



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

IMPLEMENTATION REVIEW OF CORRECTIVE ACTION PLAN

**PBS Failed to Enforce Kress Building
Lease Provisions and May Have
Exposed Tenants to Health Risks
Report Number A160019/P/4/R17003
January 27, 2017**

Assignment Number A190023
July 31, 2019

Table of Contents

Introduction 1

Results

Finding 1 – PBS failed to enforce the terms of the lease and take measures to ensure that all necessary maintenance and repair issues were addressed in a timely manner. 3

Finding 2 – PBS did not pursue the strategies included in the corrective action plan to keep the lease procurement on schedule and move the tenant by the 2018 lease expiration. 5

Finding 3 – PBS did not provide training that addressed the communication of environmental concerns and test results to affected building tenants. 6

Conclusion..... 7

Appendixes

Appendix A – Corrective Action Plan for Report Number A160019/P/4/R17003 A-1

Appendix B – Report DistributionB-1

Introduction

We have completed an implementation review of the management actions taken in response to the recommendations contained in our January 2017 audit report, *PBS Failed to Enforce Kress Building Lease Provisions and May Have Exposed Tenants to Health Risks*, Report Number A160019/P/4/R17003.

Objective

The objective of our review was to determine whether the Public Buildings Service (PBS) has taken the actions as outlined in the corrective action plan for *PBS Failed to Enforce Kress Building Lease Provisions and May Have Exposed Tenants to Health Risks* (see **Appendix A**). To accomplish our objective we:

- Examined documentation submitted by PBS to support the completion of the corrective action plan steps; and
- Interviewed PBS officials responsible for oversight and enforcement of the subject lease and for meeting the current and future space needs of the tenant agency.

Background

PBS currently leases 26,931 square feet of space for the U.S. Customs and Border Protection Agency (Customs) at the Kress Building in Tampa, Florida.¹ The full service lease was originally signed in 1995 with Shiver Ybor Holdings, Inc. and was amended on March 30, 2007, when the property was acquired by Victoria Properties, LLC. Customs' daily operations, staffing, and facility and security requirements changed substantially in 2003. Customs attempted to relocate but was not able to due to a lack of funding and delayed completion of the new space request. In October 2006, PBS extended the Kress Building lease for 10 years to November 3, 2016.

For years, the Kress Building has had water intrusion, termites, poor ventilation, exterior deterioration, mold, unsuitable air conditioning and heating, poor air quality, plumbing problems, and roof leaks. PBS issued a Notice of Non-Compliance to the lessor in September 2014, citing numerous maintenance issues. In August 2015, testing of a ceiling tile sheetrock sample confirmed the presence of black mold in one room of the building.

In April 2016, PBS notified the lessor that PBS was considering a short-term lease extension. However, PBS also informed the lessor that the Kress Building would not be considered for a future long-term lease due to Customs' change in requirements. Due to ongoing building and maintenance issues, PBS issued the lessor another Notice of Non-Compliance in August 2016

¹ Lease Number GS-04B-46845.

and gave the lessor a September 30, 2016, deadline to address the deficiencies in the leased space. Notwithstanding the lessor's noncompliance with the terms of the lease, PBS entered into a short-term agreement with the lessor on September 9, 2016, to extend the lease through November 3, 2018.

The lessor remained out of compliance with the terms of the lease well after the short-term extension was awarded and the September 30, 2016, deadline for corrective action passed. Accordingly, in a December 5, 2016, Notice of Default and Final Opportunity to Cure letter, PBS informed the lessor that building and maintenance issues still persisted.

On January 27, 2017, we issued an audit report, *PBS Failed to Enforce Kress Building Lease Provisions and May Have Exposed Tenants to Health Risks*, to PBS. The objectives of the audit were to determine if PBS enforced the health, safety, and security terms of the full service lease at the Kress Building; and whether PBS's approach to handling mold and other environmental issues exposed tenants to health risks.

Our audit found:

- PBS's failure to enforce the terms of the full service lease resulted in inadequate maintenance and repair of the facility.
- PBS did not notify the tenants about the presence of black mold in a timely manner, possibly exposing them to health risks.

To address the findings identified in our report, we recommended that the Southeast Sunbelt Region PBS Regional Commissioner:

- Enforce the terms of the lease and take measures to ensure that all necessary maintenance and repair issues are addressed in a timely manner.
- Develop and distribute guidance that ensures the immediate communication of environmental concerns and test results to affected building tenants.

The PBS Commissioner agreed with our report recommendations.

On August 14, 2018, PBS entered into a lease agreement for a new Customs field office in Tampa, Florida. The Kress Building lease expired on November 3, 2018. PBS entered into an agreement with the Kress Building lessor to extend the lease for another 2 years, anticipating that Customs will not move to the new location until 2020.

Results

Our implementation review found that PBS did not fully implement several corrective actions. Specifically, PBS did not:

- Enforce the terms of the lease and take measures to ensure that all necessary maintenance and repair issues were addressed in a timely manner.
- Pursue the strategies included in the corrective action plan to keep the lease procurement on schedule and move the tenant by the 2018 lease expiration date.
- Provide training that addressed the communication of environmental concerns and test results to affected building tenants.

Finding 1 – PBS failed to enforce the terms of the lease and take measures to ensure that all necessary maintenance and repair issues were addressed in a timely manner.

Our original audit found that PBS's failure to enforce the terms of the full service lease at the Kress Building resulted in inadequate maintenance and repair of the facility. PBS's corrective action plan included several steps designed to address our report finding and hold the lessor accountable for providing space that met the terms of the lease. However, as described below, we found that PBS did not complete these actions in a timely manner or take effective steps to address the poor conditions at the Kress Building. This has resulted in persistent deficiencies in the condition of the leased space.

PBS's corrective action plan included a step to hold an onsite meeting at the Kress Building to discuss next steps with Customs and a plan for communication and resolution with the lessor. If the deficiencies were resolved, PBS's plan provided that it would issue a close-out letter to the lessor and the tenant agency notifying them that the deficiencies were resolved. If the deficiencies were not resolved, PBS's plan provided that it would issue a Notice of Exercise of Lease Right—Commencement of Work letter to the lessor and assign a Project Manager to ensure the deficiencies were resolved. PBS planned to complete these actions by March 31, 2017, but PBS did not complete these actions by this date.

PBS's corrective action plan also provided that it would send a Notice of Exercise of Lease Right—Deduction letter notifying the lessor of the amount of rent deduction that would be taken to offset the cost of the work performed. According to its corrective action plan, PBS was to complete this action by May 31, 2017. PBS failed to complete this action step.

On July 27, 2017, the PBS Lease Contracting Officer issued a memorandum to GSA's GAO/IG Audit Response Division providing that the action step to issue the Notice of Exercise of Lease Right—Commencement of Work letter was unnecessary. In the memorandum, the PBS Lease Contracting Officer stated, "the deficiencies regarding roof repair, janitorial services, pest control, and floor coverings and paint...have been resolved or addressed to minimal standards."

However, during our review, PBS provided us with the following documentation that directly contradicted the information contained in the PBS Lease Contracting Officer's memorandum:

- Minutes from an August 15, 2017, meeting between the tenant and PBS officials, which stated that conditions from a January 2017 walk-through of the premises, including pest control, roof maintenance, janitorial services, air conditioning, and others, remained unresolved.
- An email from the PBS building manager to the lessor dated August 15, 2017, which listed the ongoing deficiencies, but did not escalate the cure process or exercise PBS's right to repair the deficiencies per the corrective action plan.
- An undated draft deficiency letter, discussed during the August 15, 2017, meeting, which stated that the air conditioning was not meeting the standards of the lease despite PBS officials having presented the issue to the lessor multiple times since May 2016. The letter also stated that the lessor was not controlling pests in compliance with the lease agreement and listed numerous dates on which live termites, termite wings, or termite droppings were reported between January 2017 and June 2017, adding that these issues dated back to 2014. PBS did not issue this letter to the lessor.

We asked responsible PBS officials to explain the discrepancy between the above information and the assertions made in the July 27, 2017, memorandum to GSA's GAO/IG Audit Response Division. PBS officials did not provide a response that addressed this question. Further, we asked why PBS did not issue the draft deficiency letter. One PBS official responded that PBS was not inclined to exacerbate issues with the lessor and risk the lessor's willingness to extend the lease, and that PBS was focused on the lease procurement for a new location. The August 15, 2017, meeting minutes also included an unattributed statement that "GSA backed off the deficiency letter when the lease extension was taking place."

In sum, PBS did not complete corrective actions to address our finding concerning inadequate maintenance and repair of the Kress Building. This has resulted in persistent deficiencies in the leased space and complaints from the tenant about the poor condition of the building.² Accordingly, PBS must resubmit revised corrective actions to address this finding and hold the lessor accountable for complying with the terms of its lease agreement.

² Our office continues to field complaints about the conditions at the Kress Building through the GSA OIG Fraud Hotline. Our original audit report was based on hotline complaints, and a complaint was most recently filed on November 7, 2018.

Finding 2 – PBS did not pursue the strategies included in the corrective action plan to keep the lease procurement on schedule and move the tenant by the 2018 lease expiration.

PBS did not provide evidence that it pursued strategies outlined in its corrective action plan to move the tenant out of the building by the 2018 lease expiration. PBS extended the lease for an additional 2 years despite longstanding deficiencies in the condition of the building. Moreover, PBS did not provide monthly updates on the plans to relocate the tenant agency per the corrective action plan.

At the time PBS prepared its corrective action plan, Customs lacked adequate funding to immediately relocate from the Kress Building. However, a long-term plan was in place to move Customs on or before the lease expiration date of November 3, 2018. PBS's corrective action plan listed several strategies designed to keep this lease procurement on schedule, including, but not limited to:

1. Relocating to vacant space in the GSA inventory,
2. Reviewing Customs' space requirements to determine if there should be two separate projects,
3. Increasing the funding available to Customs for space customization, and
4. Accepting new space in its current state and altering it post-occupancy.

We asked PBS officials whether PBS pursued any of the above-mentioned strategies to move Customs to a new location before the Kress Building lease expired in November 2018. PBS did not assert that it had.

PBS's corrective action plan also provided that Customs would confirm which strategy fit its mission and budget requirements, and that PBS would confirm Customs' requirements and track progress on the procurement. PBS would then provide an updated milestone schedule and monthly project plans to the OIG until Customs was permanently housed in a new location. However, although the new lease procurement has not been completed, PBS has not provided the OIG with updates on the project to relocate Customs since June 2017. Therefore, PBS is not complying with its corrective action plan.

As noted in the *Background* section of this report, PBS was not able to relocate Customs by the 2018 lease expiration and extended the Kress Building lease for an additional 2 years. PBS anticipates that Customs will move to a new location in 2020. In light of this planned lease procurement and the ongoing maintenance and repair issues in the Kress Building, PBS's corrective action plan steps designed to advance the replacement lease remain relevant and should be addressed in a new corrective action plan.

Finding 3 – PBS did not provide training that addressed the communication of environmental concerns and test results to affected building tenants.

According to its corrective action plan, PBS was to deliver a mandatory training on the Lease Management Desk Guide that addressed communication of environmental concerns and test results to each Property Management Center and the Leasing Division. PBS provided the OIG a list of training attendees, sign-in sheets, the slideshow used in the training, and the link to the training video. We reviewed these materials and found that they did not cover the topic of immediate communication of environmental concerns and test results to affected building tenants.

As a result, PBS's training did not address the report recommendation. PBS must submit a revised corrective action plan to ensure this recommendation is fully addressed.

Conclusion

Our implementation review determined that PBS did not fully implement several corrective actions. Specifically, PBS did not:

- Enforce the terms of the lease and take measures to ensure that all necessary maintenance and repair issues were addressed in a timely manner.
- Pursue the strategies included in the corrective action plan to keep the lease procurement on schedule and move the tenant by the 2018 lease expiration.
- Provide training that addressed the communication of environmental concerns and test results to affected building tenants.

PBS's failure to implement corrective actions has resulted in persistent deficiencies in the leased space and complaints from the tenant about the poor condition of the building.

As a result, a revised corrective action plan addressing these open recommendations must be submitted by August 30, 2019 to this office and the Audit Management Division (H1EB).

Audit Team

This review was managed out of the Real Property and Finance Audit Office and conducted by the individuals listed below:

Marisa A. Roinestad	Associate Deputy Assistant Inspector General for Auditing
Timothy Keeler	Audit Manager
Dana Q. Fitzpatrick	Auditor-In-Charge

**Appendix A – Corrective Action Plan for Report Number
A160019/P/4/R17003**

Designated Responding Official: [REDACTED]
 Contact Person: [REDACTED]
 Telephone Number: [REDACTED]
 Date: 02/17/17

Audit Report	Recommendation Number	Proposed Recommendation Completion Date
A160019/P/4/R17003 – PBS Failed to Enforce Kress Building Lease Provisions and May Have Exposed Tenants to Health Risks	001	May 31, 2017

Recommendation 001: Enforce the terms of the lease and take measures to ensure that all necessary maintenance and repair issues are addressed in a timely manner.

Action to be Taken Step by Step	Supporting Documentation to be sent to the GAO/IG Audit Management Division	Documentation Will be Sent Last Day
001 – On December 5, 2016, a default letter was sent to the Lessor notifying the Lessor that the building was not in compliance in four (4) major areas: (1) quality and appearance of the building exterior and premises; (2) janitorial services; (3) water intrusion; and (4) pest activity. The letter also notified the Lessor that if the lessor did not remedy the outstanding maintenance and repair issues, the GSA would take action to cure and would deduct the associated cost from the rent. A response was due on January 13, 2017. On January 8, 2017, the Lessor responded indicating that the all issues had been addressed.	(1) Default Letter to Victoria Properties 12-5-16 (2) Response from Victoria Properties 1-8-17	March 31, 2017

**Appendix A – Corrective Action Plan for Report Number
A160019/P/4/R17003 (cont.)**

<p>Neither the tenant agency (CBP) nor PBS were satisfied with the Lessor’s statements. In accordance with the PBS Lease Management Desk Guide, the next step would be to provide notice to proceed to contractors and issue a Notice of Exercise of Lease Right—Commencement of Work letter to the Lessor.</p>		
<p>002 – On January 24, 2017, the Leasing Division met with the Florida Property Management Center (PMC), Tampa Field Office, Facilities Management (FM), and Regional Counsel to discuss the Lessor’s response and the PBS action plan. All participating parties agreed that we required current, detailed reports of the condition of the Premises, and the responsiveness of the Victoria Properties staff. In an effort to confirm completion of the issues, GSA Lease Administration Managers (LAM) walked the space on January 31, 2017 and created a baseline document that will be used to complete a comprehensive condition survey following thirty (30) days of onsite observation.</p>	<p>(3) Email from James Thompson – Ybor City follow up 1-25-17</p>	<p>March 31, 2017</p>
<p>003 – LAM will work from the Kress Building three (3) days per week for a period of 30 calendar days beginning February 2, 2017. LAM will follow up with Leasing, FM, the PMC, and Regional Counsel bi-weekly by phone.</p>	<p>(4) Comprehensive condition survey drafted and signed by Michael Grimes. (5) Meeting minutes from bi-weekly phone conferences.</p>	<p>March 31, 2017</p>

**Appendix A – Corrective Action Plan for Report Number
A160019/P/4/R17003 (cont.)**

<p>004 – Following the 30-calendar day period an onsite meeting at the Kress Building will be scheduled to discuss the next steps with the agency and to confirm a protocol for communication and resolution with the Lessor. The Lease Contracting Officer (LCO) and Leasing Branch Chief will be in attendance. If the deficiencies have been resolved, LAM will issue a close-out letter to the Lessor and the tenant agency.</p>	<p>(6) Current estimates for service contracts for janitorial and pest control.</p> <p>(7) Current estimates for repair and alterations of the premises.</p> <p>(8) Meeting minutes will also be provided from the onsite meeting.</p>	<p>March 31, 2017</p>
<p>005 – If the deficiencies are not resolved, in accordance with the PBS Lease Management Desk Guide, the LAM and the LCO will issue the Notice of Exercise of Lease Right – Commencement of Work letter to the Lessor and provide copies to all interested parties. PBS Region 4 will assign a Project Manager to monitor the completion of work until all deficiencies are resolved.</p>	<p>(9) Notice of Exercise of Lease Right – Commencement of Work letter</p>	<p>March 31, 2017</p>
<p>006 – Upon completion, inspection and acceptance of the work in accordance with the PBS Lease Management Desk Guide, the LCO will send a Notice of Exercise of Lease Right – Deduction letter to the Lessor. This letter will serve as the notification of the amount of rent deduction that will be taken to offset the cost of the work. Appeal Rights must be provided in the letter.</p>	<p>(10) Notice of Exercise of Lease Right – Commencement of Work letter</p>	<p>May 31, 2017</p>

**Appendix A – Corrective Action Plan for Report Number
A160019/P/4/R17003 (cont.)**

<p>007 – The long term replacement lease procurement is currently on hold and the Request for Lease Proposals (RLP) has not been released. CBP lacks sufficient funding for relocation and tenant improvements. Several options have been presented to keep the procurement on schedule and allow the agency to move on or before the lease expiration date (November 3, 2018) including, but not limited to: (1) relocating to vacant space in the GSA inventory; (2) Reviewing the CBP requirements to determine if there are independent functions which should be separated into two distinct stand-alone projects for operational efficiency; (3) increasing the tenant improvement allowance tier; and (4) accepting new space as-is and altering the space post-occupancy. CBP has not confirmed which option will meet its mission and budget requirements. The Leasing Division and Client Delivery Team shall follow PBS’s protocols to confirm CBP’s long term requirements and track progress on the procurement.</p>	<p>(11) An updated milestone schedule along with monthly project plans will be provided by the LS/LCO until the agency is permanently housed in a new location.</p> <p>(12) If the requirements are substantially altered a Client Project Agreement will be developed.</p>	<p>April 30, 2017</p>
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**Appendix A – Corrective Action Plan for Report Number
A160019/P/4/R17003 (cont.)**

Audit Report	Recommendation Number	Proposed Recommendation Completion Date
A160019/P/4/R17003 – PBS Failed to Enforce Kress Building Lease Provisions and May Have Exposed Tenants to Health Risks	002	June 30, 2017

Recommendation 002: Develop and distribute guidance that ensures the immediate communication of environmental concerns and test results to affected building tenants.

Action to be Taken Step by Step	Supporting Documentation to be sent to the GAO/IG Audit Management Division	Documentation Will be Sent Last Day
001 – On January 24, 2017, the Region 4 Facilities Management Division released a memorandum to all Property Management Center (PMC) Directors regarding Timely Communication of Mold Presence and Test Results.	(13) Region 4 Mold Communication Memo 1-24-17	January 24, 2017
002 – As a refresher, and make mandatory, training to be delivered via GSA Online University on the Lease Management Desk Guide to each PMC and the Leasing Division.	Schedule of pending training	June 30, 2017
003 – Follow through on training for existing Regional SOPs, particularly New Project Intake, Escalation Protocol, and SDE Planning.	(1) Roster of attendees for SDE training, (2) video file of SDE training, (3) list of those who viewed video who were not able to attending live session, (4) copies of SOPs	June 30, 2017

Appendix B – Report Distribution

GSA Administrator (A)

GSA Deputy Administrator (AD)

Chief of Staff (AC)

Commissioner (P)

Deputy Commissioner (P)

Chief of Staff (P)

Regional Administrator (4A)

Regional Commissioner (4P)

Deputy Regional Commissioner (4P1)

Regional Counsel (LD4)

Director of Financial Management (BG)

Chief Administrative Services Officer (H)

Audit Management Division (H1EB)

Assistant Inspector General for Auditing (JA)

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