Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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March 1, 2013

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SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Economic Development, Public Buildings, and Emergency Management

FROM: Staff, Subcommittee on Economic Development, Public Buildings, and Emergency Management

RE: Subcommittee Hearing on "FBI Headquarters Consolidation"

PURPOSE

The Subcommittee on Economic Development, Public Buildings, and Emergency Management will meet on Wednesday, March 6, 2013, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony related to the proposal for a consolidated headquarters for the Federal Bureau of Investigation (FBI) in the National Capital Region. At this hearing, the Subcommittee will review the need for a new FBI headquarters, consider the best solution to meet the needs of the FBI and protect the taxpayer, options for financing this major project, and how and whether the existing FBI headquarters building can and should be leveraged. The hearing is intended to inform the Committee as the Committee considers whether to authorize the General Services Administration (GSA) to proceed with the project. The Subcommittee will hear from Members of Congress representing states and districts in the National Capital Region, GSA, and the FBI.

BACKGROUND

General Services Administration

The Subcommittee has jurisdiction over all of GSA's real property activity through the Property Act of 1949, the Public Buildings Act of 1959, and the Cooperative Use Act of 1976. These three Acts are now codified as title 40 of the United States Code. The Public Buildings Service (PBS) is responsible for the construction, repair, maintenance, alteration, and operation of United States courthouses and public buildings of the Federal government. Additionally, PBS leases privately owned space for Federal use. GSA owns or leases 9,600 assets and maintains an inventory of more than 362 million square feet of workspace. GSA acts as the "landlord" for the Federal government, obtaining and managing space to meet the space needs of other Federal agencies.

Federal Bureau of Investigation Headquarters

The FBI headquarters building, named the J. Edgar Hoover Building ("Hoover Building"), is located on Pennsylvania Avenue in Northwest Washington, D.C. and occupies over a full city block of prime real estate located in the Nation's Capital between the U.S. Capitol and the White House. The building was first occupied in 1974. Since that time, security requirements have changed significantly, and the FBI has outgrown the building. Currently, elements of the FBI headquarter functions in the National Capital Region occupy more than 3 million square feet of space, costing $168 million annually, dispersed over 21 separate locations, and the Hoover Building now only houses 52 percent of the headquarters staff.

Over the last decade, various studies have been conducted related to consolidating the FBI headquarters. In 2004, FBI Director Mueller requested that GSA recommend a strategy for consolidating the FBI headquarters. In 2005 and 2006, GSA commissioned studies on a housing strategy and a site analysis on repositioning the Hoover Building. In 2010, the FBI commissioned an initial project report for the FBI consolidation. In 2011, the Urban Land Institute also conducted a focused study on an FBI headquarters consolidation. Also, in 2011, the Government Accountability Office (GAO) completed a study related to security recommendations pertaining to the Hoover Building.

Senate Action

In July of 2011, the Senate Committee on Environment and Public Works (Senate EPW) passed a committee resolution directing GSA to investigate the feasibility and need to construct or acquire a replacement consolidated headquarters facility for the FBI. In August of 2011, the FBI submitted to Senate EPW and House Committee on Transportation and Infrastructure the results of its commissioned report. In October 2011, the GSA submitted its response to the Senate EPW request. In December 2011, the Senate EPW adopted a committee resolution to authorize GSA to enter into a lease transaction, on federally-owned land, for a consolidated FBI headquarters consistent with the survey completed by the FBI. The Senate resolution also required:

- GSA ensure the lease transaction resulted in ownership;
- To the maximum extent practicable, the new headquarters to be located within 2 miles from a Metro rail station **and** 2.5 miles from the Capital Beltway (I- 495);
- The site not exceed 55 acres and provide for Level V security;
- The building not exceed 2.1 million square feet with an office utilization of not more than 109 square feet per person and an overall utilization of 174 square feet per person.

On January 9, 2013, GSA issued a Request for Information (RFI) to obtain responses from the development community, local and state jurisdictions, and other interested parties on the potential of a consolidated FBI headquarters in the National Capital Region. The deadline for submissions is March 4, 2013. The new FBI headquarters would reduce the current FBI footprint by roughly 1 million square feet and allow for the consolidation of their 21 locations across the region.

FBI and GSA Responses to Senate EPW Resolution

Both the FBI and GSA submitted responses to the Senate EPW's original request to investigate the feasibility of a consolidated FBI headquarters. Both studies concluded that the current Hoover Building no longer meets the requirements of the FBI due to growth, security, and information technology requirements. However, the studies came to two different conclusions as to the most cost effective option for a new consolidated headquarters. The GSA response recommended Federal construction. The FBI response recommended a lease transaction.

Both the FBI and GSA looked at various options for financing a new headquarters. Specifically, these options are:

- Federal Construction – using Federal funds to construct the facility on Federal land.
- Lease Construction – entering into an agreement with a private developer to build the facility and lease to the Federal government.
- Ground lease/lease back – leasing federally-owned land to a private entity, which would then construct the facility and lease the building back to the Federal government.
- Acquisition by Exchange – leveraging the value of the Hoover Building by exchanging it for a new facility.

Below is a comparison chart of the cost analyses[1] completed by GSA and the FBI for each:

Transaction Type	**GSA**	**FBI**
Federal Construction	$1.862 billion	$2.985 billion
Lease Construction	$2.5 billion	$2.405 billion
Ground Lease/Lease Back	$2.1 billion	$1.957 billion
Acquisition by Exchange	$1.933 billion	N/A

Another factor discussed in both studies is the cost of the land. If the Federal government had to acquire unimproved land for a new headquarters, such an acquisition would impact the costs.

The Senate EPW resolution authorizing a new consolidated headquarters identified the FBI's preferred solution of a lease transaction, most likely a ground lease/lease back arrangement. The GSA RFI seeking information on possible arrangements and solutions for a new FBI consolidated headquarters also indicated GSA would consider the exchange of the Hoover Building as part of a potential transaction.

[1] Cost analyses calculated at the 30-year net present values.

Legal Authorities

GSA has broad authorities to enter into certain transactions. GSA has various authorities, largely contained in title 40 of the United States Code, to construct, acquire, lease, and exchange properties, subject to authorization through committee resolution by the Senate EPW and the House Committee on Transportation and Infrastructure. In addition, Congress provided GSA with additional authorities, specifically intended to encourage public-private partnerships. For example, section 412 of the fiscal year 2005 Consolidated Appropriations Act (commonly referred to as "412 authority"), allows GSA to retain net proceeds from dispositions of its real property through sale, lease, exchange, or otherwise, including leaseback arrangements. In addition, GSA also has authority under section 585 of title 40 of the United States Code to enter into 30 year ground leases with a private entity, such as a developer, and lease back the space as proposed by the FBI.

The authorities contained in sections 412 and 585 provide GSA with significant authority to sell or redevelop underutilized properties and enter into public private partnerships to offset costs associated with renovating or creating Federal space. Section 585 would likely be the primary authority used for the FBI transaction – issuing a ground lease of Federal land to a private entity which would build the facility and lease it back to the Federal government. In addition, GSA's exchange authority may be used if the Hoover Building is a part of the transaction.

Potential Issues

Given the size and complexity of the proposed project, there are a number of issues that could complicate the project and unnecessarily increase costs to the taxpayer. In addition, the Committee will need to decide, as it considers whether to authorize this project, what limitations and parameters should be included in a committee resolution to help mitigate against any potential issues. Potential issues include:

1. Cost to the Taxpayer/Hidden Costs – While a ground lease/lease back arrangement would lower upfront costs to the taxpayer since Federal construction would be avoided, the overall costs of the project will impact the taxpayer through:
    a. Factors impacting the rental rate of the new facility
        i. Determining a reasonable rental rate;
        ii. Avoiding unnecessary and expensive tenant improvement costs that would translate into a higher rental rate.
    b. Use of Federal, donated, or purchased land
        i. Purchasing property would add significant costs and may not be appropriate.
        ii. Should the transaction be bifurcated – one for the site selection and another for the construction facility to avoid hidden costs (e.g. a "donation" of land in which the costs are incurred through higher lease payments).

2. Valuation of the Hoover Building – If the Hoover Building is used in the transaction to offset costs of the new facility, ensuring the full value of the Hoover Building is realized becomes both more critical and more difficult.

3. Maximize Competition – The Senate EPW resolution requires, to the extent practicable, the new location be 2 miles from a Metro rail station and 2.5 miles from the Capital Beltway. If GSA were to follow this instruction, it could significantly limit competition of sites in all three potential jurisdictions (Virginia, D.C., and Maryland).

4. Management of Transaction – Given the size and complexity of this project, what mechanisms will GSA and the FBI put into place to ensure the project is carried out and managed appropriately.

5. Budgetary Scoring Concerns – The Office of Management and Budget (OMB) scoring guidelines for leases create considerable uncertainty about the scoring treatment of a public private development partnership for a new consolidated headquarters. If the OMB scores a lease as a capital lease, then the project would require up front the budget authority to cover the full costs of the development.

Possible Committee Action

GSA's Public Building Service activities are funded primarily through the Federal Building Fund, an intra-governmental fund into which agencies pay rent for the properties they occupy. Any excess funds generated by the rental system are used for building repairs and new construction. Each year, GSA submits to the Committee on Transportation and Infrastructure and Senate EPW its Capital Investment and Leasing Program (CILP) for the subsequent fiscal year. The CILP submission includes what are known as prospectuses for each project, detailing the project scope, need, and estimated costs. For FY 2013, a prospectus is required for any project in excess of $2.79 million.

As noted, while the FBI project was not included as a part of the annual CILP, resolutions by both committees will be required for GSA to proceed with the FBI project. Title 40 of the United States Code, requires the Committee on Transportation and Infrastructure and Senate EPW to pass resolutions authorizing projects for construction, repair, alteration, or leasing of space prior to an appropriation of funds. The annual appropriations bills also include limitations on GSA's funds to include only those "prospectus-level" projects that have been authorized by committee resolutions. As mentioned, Senate EPW has already passed a committee resolution authorizing GSA to proceed with the development of a new headquarters.

WITNESS LIST

The Honorable Benjamin L. Cardin (D-MD)
United States Senator

The Honorable Tim Kaine (D-VA)
United States Senator

The Honorable Steny Hoyer (D-MD)
Democratic Whip
Member of Congress

The Honorable Frank Wolf (R-VA)
Member of Congress

The Honorable Jim Moran (D-VA)
Member of Congress

The Honorable Gerald E. Connolly (D-VA)
Member of Congress

Dr. Dorothy Robyn
Commissioner
Public Buildings Service
U.S. General Services Administration

Mr. Kevin L. Perkins
Associate Deputy Director
Federal Bureau of Investigation