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**REPORT TO THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES**

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**Lease With The Port Authority
Of New York And New Jersey
For The New York World Trade
Center Building**

B-178029

Bureau of Customs
Department of the Treasury

**BY THE COMPTROLLER GENERAL
OF THE UNITED STATES**

911635-089054

MARCH 12, 1973



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D C 20548

B-178029

The Honorable George H. Mahon, Chairman
Committee on Appropriations
House of Representatives

R Dear Mr. Chairman

In response to your request of January 30, 1973, we have reviewed the Government's arrangements with the Port Authority of New York and New Jersey for the leasing of a building in the World Trade Center in New York City for the Bureau of Customs. In discussions with your office, it was agreed that we would also review the Secretary of the Treasury's request for approval of a reprogramming of the Bureau's fiscal year 1973 appropriations to provide for certain additional facilities to be included in the leased building.

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The information contained in this report was obtained from the General Services Administration's (GSA) lease with the Port Authority and related correspondence and reports and from discussions with officials of GSA, the Bureau of Customs, and the Port Authority. Because of the reporting time constraints we were unable to verify all of the information.

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

Comptroller General
of the United States

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LEASE OF BUILDING FOR

BUREAU OF CUSTOMS

The General Services Administration (GSA) entered into a lease dated June 2, 1970, with the Port Authority of New York and New Jersey for a building to be constructed by the Port Authority in the World Trade Center in New York City for the Bureau of Customs

Customs' files show that in June 1964 it prepared plans for its space requirements under a proposed consolidation of its New York offices in a single building. The plans were forwarded to GSA which submitted them to the Port Authority in July 1964 and requested an estimate of the cost of leasing space constructed in accordance with the requirements outlined in the plans. On March 8, 1965, the Port Authority submitted an offer to GSA to construct a separate building to meet Customs' requirements and to lease it to the Government. After some negotiations the Port Authority submitted a revised offer on May 19, 1965, which was tentatively accepted by GSA pending approval of the prospectus by the Public Works Committees of Congress

C2 GSA submitted the prospectus to the committees on
C3 July 6, 1965, it was approved by the Senate Public Works Committee on July 12, 1965, and by the House Public Works Committee on September 9, 1965. Between September 1965 and July 6, 1965, when the lease was signed, prolonged negotiations were held on the specific terms of the lease and many of its terms were agreed to in 1968, 1969, and early 1970. The lease includes some changes not covered in the prospectus but the maximum annual rental specified therein remains unchanged.

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The building being constructed by the Port Authority for lease to the Government will consist of 9 floors--two will be below ground level--and will contain about 763,000 square feet of space with a minimum of 673,000 square feet to be assignable. GSA advised us that Federal agencies other than the Bureau of Customs will occupy one complete floor of the building or about 60,000 square feet of assignable space

The principal provisions of the lease concerning rental and other payments are summarized in app I

APPROPRIATIONS FOR
LEASE OF BUILDING FOR
BUREAU OF CUSTOMS

The Bureau of Customs requested, and Congress provided, appropriations for the Customs building in the World Trade Center as follows--\$1.4 million in fiscal year 1970 for laboratory equipment and furniture, \$2 75 million in fiscal year 1972 for rental of, and cost of moving into the building, and \$4 735 million in fiscal year 1973 for rental of, and cost of moving into the building Information on the use planned, or made, of these funds is presented in app II.

REPROGRAMING OF APPROPRIATION

The Secretary of the Treasury in a letter dated January 2, 1973, to the Chairman, Subcommittee on Treasury, Postal Service, and General Government, House Committee on Appropriations, requested approval of a reprograming of \$1 8 million of fiscal year 1973 appropriations to provide for financing the cost of including the following additional facilities in the building

Pistol range	\$ 350,000
Space and equipment (for training, lockers, corridor extensions, storage of narcotics and other seizures, etc.)	240,000
Computer room	415,000
Files depository	235,000
Design, engineering, and consultants fees	245,000
Contingencies	115,000
Fees for the Port Authority	<u>200,000</u>
Total	<u>\$1,800,000</u>

Following are comments on some of the items which may be of interest to the committee.

When will changes be made, if authorized?

The Secretary's letter of January 2, 1973, stated that it would be easier and less costly to incorporate the above items in the building before the design of the interior of the building is completed. We noted, however, that in November 1972 the Port Authority advised GSA which in turn advised Customs that the two major items--the pistol range and the computer room--will not be installed until after the building is constructed and occupied. A Port Authority official advised us that the installation of these items after the building has been completed would require the alteration or removal of certain features, such as the air conditioning equipment.

We were advised by a Customs official that the other items--space and equipment for training, lockers, corridor extensions, storage of narcotics and other seizures, etc., and the files depository equipment--could be installed by the time Customs occupies the building. A Customs official advised us further that the funds needed for the other items, such as design, engineering, and Port Authority fees, and for contingencies will depend on how many of the additional items are actually designed and constructed. The lease provides that the Government will have to pay for the architectural, engineering, and redesign costs incurred by the Port Authority because of the requested additional items regardless of whether or not they are actually included in the building (see app I).

Would the Port Authority be willing to provide the additional items and recover its costs through increased rentals rather than a lump sum payment as proposed by the Bureau?

This question was raised by one of the committee members at hearings on January 11, 1973, on the reprogramming request. The Port Authority estimates that the present maximum rental payments included in the lease and approved prospectus will not permit it to recover its entire construction costs. The Port Authority has therefore insisted that any construction changes be paid for in a lump sum unless the lease is appropriately amended.

Customs' files show, however, that in August 1972 a Port Authority official had proposed that the lease be amended to provide that it would make construction changes and to recover the costs through increased rental payments if the lease were changed to revise the maximum rentals. The Government is committed by a supplement to the lease to submitting a revised prospectus to the Public Works Committees which, if approved, would enable the Port Authority to recover its construction costs (see app I). It appears to us that the proposed construction changes could be accomplished without a lump sum payment if such changes were included in the revised prospectus and approved by the Public Works Committees.

Pistol range

We discussed the need for the pistol range with Customs and GSA officials in the New York area. These officials generally agreed that there is a need for additional Federal pistol range facilities in the New York area.

Customs officials said that the New York Customs Agency Service requested the pistol range and that the Regional Commissioner agreed that there was a need for a pistol range. Customs planning for the inclusion of a pistol range in the building was started in July 1971. The main reasons given for its inclusion were Customs' increased emphasis on enforcement and the inadequacy of the pistol ranges in the New York area. Customs officially informed GSA of its need for a pistol range in November 1971. The Port Authority advised us that it recently began preparing a proposed design for the pistol range but that complete cost estimates will not be prepared until the design is accepted by GSA.

Customs officials advised us that the New York region has 767 inspectors who are required to qualify on the pistol range at least twice a year, and that although not all of these inspectors are required to carry firearms regularly they are required to qualify so that they may be used on assignments requiring the use of firearms. In addition to the inspectors, about 125 agents and 20 air security officers in the New York region carry firearms and are required to qualify quarterly on the pistol range.

At present, Customs uses primarily the Federal pistol range at 90 Church Street. We visited this range where we were informed by Customs officials that the range had been constructed in 1937, is out of date based on current pistol range standards, is too small and cannot be expanded, is in need of refurbishing, and contains no classroom facilities.

Customs officials also said that the following facilities in the New York area are also utilized by Customs on an as available basis:

1. New York City Police Department outdoor range in City Island,
2. United States Coast Guard facilities,
3. Teaneck, New Jersey, Police Department facility,
4. United States Marshals' facility in the United States Courthouse, New York City.

Customs officials informed us, however, that those facilities are rarely available at suitable times to its personnel.

GSA officials informed us of other Federal pistol ranges in the New York area:

1. A range at 69th Street leased by the FBI (limited to use by FBI personnel),
2. The new Bureau of Narcotics and Dangerous Drugs range at 57th Street (this facility requires the use of wax bullets rather than live ammunition),
3. Several military installation ranges.

They also informed us that the FBI is planning to construct a new range at 26 Federal Plaza in 1975.

Although GSA and Customs officials are in agreement on the need for an additional Federal pistol range in the New York area they said that neither agency had made any detailed studies on the availability and utilization of existing pistol ranges in the area. Inasmuch as the Port Authority has advised Customs that the pistol range will not

be built until after Customs occupies the building, we believe that in the interim GSA should give further consideration to the need for a range based on a study to determine the ranges currently available in the New York area, those planned for construction, range usage, hours available, the distance of the ranges from the Federal agencies, and the training needs of the Federal agencies

GSA officials informed us that they had suggested to Customs that the proposed pistol range be constructed in its building at 201 Varick Street instead of in the building at the World Trade Center but that this suggestion had been rejected. Customs will vacate the building at 201 Varick Street when it moves into the building at the World Trade Center after which the Varick Street building will be occupied by other Federal agencies. We believe that GSA should consider the relative suitability and estimated cost of constructing a pistol range in the Varick Street building and in the World Trade Center building.

Computer room

Customs advised us that when the lease of the World Trade Center building was signed on June 2, 1970, it contemplated that electronic accounting machine (EAM) equipment would be used for its mail-entry control program and, that the building designs provided for a room to accommodate such equipment. In March 1971 Customs Headquarters advised its New York region to revise the building plans to accommodate automatic data processing (ADP) equipment that would be acquired to perform the mail-entry control functions.

The ADP equipment was acquired in September 1971 and by November 1971 had been installed in the old Customhouse. Customs' files show that in June 1972 it advised GSA of the need for the changes in the World Trade Center building to accommodate the ADP installation and submitted revised floor plans and specifications. In July 1972, GSA submitted the revised plans and specifications to the Port Authority and requested the Authority to design the ADP facility to meet the specifications and to submit estimates of the design and construction costs.

We were told by the Port Authority that it has prepared the design changes for the computer room but that it has not prepared the cost estimates. The use of ADP rather than EAM equipment will require more fire protection equipment and more stringent temperature and humidity controls. A Port Authority official told us that the changes in the building after it is completed will require the alteration and removal of some items such as air conditioning equipment. We did not determine whether the alteration or removal of these items, assuming that the change to accommodate the ADP equipment is approved, could have been avoided if the Port Authority had been requested in early 1971 rather than the middle of 1972 to make the required changes.

Customs told us that if, at the time it moves into the new building, the changes have not been made to accommodate the ADP equipment (the Port Authority has advised GSA that the changes will not be made until after the building is completed) the equipment will be left in its present location in the old Customhouse building. Customs said, however, that this would only be a temporary arrangement because the old building will be vacated by the Federal Government in about one year.

Fees for the Port Authority

The Secretary of the Treasury's letter requesting the reprogramming approval included an estimated \$200,000 for fees for the Port Authority.

Port Authority officials advised us that the Authority charges a standard overhead fee of 15 percent to cover its costs of administration and monitoring of the design and construction of changes in the building.

Customs officials informed us that the estimated fee of \$200,000 was based on 15 percent of the estimated costs of the additional facilities less amounts included for contingencies. GSA officials told us that the Port Authority would be allowed only 15 percent of the actual costs of constructing the additional facilities.

Under the terms of the lease, GSA may provide the additional facilities if it does not accept the Port Authority's cost estimates. The Government, however, would

have to pay for all costs incurred by the Port Authority in connection with the changes GSA officials said that GSA most likely would not undertake the construction of any of the additional facilities

ESTIMATED RENTAL COSTS AND OTHER COSTS
FOR FISCAL YEAR 1974

Customs' fiscal year 1974 appropriation request included \$4,735,000 for rental of the building in the World Trade Center, the same amount as requested in fiscal year 1973. Customs said that the latest estimate for beginning its move into the new building is June 1973 which means that a full year's rental will probably be required for fiscal year 1974.

Customs' estimate of its rental requirements shows that the annual rental and maintenance costs totaled \$5,750,730. Customs told us that this amount had been reduced to \$4,735,000 on the assumption that of the annual rental costs, \$1,015,730 would apply to space to be occupied by other Federal agencies. This reduction seems to be excessive and could result in an understatement of Customs' rental costs because it is expected that these agencies will occupy only about 60,000 of the assignable square feet of space in the building. GSA told us that it had advised Customs that none of the other Federal agencies had budgeted funds for rental payments and that Customs should request funds for the rental of the entire building.

We also noted that the total estimated costs of \$5,750,730 was overstated by about \$742,700 because of the inclusion of duplicate items for amortization of land costs, payments in lieu of taxes, and the Port Authority's costs for operating and maintaining common use equipment and areas. The under- and over-estimated costs, however, just about offset each other.

As shown in appendix I, the maximum annual rental during the first 20 years under the terms of the lease is \$3,149,600. Our review indicated that the maximum rental payment will be required. GSA has estimated that in addition to the annual rental, Customs will be billed about \$2 million annually for maintenance and electricity. Total annual costs will therefore amount to about \$5,149,600. Assuming that other Federal agencies occupy and pay for the expected 60,000 square feet of assignable space (9 percent of total assignable space of 673,000 square feet), Customs annual cost would be about \$4.7 million or just about equal to the \$4,735,000 provided for in the budget request.

It should be noted, however, that supplement No 1 to the lease commits the Government to present a revised prospectus to the Public Works Committees after the building is completed and, if the prospectus is approved, to amend the lease to permit the Port Authority to recover its costs. There is ample evidence that these costs will substantially exceed the estimated costs of \$32,058,800 on which the annual rental payments were based. The estimated cost of \$32,058,800 was developed in 1965 and included a 3-year escalation factor amounting to 10 5 percent and a 10 percent contingency factor. A Port Authority official advised us that it is now expected that the cost of constructing the building, exclusive of changes for which it expects to receive lump sum payments, will be between \$50 and \$55 million.

The approved prospectus indicates that an annual rental of 7 52 percent of construction costs was necessary to provide for the Port Authority to recover the estimated cost of the building over a 20-year period based on an interest rate of 4 25 percent. The estimated costs included architectural and engineering services and administrative costs of 6 percent and 5 percent, respectively, of payments made to contractors and of other specified items and interest at 4 25 percent during a construction period of 18 months.

The lease provides, in addition to other items such as a payment in lieu of taxes and the amortization of land costs, for an annual rental of 8 879334 percent of actual construction costs. We were advised by a Port Authority official that this rate was used instead of the 7 52 rate in the prospectus, to enable the Port Authority to recover its architectural, engineering, and administrative costs and interest during construction. These items were omitted from the definition of construction costs included in the lease. The inclusion of this higher percentage factor will have no effect on the amount of the annual rental because of the maximum dollar limitation thereon.

Although Customs has obligated prior year funds for changes which are to be covered by lump sum payments (see p 12), final billings have not been received for some of these items which when billed may require payments in excess of the amounts obligated. Also Customs has not been billed

for costs of about \$1 million for changes to the laboratory and has not obligated any funds to cover these costs (See p. 13)

REPROGRAMING OF FUNDS FOR WHICH THE APPROVAL OF
THE APPROPRIATION COMMITTEES WAS NOT REQUESTED

As shown in app II, Customs first appropriation which included funds for the move into, and rental of, the World Trade Center building, was for fiscal year 1972. During fiscal year 1973 budget hearings, Customs officials advised the appropriation committees that of the funds appropriated for those purposes, it had reprogramed about \$2 million for narcotics enforcement. Customs officials agreed that the prior approval of this reprograming by the committees should have been obtained.

As shown below, we noted several other instances where committee approval had not been requested for reprograming of (1) appropriated funds for rental of the World Trade Center building but which have been used or obligated for construction changes to the building, and (2) funds not identified in the budget justification as being for rental or any other purpose related to the World Trade Center building but which had been used or obligated for construction changes in the building.

<u>Construction change</u>	<u>Date authorized</u>	<u>Amount obligated or paid</u>	<u>Appropriation used</u>
Freight elevators and auxiliary toilet facilities	6-24 70	\$280,000 00	Funds appropriated for other purposes in the "Salaries and Expenses" appropriation for fiscal year 1970
Designs for mechanization of the examination area	5-21-71	27,066 00	Funds were reprogramed from funds appropriated for other purposes in the "Salaries and Expenses" appropriation for fiscal year 1971
Design, layout, and color coordination in certain areas	9 20-71	86,192 50	Fiscal year 1972 funds appropriated for rental payments for the World Trade Center building
Design work	4 27-72	5,406 00	"
Cafeteria and lounge furniture and furnishings	April or May 1972	139,000 00	"
Treasury exhibit area	6- 9-72	327,000 00	"
Counters	6-15-72	15,500 00	"
Glass Divider	6-16-72	4,140 00	"
Vault	6-28-72	<u>9,876 00</u>	"
Total		<u>\$894,180 50</u>	

We also noted that in November 1970 GSA advised the Port Authority that Customs wanted some changes made in the laboratory to be included in the building. A Port Authority official advised us that the Authority had constructed the laboratory in accordance with these revised requirements, and that the costs amounted to about \$1 million. Customs has not obligated any funds to cover these costs.

LEASE PROVISIONS RELATING TO RENTAL
AND OTHER PAYMENTS

The lease signed on June 2, 1970, provides for Government occupancy of the building at the World Trade Center for 20 years with an option to renew it for one or more of 16, 5-year periods. The lease provides for maximum rental payments during each of the first 20 years totaling \$3,149,600 consisting of

- (1) \$124,700 As an annual payment in lieu of taxes
- (2) \$440,400 As an annual land rental intended to allow the Port Authority to recover the cost of the land. If the Government does not renew the lease for any of the first four renewal periods it is entitled to a partial refund of these land rental payments.
- (3) \$2,410,800 Based on 7.52 percent of estimated construction costs of \$32,058,800 (The lease provides for an amortization percentage of 8.879334 instead of 7.52 percent, see p. 10.) Included in construction costs is 8.1 percent of the cost of certain facilities and equipment which will serve the Government in common with other tenants of the World Trade Center complex.
- (4) \$13,200 Estimated annual insurance premiums for fire and extended coverage.
- (5) \$160,500 Based on 9.315 percent of the Port Authority's estimated cost of operating, maintaining, or replacing the facilities and equipment which are to be shared in common with other tenants in the complex.

In addition to the annual rental the Government is required to pay 115 percent of the Port Authority's costs for electricity used to furnish light, power, and chilled

water for air-conditioning. The Authority has the option, if permitted by law, of submetering the Government's use and charging for the electricity on the basis of what the Government would have to pay if it was purchased from the public utility. The Government is required to clean and maintain the interior and exterior of the building. GSA estimates that the electricity and maintenance costs will be about \$2 million a year.

The lease provides that if the Government requires construction work other than that described in the exhibits to the lease, it shall furnish the Port Authority with a description, plans, and specifications of the additional work and requires the Port Authority to submit its estimate of the cost to do the work. If the Port Authority does the work the Government is required to pay the costs on demand after completion of the work.

The Government will have to pay for the architectural, engineering, and design costs incurred by the Port Authority in connection with any requested additional items regardless of whether or not they are actually included in the building. Also, if the Government does not accept the estimate, it can perform the work itself but must pay for any additional costs incurred by the Port Authority because of the construction changes.

During each of the renewal periods the Government is required to pay the Port Authority an annual rental covering only items (1), (4), and (5) above. The maximum annual rental for these items is set at \$298,400. If the Government does not exercise its option to renew the lease for any of the first four renewal periods, it will be entitled to refunds of the land rental payments. The refund, if the lease is terminated after (1) 20 years is \$2,928,000, (2) 25 years is \$2,196,000, (3) 30 years is \$1,464,000, and (4) 35 years is \$732,000.

Four amendments or supplements have been made to the lease as follows:

- Supplement 1 - Dated June 2, 1970, the same day as the lease, states that the maximum rentals prescribed in the lease may not allow the Port Authority to recover its costs and provides that when construction

is completed the Government will audit the costs and if it is determined that the maximum rentals specified in the lease will not enable the Port Authority to recover its costs a revised prospectus will be submitted to the Public Works Committees. If the prospectus is approved by the committees the maximum rental costs will be revised to permit the Port Authority to recover its costs. The principal item included in determining the maximum rental for the first 20 years was the cost of constructing the facility. The cost was estimated at \$32,058,800, including a 3 year escalation factor amounting to 10.5 percent and a 10 percent contingency factor. The Port Authority advised us that the current estimated cost of the building is between \$50 and \$55 million.

- Supplement 2 - Dated April 19, 1971, provides for reimbursing the Port Authority \$27,066 for services performed in connection with designs for mechanization of the examination area at the request of the Government.
- Supplement 3 - Dated September 16, 1971, provides for reimbursing the Port Authority \$86,192 for services performed in connection with the design, layout, and color coordination of certain areas.
- Supplement 4 - The lease provided that if before January 31, 1973, the Port Authority did not tender the premises for occupancy, the Government could terminate the lease by notice. This supplement extended this date to August 31, 1973.

APPROPRIATIONS FOR THE CUSTOMS WORLD TRADECENTER BUILDING

Funds for costs (initial move, rental, services, furniture) connected with the Customs building at the World Trade Center have been provided under its annual 1-year appropriation entitled "Salaries and Expenses ". The appropriation does not specifically mention the World Trade Center building costs. The budget justifications, however, contained data on the moving, rental, and service costs at the center for fiscal years 1972, 1973, and 1974. Although no funds were specifically requested for these purposes prior to the 1972 budget request, we noted that some fiscal year 1970 and 1971 funds were obligated for payments to the Port Authority.

Fiscal Year 1970

Customs' budget justification for fiscal year 1970 shows that \$1.4 million was requested for laboratory equipment and office furniture and fixtures for the World Trade Center building. We were informed that about \$1.4 million has been obligated for laboratory equipment and office furniture and fixtures to be used in the laboratory. No other funds were specifically requested for the building. We identified an additional \$280,000 of fiscal year 1970 salary and expense funds that were obligated to pay for certain additional facilities. (See p. 12.)

Fiscal Year 1971

The budget justification for fiscal year 1971 did not include any funds for the World Trade Center building. We identified \$27,066 of fiscal year 1971 salary and expense funds that were obligated to pay for changes in the building. (See p. 12.)

Fiscal Year 1972

Customs planned to consolidate its activities in New York City by moving into the World Trade Center building in approximately January 1972. Customs' fiscal year 1972 budget justification included \$2,500,000 for the rental for one-half year and \$250,000 for the move into the building.

As discussed on page 12, \$2 million was reprogramed for narcotic enforcement, and the remainder was used for other purposes. We identified about \$587,000 that was obligated for changes in the building (See p 12)

Fiscal Year 1973

Customs requested an appropriation of \$203,400,000 for fiscal year 1973. The justification in support of the request showed that \$4,735,000 was for the rental of, and move into, the World Trade Center building. Subsequently the total amount requested was increased to \$212,326,000 to provide \$8,926,000 for the cost of Federal pay raises. Congress provided an appropriation of \$209 million, or \$3,326,000 less than the amount requested. The conference report which recommended this amount did not mention the specific items to which the reduction was expected to be applied.

Shortly after the appropriation act was passed, the slippage in the occupancy date for the World Trade Center building became evident, and Customs began planning on occupancy in December 1972 or January 1973. Customs determined that the moving, rental, and services for the remaining 6 to 7 months in fiscal year 1973 would have cost about \$2,920,000. The estimated unneeded rental and services funds of \$1,815,000 were used to absorb part of the reduction of \$3,326,000 in Customs budget request.

On November 1, 1972, Customs' New York Regional Commissioner informed headquarters that occupancy of the World Trade Center building had been further delayed until May or June 1973 and that a part of the remaining funds budgeted for rent for fiscal year 1973 would not be needed. Customs determined that the move would not take place before May 30, 1973, and that of the unused funds of \$2,920,000, about \$1,120,000 would be needed for one month's rental, services, moving and telephone installation costs.

At the time that the New York Regional Commissioner informed headquarters of the occupancy delay, he also pointed out that, due to changes in Customs requirements necessitated by growth and a major reorganization, funds were needed for construction of additional facilities at the World Trade Center building. He estimated that Customs would need \$1,800,000 for constructing the additional facilities, which

is the full amount of the rental and moving funds that will be available if the \$1,120,000 estimate of the rental for one month and associated moving costs is correct. The Bureau has requested the reprogramming of the full \$1,800,000 of the fiscal year 1973 rental funds to cover the cost of the additional facilities. The New York Regional Commissioner estimated that about \$1,700,000 would be needed for furniture and equipment. A Customs official told us that about \$1,600,000 had been allocated from the fiscal year 1973 appropriation for the acquisition of furniture and equipment. The need for funds for this purpose was not identified in the fiscal year 1973 justification.