more than seek to buy the property as a short-term response to its problem of having to pay rent for vacant property in addition to amassing an escalating repair bill. The Report does not discuss what the District plans to do with the property once purchased. Is there a need for property vacant since 1992? Does the District Department of Human Services want the renovated property in light of the repeal of the law which precipitated the lease in the first place? Who is responsible for and who pays for the renovation? Who is responsible and who pays for ongoing maintenance? Have these costs been estimated and placed into future budget considerations? Is the solution to the short-term problem going to cause even greater long-term headaches? The only information in the Report mentions the fact that the District is trying to determine if funds are available to buy the property. Because these issues are not discussed in the Report, it is difficult to ascertain whether or not the District has corrected what appears to be its original problem of not reviewing the long-term ramifications of its lease for the property.

General issues raised in the Report

It is unclear whether the two leases discussed in the Report are illustrative of other District leases or are worst case scenarios. Thus, it is difficult to draw broad conclusions from the Report.

However, the Report makes it clear that there is a need to improve the District's record-keeping with regard to initial analysis, approval and ongoing history of leases.

The Report also makes it clear that the District needs to do substantial due diligence before it acts with regard to buying or leasing property. For example, before leasing property which requires District maintenance during the term of the lease, District procedures should require an inspection to ascertain the condition of the property and the possible ongoing repair costs. This is particularly true if there is an obligation for structural repairs. Armed with such knowledge, the District can do a much better job of negotiating a fair arrangement.

Furthermore, the Report makes it clear that the District must ascertain and provide for the long-term budgetary impact of both the rent and associated costs of any lease, and, with respect to the lease of the multiuse facility, the Report makes it clear that the District should arrange to occupy the entire leased space before it signs the lease.

Finally, the Report illustrates the need for the District to monitor its leased properties to insure that the landlords and the District are complying with the leases.

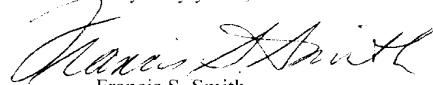
The District is attempting to improve its property acquisition, sale and leasing program, and the Authority supports efforts to impose discipline by allocating these tasks to a single agency staffed with professionals. The Authority also approves of the use of commercial real estate agents to assist the District in finding properties to lease and assisting in negotiating the terms of leases (the costs of these agents are almost always paid by the landlord). Under certain circumstances, when the District seeks to lease its

Appendix I
Comments From the D.C. Financial Management and Assistance Authority

space to third parties, it may be advisable to use such agents to represent the District. Use of real estate agents when the District needs to buy property may be advisable to better ascertain what is available and how to obtain the best price in the current market (the seller pays the commission).

The Authority agrees that the District needs to continually monitor what District leases and owns, what space the District needs, what space is surplus, what are the all-in costs of such space and what is the best over-all utilization of such space. Most of those needs should be met by the District's current and proposed legislation. However, the District's Office of Property Management also needs to be given the tools to fully and thoroughly analyze property proposed to be leased, purchased or sold before negotiations are completed. Finally, the District's due diligence should ascertain the long-term costs of the District's obligation and whether or not the District expects to have the long-term ability to carry through on these costs.

Very truly yours,



Francis S. Smith
Executive Director

Comments From the D.C. Council



LINDA W. CROPP
Chairman

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D. C. 20001

April 6, 2000

JayEtta Hecker, Associate Director
Government Business Operations Issues
United States General Accounting Office
Washington, D.C. 20548

By Facsimile: 202-572-3796
(Attn: Mike Yacura)

Dear JayEtta Hecker:

Thank you for the opportunity to review and comment upon the draft report entitled D.C. Government: Management Issues Concerning Two District Leases, dated March 2000. Attached are comments provided by Councilmember Kathy Patterson, who chairs the Council's Government Operations Committee which has local legislative oversight of this matter.

Also, for your information, the Council yesterday took emergency and final permanent action to adopt the Omnibus Government Real Property Asset Management Reform Act of 2000, the emergency version of which will take effect upon approval by the Mayor and the District of Columbia Financial Responsibility and Management Assistance Authority.

Your interest in this matter is appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda W. Cropp".
Linda W. Cropp
Chairman

Attachment

cc: Councilmember Patterson

COUNCIL OF THE DISTRICT OF COLUMBIA
One Judiciary Square
441 4th Street, N.W.
Washington, D.C. 20001

Memorandum

To: Chairman Linda W. Cropp

Fm: Councilmember Kathy Patterson 

Re: Draft GAO Report on Government Leases

Date: March 28, 2000

I write to comment on the draft General Accounting Office report on District of Columbia government leases, and specifically on the references to the government lease of property on 24th Place N.E., though the address is not specified in the draft report. Apparently the GAO was not aware of the investigative hearing held on this particular lease by the Committee on Government Operations on March 7, 1997. I have attached background information on that investigation and on the hearing, and hope you will forward this to the GAO. The materials include a letter from me to Mayor Barry urging that this lease, for the reasons cited, be terminated by the District government.

The GAO staff has also been in touch with Government Operations Committee staff, and we have provided them with an update on the status of the Omnibus Real Property Reform Amendment Act of 2000, Bill 13-408.

Thank you for the opportunity to comment on this matter.

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