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

GSA's Public Buildings Service Does Not Track and Report All Unused Leased Space as Required

Report Number A160133/P/6/R18002
August 10, 2018

Executive Summary

GSA's Public Buildings Service Does Not Track and Report
All Unused Leased Space as Required
Report Number A160133/P/6/R18002
August 10, 2018

Why We Performed This Audit

This audit was included in our *Fiscal Year 2017 Audit Plan*. Our objective was to determine whether GSA's Public Buildings Service (PBS) accurately reports the amount of vacant and unused leased space (collectively referred to as "unused" in this report) and whether PBS's controls for managing unused leased space are effective in preventing and reducing undue costs to the government.

What We Found

PBS reported a leased space vacancy rate of 1.1 percent of its total lease inventory for Fiscal Year 2016. However, we identified 785,400 square feet of unused leased space representing $21 million in annual rental payments that PBS is not reporting as required. Specifically, PBS does not identify or report unused leased space under non-cancelable occupancy agreements where the tenant continues to pay rent. As a result, PBS is not backfilling the space or taking other steps to minimize the impact to the taxpayer.

In addition, PBS is not consistently complying with its policies for using non-cancelable occupancy agreements. We identified several non-cancelable occupancy agreements that did not meet PBS's criteria for this designation.

What We Recommend

We recommend that the PBS Commissioner:

(1) Develop and implement a process to ensure that PBS reports and mitigates all unused space for all non-cancelable occupancy agreements in its lease portfolio; and
(2) Take action to ensure that existing and future non-cancelable occupancy agreements comply with PBS's policy.

In his response, the PBS Commissioner disagreed with certain statements in our report concerning PBS's responsibilities for tracking and reporting unused space. However, he concurred with our report recommendations and agreed to develop a corrective action plan to implement them.

The Commissioner's response is included in its entirety in ***Appendix B***. The Commissioner's response included four attachments; however, we did not include those attachments due to the volume of the documentation. We will make the attachments available upon request.

Table of Contents

Introduction

We performed an audit of the Public Buildings Service's (PBS) procedures for reporting and administering unused space in leased buildings.

Purpose

This audit was included in our *Fiscal Year 2017 Audit Plan*. We performed this audit to determine if PBS is accurately reporting the rate of vacant and unused leased space (collectively referred to as "unused" in this report) and working to reduce the amount of this leased space to minimize costs to taxpayers.

Objective

Our objective was to determine whether PBS accurately reports the amount of unused leased space and whether PBS's controls for managing leased space are effective in preventing and reducing undue costs to the government.

See ***Appendix A*** – Scope and Methodology for additional details.

Background

GSA's PBS is the landlord for the federal government, providing federal agencies with the real property needed to accomplish their missions. PBS manages over 370 million square feet of property throughout the country. As of January 2017, 185.7 million of PBS's rentable square feet was leased space accounting for $5.8 billion in annual rent.

In its *Fiscal Year 2016 State of the Portfolio Snapshot*, PBS reported that 1.1 percent of the usable square footage of its leased space is vacant. PBS defines vacant space as space that tenants return to PBS and for which PBS is no longer collecting rent. Accordingly, PBS does not report unused lease space if it is still collecting rent on that space.

When an agency comes to PBS with a request for space, PBS determines whether the agency's needs can be met from PBS's existing space inventory or new federally owned or leased space is required. If PBS determines that leased space is the best option for the tenant, PBS solicits bids, negotiates lease terms, and enters into a lease agreement with the lessor. PBS and the tenant agency then enter into a rental agreement called an occupancy agreement. This agreement defines the specific terms and conditions under which the tenant agency occupies the space. PBS uses two types of occupancy agreements for leased space: cancelable and non-cancelable.

According to the PBS Pricing Desk Guide section 5.3.1, under a cancelable occupancy agreement, tenants may return the space to PBS upon providing 4 months written notice and as long as the following conditions are met:

- There is no longer a need for the space;
- The space is in marketable blocks; and
- The tenant is at least 16 months into its occupancy term.

Under a cancelable occupancy agreement, PBS bills tenant agencies its lease costs as a pass-through of its lease costs plus a 7 percent administrative fee.

Non-cancelable occupancy agreements may be used if PBS determines that there is a low probability of backfilling the space due to its specific qualities. For example, such agreements can be used for space that PBS determines is in a remote or not easily accessible location, or has a special-purpose use or buildout that can only be retrofitted to conventional use at significant expense. PBS guidance also provides for the use of non-cancelable occupancy agreements if the space is a lease construction.[1] The space must be designated as non-cancelable at the beginning of the occupancy agreement and the designation cannot be changed during the occupancy agreement term. Under non-cancelable occupancy agreements, PBS bills tenant agencies its lease costs as a pass-through of its lease costs plus a reduced administrative fee of 5 percent. If the tenant vacates non-cancelable space prior to expiration of the occupancy agreement, the tenant must continue to pay rent until the space is backfilled or the occupancy agreement expires.

Figure 1 shows the number of cancelable and non-cancelable occupancy agreements and the amount of square footage in PBS's leased inventory as of January 2017.

Figure 1 – Cancelable and Non-Cancelable Occupancy Agreements

Agreement Type	Number	% of Total Number	Total SF	% of Total SF	Annual Rent	% of Total Rent
Cancelable	8,388	82%	136,763,846	74%	$4,334,036,078	75%
Non-Cancelable	1,875	18%	48,903,419	26%	$1,461,351,262	25%
Totals	**10,263**	**100%**	**185,667,265**	**100%**	**$5,795,387,340**	**100%**

Under both types of occupancy agreements PBS can accept a tenant's request to release space before the occupancy agreement expires. If PBS accepts a request to release space, the lease contracting officer must determine the best method of backfilling the space, terminating the lease, or strategically holding the space for future use (for example, as temporary "swing space" to accommodate tenant agencies during repair or renovation projects).

As shown in *Figure 2*, PBS is responsible for being aware of any unused leased space under its authority in its inventory and working to mitigate the financial impact of that space to the government.

[1] PBS defines a lease construction as "a Government-planned or Government-required new construction of a building resulting from a lease solicitation. It refers to projects where the Government requirements drive a new construction solution in order to satisfy an agency's space requirements."

Figure 2 – Criteria Related to GSA's Management of Leased Real Property

Federal Property Management Reform Act of 2016 (Public Law 114-318)	Requires federal agencies to inventory property under their control annually and "assess leased space to identify space that is not fully used or occupied."
Federal Management Regulation Part 102	Requires GSA to identify space reported on its financial statements that is not utilized, underutilized, or not being put to optimal use and maximize use of its real property inventory, which includes leased property.
Executive Order 13327	Emphasizes the efficient and economical use of America's real property assets and GSA's central role in achieving this mandate. GSA is also required to publish performance measures related to this Order.
PBS Leasing Desk Guide 6.2.4b	"PBS is responsible for being aware of any vacant space in leases in our inventory. Additionally, PBS is responsible for working to actively mitigate the financial impact to the government of that vacant space."
PBS Leasing Desk Guide 6.2.4a	"The mitigation of lease liability on vacant leased space is such a central function of PBS that the expertise is to be made available to other agencies even when PBS is not directly affected financially. This includes agencies on non-cancelable OAs [occupancy agreements] and delegated leases for facilities no longer used by the client or delegated agency."
PBS Pricing Desk Guide 5.3.3	"Return of Non-Cancelable Space: Tenant agencies may vacate and return space designated as non-cancelable to PBS; however, they continue to pay Rent.... These charges are removed only if PBS finds a backfill tenant, and then only to the extent to which the backfill tenant agency's Rent... covers the total Rent obligation of the vacating agency.... PBS will actively seek a backfill tenant for the vacant space to mitigate the tenant agency's Rent losses."
PBS Leasing Desk Guide 6.2.1	"[E]fforts should be made to also assist in the remarketing of vacant space when OAs [occupancy agreements] are not cancelable because of the obvious value to the taxpayer in minimizing rental expense for vacant space."

Results

PBS reported a leased space vacancy rate of 1.1 percent of its total lease inventory for Fiscal Year 2016. However, we identified 785,400 square feet of unused leased space representing $21 million in annual rental payments that PBS is not reporting as required. Specifically, PBS does not identify or report unused leased space under non-cancelable occupancy agreements where the tenant continues to pay rent. As a result, PBS is not backfilling the space or taking other steps to minimize the impact to the taxpayer.

In addition, PBS is not consistently complying with its policies for using non-cancelable occupancy agreements. We identified several non-cancelable occupancy agreements that did not meet PBS's criteria for this designation.

Finding 1 – PBS does not track and report all unused leased space as required.

While PBS has processes in place to track, report, and mitigate unused leased space, it could do more to manage its leased space inventory. Specifically, PBS is not tracking and reporting some unused leased space as required.

PBS's calculation of vacant leased space includes space tenant agencies return to PBS. However, its calculation is incomplete because it does not include unused leased space where PBS continues to collect rent from the tenant. For example, PBS's calculation does not include unused leased space under non-cancelable occupancy agreements. According to an official from PBS's Office of Portfolio Management, this is because "other than individual visual inspection of tenant spaces, there is not a way for PBS to identify [this] space…." The official further provided that, as with vacant leased space, "[i]f the tenant has not submitted a request for release of space and continues to pay rent, PBS identifies that space as occupied."

However, as outlined in *Figure 2* on page 3, PBS is required under a range of laws, regulations, and policies to track, report, and mitigate unused leased space. For example, the Federal Property Management Reform Act of 2016 requires PBS to annually assess the extent to which property under its control is being used and to provide this information to the Federal Real Property Council. Federal Management Regulation 102 also requires GSA to identify property on its financial statements that is not being put to optimal use. Furthermore, according to PBS's Leasing Desk Guide, "PBS is responsible for being aware of any vacant space in leases in our inventory. Additionally, PBS is responsible for working to actively mitigate the financial impact to the government of that vacant space."

Tenants for 12 of the 263 occupancy agreements in our sample disclosed 785,400 square feet of unused leased space. All 12 of these occupancy agreements were non-cancelable, and the unreported space represented 6.5 percent of the total non-cancelable square footage in our sample. Rental payments for the unused space under these occupancy agreements total $21 million annually or $98 million through expiration. PBS is not reporting this space as required because the tenants for the 12 occupancy agreements continue to pay rent.

The following are examples of unreported unused space identified during our audit.

Internal Revenue Service (IRS) – 5045 E Butler Avenue, Fresno, California

The IRS is paying $8.7 million in annual rent for 527,780 square feet at this facility. IRS officials told us that the agency staffs only about half of the 6,000 employees who once occupied this facility. During our inspection of the space, we observed that a significant portion of the space was unused. PBS personnel told us that PBS is actively involved with the IRS to optimize the space in the region. PBS is aware that the IRS plans to close this facility at the end of the lease in 2021. However, IRS officials told us that they would likely move out sooner if they had a cancelable occupancy agreement.

Nuclear Regulatory Commission (NRC) – 1600 E Lamar Boulevard, Arlington, Texas

The NRC rents 89,421 square feet for $2.3 million in annual rent. The tenant told us it has approximately 11,000 square feet of unused space. PBS officials initially told us that the space was fully occupied by the tenant but later told us that the unused space needs to be consolidated into a marketable block before GSA markets it to other federal agencies. In its 2016 *Real Property Efficiency Plan*, the NRC stated that releasing the space to recognize cost savings would be a challenge because of the non-cancelable occupancy agreement with PBS.

IRS – 127 International Drive, Franklin, Tennessee

The IRS rents 135,373 square feet for $4.4 million in annual rent. IRS personnel told us the agency had approximately 25,000 square feet of unused space. The tenant also told us that they have never fully occupied the building and have not released the space back to PBS because they have a non-cancelable occupancy agreement. PBS officials told us that they were unaware that this space was unused because the IRS has not notified them that it is not fully occupying the space.

Printed on each orange sign:
"**Vacant Workstation Do not remove equipment**"

IRS – 1001 South 1200 West, Ogden, Utah

The IRS rents 89,625 square feet for $2.2 million in annual rent. At the time of our inspection, the IRS was in the process of vacating this building and moving to a smaller space before the lease expired in July 2017. PBS officials told us that they are aware of the unused space and added that the lease has been terminated, as the IRS is consolidating back into government-owned locations in the Ogden, Utah, area. The IRS indicated that it could have reduced its footprint by 30,000 square feet 5 years ago, but did not do so because of its non-cancelable occupancy agreement.

Incomplete information on unused leased space may prevent PBS management and other key stakeholders, including the Federal Real Property Council and Congress, from making informed and effective decisions to minimize unnecessary costs associated with GSA's lease portfolio. Accordingly, PBS should develop and implement a process to ensure that it reports and minimizes all unused space in its lease portfolio, including any unused space where PBS is receiving rent; specifically, space held under non-cancelable occupancy agreements.

Finding 2 – PBS is not consistently following its policy for the use of non-cancelable occupancy agreements.

As previously shown in *Figure 1*, non-cancelable occupancy agreements represent 26 percent of the square footage and 25 percent of the rent payments in GSA's leased inventory.

The PBS Pricing Desk Guide defines non-cancelable space as space for which there is a low probability that PBS will find a backfill tenant due to the specific attributes of the space. Examples include space located in a remote or not easily accessible location as well as space designed for special-purpose use, such as a laboratory, that would require significant capital outlays to convert it for more conventional use. PBS may also use a non-cancelable occupancy agreement for a lease construction. This space must be designated as non-cancelable at the beginning of a leasing action and the designation cannot be changed during the occupancy agreement term. In addition, tenants cannot request a non-cancelable occupancy agreement in order to receive the reduced administrative fee that PBS charges under these agreements.

However, we determined that 5 of the 12 non-cancelable occupancy agreements identified in *Finding 1* were for conventional office space that appeared marketable for backfill and incorrectly designated as non-cancelable. As a result, PBS is not considering this space for backfill opportunities that could result in more efficient use of taxpayer dollars. These five agreements are detailed below.

IRS – 5045 East Butler Avenue, Fresno, California

PBS officials told us that the current occupancy agreement is non-cancelable because it is a lease construction. However, the lease construction occurred in 1971, and the original occupancy agreement was cancelable. In 2011, PBS entered into a succeeding lease for a 10-year term at a reduced rental rate and changed the IRS occupancy agreement to non-cancelable. Since the lease construction occurred 40 years prior to 2011, and the space appears to contain standard office space, there does not appear to be a valid reason for executing a non-cancelable occupancy agreement in 2011.

IRS – 1325 Broadway, Fresno, California

PBS officials told us that the occupancy agreement is non-cancelable because this location was a lease construction in 2002. However, we verified that the occupancy agreement was originally cancelable. IRS officials advised us that PBS and the IRS switched to a non-cancelable agreement in 2005 to lower the PBS administrative fee by 2 percent. This violates PBS's policy that a tenant agency cannot request a non-cancelable occupancy agreement to receive the reduced PBS administrative fee.

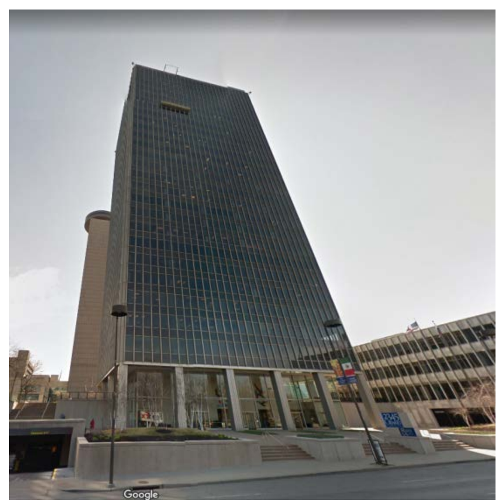
IRS – 855 M Street, Fresno, California

PBS officials told us that the occupancy agreement for this space was non-cancelable because it was a lease construction. However, we verified that the original occupancy agreement executed in 2003 was cancelable and changed to non-cancelable in 2005. IRS officials stated that the occupancy agreement was converted from cancelable to non-cancelable during an initiative between GSA and IRS. Under this initiative, several Fresno occupancy agreements were converted to non-cancelable due to lack of backfill potential for GSA and the IRS's desire to reduce the PBS fee. Execution of the non-cancelable occupancy agreement at this location does not conform to PBS policy because: (1) the occupancy agreement must be designated as non-cancelable at the beginning of the leasing action and cannot be re-designated during the occupancy agreement term, and (2) tenant agencies may not volunteer to designate their space as non-cancelable to receive the reduced fee. Further, we found that that this building houses both government and commercial tenants and appeared to be marketable office space.

NRC – 1600 East Lamar Boulevard, Arlington, Texas

PBS officials initially stated that the occupancy agreement for this 89,421 square feet location was non-cancelable due to its size, but did not elaborate. Subsequently, PBS officials told us that the occupancy agreement for this space was non-cancelable because it was a lease construction. However, the original June 2008 occupancy agreement was cancelable. PBS changed the occupancy agreement to non-cancelable 4 years later, which violates its policy that the occupancy agreement must be designated as non-cancelable at the beginning of the agreement term and cannot be re-designated during the term of the occupancy agreement. NRC officials objected to this change and stated that it hinders their ability to reduce their footprint but ultimately signed the non-cancelable agreement.

U.S. Department of Housing and Urban Development – 2345 Grand Boulevard, Kansas City, Missouri



This occupancy agreement is non-cancelable even though PBS has cancelable occupancy agreements with other tenants in the same building. PBS officials informed us that the space was designated as non-cancelable because the tenant was unsure whether it could make a long-term commitment to occupy the space. However, this is not a valid reason for a non-cancelable occupancy agreement as outlined in the PBS Pricing Desk Guide. Tenant officials told us they did not agree with the non-cancelable designation but ultimately signed the occupancy agreement.

PBS's designation of these occupancy agreements as non-cancelable was not in accordance with its policies. Therefore, PBS may be missing opportunities to more effectively manage unused space at these locations because the non-cancelable occupancy agreements discourage tenants from releasing the space back to PBS. Accordingly, PBS should strengthen controls to ensure that all non-cancelable occupancy agreements comply with PBS policy.

Conclusion

PBS is not tracking and reporting all unused leased space under its authority as required. Specifically, PBS is not reporting unused leased space where the tenant continues to pay rent, including space occupied under non-cancelable occupancy agreements. As a result, PBS is not reporting 785,400 square feet of unused leased space, as required, representing $21 million in annual rental payments. Additionally, we found that PBS is not consistently complying with its policies for use of non-cancelable occupancy agreements.

PBS should develop and implement a process to ensure that it reports and minimizes all unused space in its lease portfolio, including any unused space where PBS is receiving rent. PBS should also strengthen controls to ensure that all non-cancelable occupancy agreements comply with its policy.

Recommendations

We recommend that the PBS Commissioner:

(1) Develop and implement a process to ensure that PBS reports and mitigates all unused space for all non-cancelable occupancy agreements in its lease portfolio; and
(2) Take action to ensure that existing and future non-cancelable occupancy agreements comply with PBS's policy.

GSA Comments

In his response, the PBS Commissioner disagreed with certain statements in our report concerning PBS's responsibilities for tracking and reporting unused space. However, he concurred with our report recommendations and agreed to develop a corrective action plan to implement them.

The Commissioner's response is included in its entirety in ***Appendix B***. The Commissioner's response included four attachments; however, we did not include those attachments due to the volume of the documentation. We will make the attachments available upon request.

Audit Team

This audit was managed out of the Heartland Region Audit Office and conducted by the individuals listed below:

John Walsh	Regional Inspector General for Auditing
Erin Priddy	Audit Manager
David Garcia	Auditor-In-Charge
Tracy Twombly	Auditor

Appendix A – Scope and Methodology

This audit was included in our *Fiscal Year 2017 Audit Plan*. Our audit focused on PBS's reporting, monitoring, and mitigation of unused leased space.

To accomplish our objective, we:

- Judgmentally sampled 118 leased buildings nationwide, consisting of 1.7 percent of all leased buildings. Our sample included:
  - 30 percent of total non-cancelable annual rental payments;
  - 25 percent of non-cancelable rentable square feet; and
  - Over 16 million rentable square feet (5.6 percent of all leased space) and $580 million of annual rent (10.4 percent of all leased rent);
- Toured 47 leased buildings, interviewed tenants subject to 198 occupancy agreements, and interviewed GSA officials about unused space under 29 leases;
- Reviewed data on PBS inventory provided by PBS in January 2017;
- Reviewed lease and occupancy agreement documents;
- Reviewed lease documents of buildings on the mitigation report and 21 mitigation plans applicable to these buildings;
- Interviewed PBS and tenant agency officials;
- Reviewed prior Office of Inspector General and Government Accountability Office audit reports related to vacant space; and
- Reviewed applicable criteria such as the Federal Property Management Reform Act, PBS's Leasing Desk Guide, PBS's Pricing Desk Guide, Federal Management Regulations, Executive Order 12411, Executive Order 13327, GSA Acquisition Manual 552.270-16, and other policies and regulations.

We conducted the audit between September 2016 and October 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

Our assessment of internal controls was limited to those necessary to address the objective of the audit.

Appendix B – GSA Comments

PBS Feedback on Draft Report

July 20, 2018

MEMORANDUM FOR JOHN WALSH
REGIONAL INSPECTOR GENERAL FOR AUDITING (JA-6)

FROM: DANIEL W. MATHEWS
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

SUBJECT: Draft Report - *GSA's Public Buildings Service Does Not Track and Report All Unused Leased Space as Required* (A160133)

The Public Buildings Service (PBS) appreciates the opportunity to review the subject Draft Report from the Office of Inspector General (OIG).

PBS previously reviewed and provided feedback to the OIG on the Discussion Draft version of this report, dated May 21, 2018. PBS's concerns regarding the Discussion Draft remain for the Draft Report. Attached is PBS's feedback to the Draft Report.

Please contact Stuart Burns, Assistant Commissioner for the Office of Portfolio Management and Customer Engagement, at (202) 501-0638 with any questions regarding this information.

Attachments (5)

PBS Feedback on Draft Report
Occupancy Agreement, Standard Operating Procedures
Customer Fact Sheet
Customer Review Analysis
Boot Camp Presentation

1

The Office of Inspector General Draft Report entitled *GSA's Public Buildings Service Does Not Track and Report All Unused Leased Space as Required* identified two recommendations for the PBS Commissioner:

(1) Develop and implement a process to ensure that PBS reports and mitigates all unused space for all non-cancelable occupancy agreements in its leased portfolio; and
(2) Take action to ensure that existing and future non-cancelable occupancy agreements comply with PBS' policy.

PBS concurs with these recommendations, and will develop an action plan to implement them. However, PBS does wish to clarify certain statements supporting the Draft Report's two findings, as described below.

<u>Finding 1</u> – PBS does not track and report all unused leased space as required.

PBS is concerned at the introduction of "unused" space in the Draft Report as a space category. The term "unused" space is not defined as a space category by the Federal Real Property Council (FRPC), the Federal Property Management Reform Act of 2016, Part 102 of the Federal Management Regulation, Executive Order 13327, or any of the various PBS policy documents referenced in Figure 2 of the report.

PBS agrees that agencies should utilize space in the most efficient manner possible, and acknowledges that, in some instances agencies are housed in more space than needed to effectively execute their missions. To that end, PBS is working with agencies as their leases expire, or when the Government has termination rights, if that is the case prior to lease expiration, to reduce space and save money. To further this effort, PBS has developed performance metrics around upfront requirements development, improved space utilization, timely project delivery, and lease cost savings.

PBS offers the following clarifications to statements raised in the Draft Report supporting this Finding:

- PBS is not responsible for reporting "unused" space that is assigned to another agency under the requirements of the Federal Property Management Reform Act of 2016 (Public Law 114-318).
- The Draft Report does not differentiate between the tracking/reporting requirements of agencies that occupy space, and PBS's responsibilities for tracking and reporting space, as listed in the Federal Management Regulation Part 102, and Executive Order 13327 listed in Figure 2.
- PBS defines "vacant space" as space that is not assigned to a customer and is not generating Rent. This definition is in accordance with industry practice, and is different than space that is assigned to an agency and is generating Rent, but

is not used efficiently, which appears to be how the term "unused space" is being used in the Draft Report[1].

- Excerpts from the PBS Leasing Desk Guide and PBS Pricing Desk Guide included in Figure 2 are all in reference to *vacant* space, not *unused* space.
- PBS does not assess whether space assigned to a customer is "underutilized or unused." It is incumbent upon the occupying agency to ensure that space assigned to it is utilized. PBS does not make that determination on an agency's behalf.

When agencies determine they no longer have a need to occupy non-cancelable space that is assigned to them by PBS, a process for considering the space release exists. In accordance with PBS' centralized release of space tracking process, which began on October 1, 2015, a customer agency can submit a request to release non-cancelable space, and PBS will determine if a suitable backfill tenant exists or if the lease may be reduced or terminated early. The agency can release this space once a backfill tenant assumes the rent obligation, or the lease contract is amended to exclude the unneeded space[2].

As part of this Draft Report, the OIG reviewed 236 Occupancy Agreements (OA), 12 of which were classified as non-cancelable. The report estimates that these OAs include 785,400 square feet of unused space, at a cost of $21 million annually, which PBS is not reporting, as required. PBS only reports on vacant space when proper notification is received from the customer agency informing it that the customer agency no longer needs the space.

PBS believes that the statement regarding a $21 million taxpayer cost for the unused space identified in the Draft Report is misleading, as it assumes PBS will be able to immediately return this space to the private sector lessors, which may or may not be allowed by the underlying lease contracts. When an agency returns space to PBS prior to lease expiration or before the Government has termination rights, PBS remains contractually obligated to pay for leased space whether it is assigned to an agency or vacant.

<u>Finding 2</u> – PBS is not consistently following its policy for the use of non-cancelable occupancy agreements.

The Draft Report cites examples where PBS has incorrectly applied its policy for classifying space as Cancelable or Non-Cancelable, as defined in the Pricing Desk Guide, 4th Edition. Many of the specific locations that the OIG reviewed and toured included discussions with the customers occupying the space. Three of the five examples cited included space occupied by the Department of the Treasury - Internal Revenue Service (IRS). In 2005, at the request of the

[1] PBS' vacancy rate for FY2016 would have been 1.5%, rather than 1.1%, if the 785,400 square feet of unused space identified in the Discussion Draft was included. 1.5% is significantly lower than historical industry averages for vacancy.

[2] Attachment II to this memorandum is PBS's "Standard Operating Procedure, Release of Space Actions, Effective October 1, 2015." In addition, Attachment III is PBS's "Customer Overview Release of Space Process, Effective October 1, 2015."

IRS, IRS and GSA agreed to reduce IRS' Rent obligation to GSA. At that time, the IRS' Rent bill was increasing at a rate that exceeded its budget by approximately $32 million. As a result of this agreement, GSA changed the "Cancelable/Non-Cancelable" designation to Non-Cancelable for 50 IRS-occupied locations, thereby reducing the PBS Fee by 2% in those locations[3]. At that time, both IRS and GSA believed it was unlikely that the IRS would need to vacate any space during the term of the OAs for the aforementioned 50 locations. The change in space designation (Cancelable to Non-Cancelable) resulted in a reduction in the PBS Fee of $1.5 million per year for IRS.

[3] Ongoing conversations between GSA and IRS at the time regarding this issue are referenced on page 2 of Attachment IV to this memo, entitled "IRS TMP Customer Review Analysis" and slide 28 of Attachment V to this memo, entitled "Customer Knowledge – PBS Boot Camp Presentation 5.17.05".

Appendix C – Report Distribution

GSA Administrator (A)

Commissioner (P)

Deputy Commissioner (P)

Chief of Staff (P)

Assistant Commissioner for the Office of Portfolio Management and Customer Engagement (PT)

Chief Administrative Services Officer (H)

Audit Management Division (H1EB)

Assistant Inspector General for Auditing (JA)

Director, Audit Planning, Policy, and Operations Staff (JAO)