



Office of Audits Office of Inspector General U.S. General Services Administration

DATE: November 12, 2013

TO: Dorothy L. Robyn
Commissioner
Public Buildings Service (P)

FROM: Marisa A. Roinestad 
Program Director
Real Property Audit Office (JA-R)

SUBJECT: PBS Needs to Develop Policies and Procedures for Use of
Section 412 Authorities
Audit Memorandum Number A130132

This memorandum conveys our concerns regarding the Public Buildings Service's (PBS) lack of policies and procedures to manage real property exchanges for services granted under Section 412 of the General Services Administration General Provisions, Consolidated Appropriations Act, 2005 (Section 412). PBS has proposed exchanging property for services on multiple projects; however, it has yet to develop any policies or procedures to implement these exchanges and ensure they are in the best interest of the Government and the taxpayer.

Section 412 states:

Notwithstanding any other provision of law, the Administrator of General Services may convey, by sale, lease, exchange or otherwise, including through leaseback arrangements, real and related personal property, or interests therein, and retain the net proceeds of such dispositions in an account within the Federal Buildings Fund to be used for the General Services Administration's real property capital needs: *Provided*, That all net proceeds realized under this section shall only be expended as authorized in annual appropriations Acts: *Provided further*, That for the purposes of this section, the term "net proceeds" means the rental and other sums received less the costs of the disposition, and the term "real property capital needs" means any expenses necessary and incident to the agency's real property capital acquisitions, improvements, and dispositions.

PBS has proposed using the exchange authority on multiple properties, including the Federal Bureau of Investigation Headquarters in Washington, D.C.; the Spring Street Courthouse in Los Angeles, California; the David W. Dyer Federal Building and Courthouse in Miami, Florida; and the Metro West Federal facility in Baltimore, Maryland. However, the only policy or guidance that we are able to identify at this time, regarding the Section 412 authority, is the General Services Administration Delegations of Authority Manual (ADM P 5450.39D). The manual requires the approval of the Commissioner prior to any use or exercise of the Section 412 authority and makes real property exchanges subject to the approval of the Administrator.

The exchange of real property for services can be very complex, involving the valuation of both the real property and the services, which may not be defined up front. In some cases, a combination of services and/or real property may be exchanged for another combination of services and/or real property, further complicating the valuation effort. Additionally, comparing multiple bids with variable options adds to the complexity.

Given the complexity of these exchanges, PBS should implement policies and procedures to ensure goals and objectives are achieved and that the best value is obtained for the taxpayer.

Management Comments

In its comments, PBS stated that it has established policies and procedures for real property exchanges and cites the “Guidance for Real Property Exchanges of Non-Excess Property” (Guidance), dated April 8, 1997. Management stated that the Guidance is applicable to Section 412 transactions. PBS added that it is in the process of finalizing guidance specific to exchanges of property for services, which it expects to issue in early 2014. PBS’s response and the Guidance are included in their entirety in **Appendix A**.

Office of Inspector General Response

This audit memorandum is concerned with the lack of policies and procedures related to the Section 412 exchange of real property for services. The Guidance provided by PBS pre-dates the 2005 Section 412 authority, and is not specifically applicable to exchanges of real property for services. Rather, the Guidance is applicable to real property exchanges under the Public Buildings Act of 1959 and the Federal Property and Administrative Services Act of 1949. For example, the Guidance directs that appraisals be completed for all properties involved in the exchange; however, it does not address the pricing for services, which is generally done through the competitive procurement process. Given this, PBS needs to develop and implement policies and procedures for the exchange of real property for services to ensure that the exchanges are in the best interest of the Government and the taxpayer.

If you have any questions regarding this audit memorandum, please contact me at 202-273-7241 or Kyle Plum, Auditor-In-Charge, at 202-273-5004.

Appendix A – Management Comments



GSA Public Buildings Service

OCT 30 2013

MEMORANDUM FOR MARISA ROINESTAD
PROGRAM DIRECTOR
REAL PROPERTY AUDIT OFFICE (JA-R)

FROM:

DOROTHY ROBYN *Dorothy Robyn*
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

SUBJECT:

PBS Response to Audit Memorandum Number A130132
“PBS Needs to Develop Policies and Procedures for Use of Section 412
Authorities”

The Public Buildings Service (PBS) received the Office of Inspector General’s memorandum, dated September 30, 2013, conveying your office’s concerns regarding PBS’s authority to exchange real property for services under section 412 of the General Services Administration General Provisions, Consolidated Appropriations Act, 2005, Public Law 108-447 (Section 412). The memorandum raised questions about PBS’s policies to ensure such exchanges are in the best interest of the Government and the taxpayer. PBS appreciates the opportunity to provide this response.

Section 412 specifically authorizes GSA to conduct exchanges. Exchanges, while they may include some cash for value equalization, are primarily like-kind transactions and are primarily not cash transactions. Section 412 expanded the Administrator’s authority as to the nature and terms and conditions of these types of transactions, including the forms of consideration that could be accepted. To that end, the GSA Office of General Counsel has concluded that GSA may use Section 412 to exchange GSA real property for in-kind consideration, including the performance of construction services on other GSA property.

To date, PBS has yet to execute an exchange for services under its Section 412 authority. However, PBS has in place established policies and procedures for real property exchanges that it uses to: (1) create a baseline for exchange documentation; (2) identify properties that are suitable for exchange; and (3) make a preliminary determination of whether such an exchange is in the best interest of the Government and the taxpayer.

PBS’s longstanding policies and procedures for documenting exchanges are found in the “Guidance for Real Property Exchanges of Non-Excess Property,” dated April 8, 1997, a copy of

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002

www.gsa.gov

Appendix A – Management Comments (cont.)

- 2 -

which is attached for your reference. This guidance outlines the procedures and minimum documentation requirements for real property exchanges authorized under various provisions in title 40 of the United States Code, and it is applicable to Section 412 transactions, as well. In addition, PBS is in the process of finalizing guidance specific to exchanges of property for services under Section 412 that it expects to issue in early 2014.

In determining which assets are suitable for an exchange under Section 412, PBS follows its standard portfolio analysis process. An Asset Business Plan (ABP) is developed for each asset in PBS's portfolio and updated annually. The plans include a long-term strategy for each asset (usually a single building), incorporating characteristics of the asset, such as financial performance, physical condition, customer dynamics, and the local real estate market. The data included in each ABP, in addition to portfolio segmentation techniques such as asset tiering and the core asset analysis, allow PBS to identify which assets should be considered for a possible exchange transaction. For some properties so identified, GSA issues a Request for Information (RFI) to assess any interest in the property from the private sector, including whether an exchange for in-kind consideration might be a viable option.

As indicated in your memorandum, PBS recently issued RFIs to explore options for the Federal Bureau of Investigation's Headquarters Building in Washington, DC; the U.S. Courthouse on Spring Street in Los Angeles, CA; the David W. Dyer Federal Building and U.S. Courthouse in Miami, FL; and the Metro West facility in Baltimore, MD. The Office of Management and Budget approved these RFIs before PBS issued them. PBS is in the process of evaluating the RFI responses to determine if it is in the Government's best interest to pursue an exchange for any or all of these properties.

If you have any further questions or concerns, please contact Martha Benson, Assistant Commissioner of Real Property Asset Management, at (202) 208-7176.

Attachment

Appendix A – Management Comments (cont.)

APR 8 1997

MEMORANDUM FOR ASSISTANT REGIONAL ADMINISTRATORS FOR PUBLIC BUILDINGS SERVICE

FROM:  ROBERT A. PECK *1st Deputy Director*
COMMISSIONER (P)

Subject: Guidance for Real Property Exchanges of Non-Excess Property

This memorandum transmits guidance for exchanges of real property, as authorized under the Public Buildings Act of 1959 (40 U.S.C. 602, 604, 605) and Sub-section 210(a)(12) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490)(1949 Act). It does not cover exchanges for the disposal of surplus real property under Sub-section 203(c) of the 1949 Act (40 U.S.C. 484(c)).

The General Services Administration (GSA) has a long-standing agreement to notify the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs for all exchange actions. We also notify the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works for exchanges completed under the Public Buildings Act of 1959. Because exchanges for non-excess property require GSA to respond rapidly to available opportunities, we will establish a streamlined notification process to provide these congressional committees with the necessary information, without curtailing GSA's response to market opportunities.

However, while we are striving to make this process more efficient, it is essential to ensure that exchanges provide the best value to the Federal Government. Therefore, all proposed exchanges need a completed analysis with documented evidence supporting the business decision.

Attached are the procedures for completing these exchanges and minimum documentation requirements.

If you have any questions, please call  on 
extension .

Attachments

cc: Regional Administrators
Regional Portfolio Managers

Doc 1 - 81

Appendix A – Management Comments (cont.)

I. Procedures

1. Regional staff should notify National Office Portfolio Management as soon as potential exchanges are identified. This is because the National Office often receives general congressional inquiries regarding these actions.
2. Regional staff should establish a file containing each of the documents referenced in section III, plus any other documents that may be pertinent to the exchange.
3. Each of the documents should be prepared or assembled by the region before any exchange agreement is executed or any property is exchanged and before submitting a proposed exchange to the National Office for approval.
4. Summary information, including the Findings and Determinations, Fact Sheet and request for approval should be submitted by the Regional Portfolio Manager to Regional Counsel for review, then forwarded to the Regional Administrator for signature.
5. The Regional Administrator then transmits the package to the National Office Portfolio Manager for review, coordination with appropriate congressional committees, and forwarding through the Commissioner to the Administrator for final approval.
6. National Office Portfolio Management will be responsible for reviewing all summaries, coordinating with the Office of General Counsel, notifying the appropriate congressional committees, and obtaining the approval of the Administrator. Note: All exchanges must be approved by the Administrator before any binding commitments are made on behalf of GSA.

II. Regional Submission to the National Office

Request for Administrator's Approval: A memorandum from the Regional Administrator requesting the Administrator's approval to complete the exchange should include the information listed below:

- **Findings and Determinations.** This document contains references to the specific statutory exchange authority being used. It should be issued by the Regional Portfolio Manager, reviewed by Regional Counsel, and include the concurrence of the Regional Administrator. This document, depending on the authority used, should fully explain why the exchange is in the best interest of GSA and the Federal Government, or should readily demonstrate why it is the most advantageous to the United States, all factors considered. It should also contain a clear statement as to the purpose of the exchange. The Findings and Determinations should also contain a short summary of the items described below.
- **Issues.** Any pertinent issues should be addressed including, any known or potential environmental issues, use restrictions, local community or political interest or opposition, or the property's status as an historic property.

Appendix A – Management Comments (cont.)

- Prospectus. If applicable, a statement that the exchange is incident to completing a fully authorized, fully funded prospectus project. This statement should include the dates that prospectuses were authorized by congressional committee resolution.
- Entities. A description of the parties involved in the exchange.
- Property Description. A brief narrative description of the properties involved.
- Estimate of valuation. This should include the values of the property involved in the exchange and an explanation of the basis for valuation; for instance whether the valuation is based on fair market value, value in use, or some other basis.
- Cost estimates. This should be a complete list of all costs to the Federal Government to consummate the exchange.
- Benefits. A full description of benefits, both tangible and intangible, to each party in the exchange, including a description of any cost avoidance resulting from the exchange.

2. Fact Sheet [REDACTED] The National Office will forward this document with a cover memo to the appropriate congressional committees. Whenever possible, this fact sheet should be a one page summary of the information included in the Findings and Determinations. It should include all major items listed above, including the legal exchange authority being used.

3. For disposal acquisitions made under Sub-section 203(c) of the Federal Property and Administrative Services Act of 1949, Regions should follow guidance in the Federal Property Management Regulations and the Office of Real Property and Disposal's Excess and Surplus Real Property Advisory (PRM P 4000.1B).

III. Regional Documentation Requirements (to be made available to the National Office upon request)

1. Description of properties involved. A full legal description of all properties in the exchange agreement, as well as a brief narrative description of the properties and a short summary of their current and historical uses. This should also include the properties' street addresses and locations.

2. Assessment of valuation. A third party appraisal should be completed for all properties involved and, if possible, the same appraiser should be used for all properties in the exchange agreement. However, there may be instances where a staff appraisal will be sufficient. There may also be rare instances where an appraisal is unnecessary. Examples include where other valuations of market value are readily available and reliable, or where an appraisal was recently completed. The National Office must be notified, in advance, when and why a third party appraisal will not be used.

Appendix A – Management Comments (cont.)

3. Copy of the Proposed Exchange Agreement. A copy of the Exchange Agreement must include evidence of the authority for the signatories to sign for their respective organizations. All Exchange Agreements must also contain appropriate exculpatory language and notices that the exchange is conditioned upon the Administrator's approval and upon the fulfillment of all conditions precedent. Examples of the types of issues that might cause the Government to cancel a proposed exchange and, thus, might be addressed in the Exchange Agreement include:

- Environmental remediation;
- Material change in either properties' condition which might occur before the exchange is consummated;
- Change in the status of the properties as historic properties or districts;
- Federal statutory directives disapproving the exchange; or
- Changes in the properties' status as a result of local laws or requirements.

4. Cost and Benefit Analysis. This should be a complete list of all costs required to consummate the exchange including:

- Appraisals;
- Site cleanup;
- Legal fees or taxes assumed by the Government;
- Title insurance; and
- Environmental assessment, etc.

This analysis will also include a description of benefits, both tangible and intangible, to each party in the exchange. The analysis should demonstrate that the exchange is in the best interest of the Government or why it is the most advantageous to the United States; all factors considered. This document should be marked as proprietary and shall not be released prior to the exchange unless approved by the Regional Counsel.

5. Miscellaneous Documents. The Regional Exchange File shall also include evidence of compliance with all applicable laws and regulations. Examples include: environmental assessment/impact; historic preservation; title reports; relocation issues and a summary of any remedial actions required. The file should also include any other documents the Region believes to be appropriate, including statements or correspondence of congressional or local political interest or opposition, etc.

Appendix A – Management Comments (cont.)

-- DRAFT

The Honorable Daniel Burton
Chairman, Committee on Government
Reform and Oversight
House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

The General Services Administration plans to enter into a real property exchange agreement under authorities previously granted to the Administrator. Attached is a fact sheet outlining the general terms of the agreement, including the benefits of completing the exchange.

If you have any questions, or require additional information, please have a member of your staff contact [REDACTED] Assistant Commissioner for Portfolio Management, on [REDACTED]

Sincerely,

Robert A. Peck
Commissioner

Doc 1 - p. 6

Appendix B – Memorandum Distribution

Commissioner, PBS (P)

Deputy Commissioner, PBS (PD)

Assistant Commissioner, Real Property Asset Management (PT)

Director, Management and Oversight Division (H1C)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Investigations (JID)