

**AUDIT OF PBS'S RESPONSE TO  
HURRICANE KATRINA  
REPORT NUMBER A070075/P/R/R08003**

*March 20, 2008*





U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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Date: March 20, 2008

Reply to: R. Nicholas Goco  
Attn of: Deputy Assistant Inspector General  
For Real Property Audits (JA-R)

Subject: Audit of PBS's Response to Hurricane Katrina  
Report Number A070075/P/R/R08003

To: David L. Winstead  
Commissioner, Public Buildings Service (P)

This report presents the results of our audit of the Public Building Service's (PBS) response to Hurricane Katrina. The audit analyzed Hurricane Katrina damage prevention, assessment, and mitigation efforts, as well as PBS's procedures for identifying and addressing tenant needs. Lastly, the audit examined the financial implications of Hurricane Katrina on the Federal Buildings Fund.

The audit revealed that in preparing for Hurricane Katrina, PBS had limited disaster related standard operating procedures and building-specific disaster plans, which contributed to an inconsistent preparation. On some levels, the organization was both efficient and effective. For example, on the whole, PBS effectively disseminated information to customers. However, the degree of building preparations undertaken to minimize damage varied widely. In the aftermath of the hurricane, PBS quickly deployed personnel to assess and repair damaged buildings as well as meet customer agency space needs. The demand for construction services and leased space was high and as a result, PBS had to absorb high repair and leasing costs in an effort to restore buildings quickly and respond to customer needs. Finally, as a result of the hurricane, PBS incurred additional leasing costs for buyouts of existing leases due to hurricane damage as well as some post-hurricane leasing actions that customer agencies vacated before the end of the lease term.

If you have any questions regarding this report, please contact me on (202) 219-0088.

A handwritten signature in black ink that reads "R. Nicholas Goco". The signature is written in a cursive, flowing style.

R. Nicholas Goco  
Deputy Assistant Inspector General for Real Property Audits  
Real Property Audit Office (JA-R)

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**Audit of PBS’s Response to Hurricane Katrina  
A070075**

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# Audit of PBS's Response to Hurricane Katrina A070075

## **EXECUTIVE SUMMARY**

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### **Purpose**

The audit objectives were to review the effectiveness of preventive actions taken by the General Services Administration (GSA) to safeguard assets and prepare GSA tenants for Hurricane Katrina; analyze the processes used to assess and repair those properties damaged by Katrina; review the steps taken by the Public Buildings Service (PBS) to determine the necessary actions for affected leased properties (e.g. terminate, suspend, or continue leases); and ascertain the financial implications of Hurricane Katrina on the Federal Buildings Fund.

### **Background**

Hurricane Katrina was one of the worst natural disasters the United States has ever experienced. Katrina devastated the Gulf Coast, impacting 93,000 square miles of the United States, flooding the city of New Orleans, and causing an estimated \$96 billion in damage. The impact zone spanned two GSA regions: 200 miles wide, as far west as Louisiana, as far east as Florida, and as far north as Kentucky. The storm caused extensive damage to a number of Federal buildings, including the U.S. Customs House in New Orleans, LA, and the Dan M. Russell Jr. Federal Building and United States Courthouse in Gulfport, MS.

The devastation caused by Hurricane Katrina dramatically increased PBS's workload. In addition to contributing to GSA's support to the Federal Emergency Management Agency (FEMA) per the National Response Plan, PBS had to prepare its customers and assets for and respond to Katrina while also maintaining its normal operations. To accomplish this, PBS engaged a cadre of personnel, including property managers, leasing specialists, contracting officers, attorneys, engineers, and environmental, telecommunication and supply specialists. PBS's efforts played a key role in the quick re-opening of the Federal government in the aftermath of the storm.

### **Results-in-Brief**

In preparing for Hurricane Katrina, PBS had limited disaster related standard operating procedures and building-specific disaster plans, which contributed to inconsistent preparation. On some levels, the organization was both efficient and effective. For example, on the whole, PBS effectively disseminated information to customers. However, the degree of building preparations undertaken to minimize damage varied widely.

In the aftermath of the hurricane, PBS quickly deployed personnel to assess and repair damaged buildings as well as meet customer agency space needs. The demand for construction services and leased space was extraordinary and as a result, PBS had to

absorb inflated repair and leasing costs in an effort to restore buildings quickly and respond to customer needs. Also, as a result of the hurricane, PBS incurred additional leasing costs for buyouts of existing leases due to hurricane damage as well as some post-hurricane leasing actions that customer agencies vacated before the end of the lease term.

### **Recommendations**

To improve PBS's disaster preparations and response, we recommend that the Commissioner of the Public Buildings Service:

1. Ensure that disaster related standard operating procedures are developed and building-level disaster preparations, including those to be performed by contractors, are developed for buildings in hurricane zones to ensure measures are taken to adequately safeguard real property assets during future disasters;
2. Ensure steps are taken to prepare tenants in hurricane zones before each hurricane season, such as updating and providing Region 4's "Hurricane Preparedness" presentation;
3. Continue to enhance and improve PBS's damage assessment capabilities, such as the "PC Tablets," developed by Region 4 personnel, for future disaster responses;
4. Explore alternative methods to procure and administer repair and remediation contracts to control costs after a major disaster;
5. Ensure that measures are taken to follow up with lessors and obtain refunds as appropriate for terminated leased space that is re-let or sold after government buyouts; and
6. Follow through with efforts to update the boilerplate Fire and Casualty Damage clause to allow for situations where PBS is unable to access leased buildings, assess building damage, or contact lessors in order to prevent buyout agreements from occurring in future disasters.

## **INTRODUCTION**

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### **Background**

The General Services Administration (GSA), Public Buildings Service (PBS) serves as the civilian Federal government's landlord, managing a diverse portfolio of real estate that includes over 340 million square feet of space in office buildings, courthouses, border stations, warehouses, etc. It serves nearly 60 agencies (over 400 bureaus), the U.S. Courts, and Congress, and houses over one million Federal employees.

In the 2005 hurricane season, PBS faced three major hurricanes: Katrina, Rita, and Wilma. While each impacted GSA customers and real property assets in the Gulf Coast region, Hurricane Katrina was one of the worst natural disasters the United States has ever experienced. Katrina devastated the Gulf Coast, impacting 93,000 square miles of the United States, flooding the city of New Orleans, and causing an estimated \$96 billion in damage. The impact zone spanned two GSA regions: 200 miles wide, as far west as Louisiana, as far east as Florida, and as far north as Kentucky. Federal buildings such as the U.S. Customs House in New Orleans, LA and the Dan M. Russell Jr. Federal Building and United States Courthouse in Gulfport, MS sustained extensive damage.

The devastation caused by Hurricane Katrina dramatically increased PBS's workload. Under the National Response Plan Emergency Support Functions, GSA was charged with providing procurement and communications assistance to the Federal Emergency Management Agency (FEMA). This required the deployment of a number of PBS contracting officers, leasing specialists, and other professionals. Concurrently, PBS had to prepare its customers and assets for, and respond to, Katrina while also maintaining its normal operations. PBS emergency response actions commenced within the first 24-72 hours of the hurricane. The scope and number of employees GSA deployed nationwide to help with the response for FEMA and to continue GSA operations was unprecedented.

As landlord for the civilian Federal government, PBS is responsible for safeguarding the Government's real property assets and for providing space and services to its customers. For Katrina, this included preparing customers and real property assets for the hurricane; maintaining customer communications/hotlines; assessing damage caused by the hurricane; helping customers return to operational status; and returning owned and leased space to operational status. To protect its assets and assist its customers, GSA deployed a cadre of associates, including property managers, leasing specialists, contracting officers, attorneys, engineers, and environmental, telecommunication and supply specialists. In Regions 4 and 7, these efforts were a major undertaking. Materials, labor, and leased space were in short supply, and PBS associates had to deal with extremely adverse working and contracting conditions.

## **Objectives, Scope and Methodology**

The audit objectives were to:

1. Review the effectiveness of preventive actions taken by GSA to safeguard assets and to prepare GSA tenants for Hurricane Katrina;
2. Analyze the processes used to assess and repair those properties damaged by Katrina;
3. Review the steps taken by PBS to determine the necessary actions for affected leased properties (e.g. terminate, suspend, or continue leases); and
4. Ascertain the financial implications of Hurricane Katrina on the Federal Buildings Fund.

The audit included a review of the PBS controls and procedures in place to ensure efficient and effective disaster preparation and response. Specifically, the audit analyzed Hurricane Katrina damage prevention, assessment, and mitigation efforts, as well as PBS's procedures for identifying and addressing tenant needs. Lastly, the audit examined the financial implications of Hurricane Katrina on the Federal Buildings Fund.

Audit fieldwork was conducted in the Southeast Sunbelt (Region 4) and Greater Southwest (Region 7) regions, as well as GSA National Office.

Fieldwork was conducted between February 2007 and August 2007. The audit was performed in accordance with generally accepted Government auditing standards.

## **RESULTS OF AUDIT**

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### **Overview**

In preparing for Hurricane Katrina, PBS had limited disaster-related standard operating procedures and building-specific disaster plans, which contributed to inconsistent preparation. On some levels, the organization was both efficient and effective. For example, on the whole, PBS effectively disseminated information to customers. However, the degree of building preparations undertaken to minimize damage varied widely.

In the aftermath of the hurricane, PBS quickly deployed personnel to assess and repair damaged buildings as well as meet customer agency space needs. However, the demand for construction services and leased space was extraordinary and as a result, PBS had to absorb increased repair and leasing costs in an effort to restore buildings quickly and respond to customer needs. PBS may have paid higher costs for some repair work due to the extended use of a time and material contract as well as inflated post-disaster construction rates. Also as a result of the hurricane, PBS incurred additional leasing costs for both existing leases and post-hurricane leasing actions. PBS absorbed more than \$5 million because it was unable to execute the Fire and Casualty Damage clause on several existing leases. Due to the post hurricane market conditions, PBS incurred additional costs to buy-out long-term leases awarded to satisfy customer agency requirements immediately after the hurricane.

To improve its preparation and response for future disasters, PBS should continue and enhance efforts that have been made since Hurricane Katrina. For example, PBS should develop a comprehensive checklist that clearly enumerates building-level preparations, including those to be performed by contractors, and incorporate it into the Standard Operating Procedures (SOPs) that Region 4 has developed. Further, PBS should continue to enhance and utilize the “PC Tablet” assessment tool developed by Region 4 personnel for use during future disaster responses. PBS should also alter the boilerplate Fire and Casualty Damage lease clause to allow for situations where it is unable to access leased buildings, assess building damage or contact lessors, thus avoiding the need for buyout agreements. In addition to these measures, PBS should attempt to lessen fiscal damages sustained from lease buyouts after Hurricane Katrina by following up with lessors and taking measures to ensure refunds are received as appropriate for terminated leased space that is sold or re-let after government buyouts.

### **PBS had limited disaster-related standard operating procedures (SOPs) in place prior to Hurricane Katrina.**

While preparing for Hurricane Katrina, PBS had limited standard operating procedures available at the national or regional levels. In Region 4, only limited guidance was available at the service center level. One service center had a “Hurricane Checklist” and a “Hurricane Response Plan,” which provided general hurricane instructions and outlined



the initial response to a major storm, but they only addressed that service center's property management activities. Another service center provided copies of similar checklists, but they were developed "on the fly" while preparing for Katrina as there was no plan in the local office.

In Region 7, Continuity of Operations (COOP) plans were in place at the service centers; however, no regional or building level plans were in place. In September 2004, instructions had been emailed from the Louisiana Service Center to develop evacuation/building protocols and designated official responsibilities. However, there was no documentation indicating that that had been done and no formal SOPs in place outlining those responsibilities. In addition, the emergency operating plan developed by the building management contractor for the Federal Complex in New Orleans was a one page document that primarily addressed damage assessment and response rather than identifying building level preparations for a natural disaster.

*Lack of SOPs resulted in inconsistent levels of building preparation.*

Despite the lack of SOPs, PBS appears to have made considerable efforts to prepare some GSA-owned buildings for Hurricane Katrina. For example, PBS made a last-minute decision to install plywood on the first two floors of the Gulfport Courthouse and on the entire annex. According to the former Assistant Regional Administrator (PBS), this \$20,000 investment may have saved the building. Likewise, PBS took steps to prepare the New Orleans Federal Complex including securing the doors and windows, sandbagging entrances, turning off utilities, shutting down all but the freight elevator, removing exterior "fly-away items", securing all roof equipment, and ensuring that roof drains were clear of litter and debris.

Actions taken at other locations were insufficient and may have resulted in avoidable damage. The John A. Campbell United States Courthouse (USCT) and the adjacent Federal Building in Mobile, AL sustained approximately \$1.66 million in damage. PBS personnel in these locations indicated that there was no checklist available to use as guidance for the hurricane preparation and response, and needed supplies were not always on hand. For example, sand bags were purchased to keep water from entering the buildings via doorways, but sand was not. Additionally, electrical ducts below ground level were not sealed, possibly causing flooding in the basement and damaging emergency generators. Further, PBS personnel did not return after the storm in time to prevent mold from growing in the building annex. Also, tenants in the Federal Building indicated that generators were on the building property list, but were not actually in the building. While these damages may not have been entirely avoidable, better building preparation and response may have reduced building damage considerably.

*PBS actively disseminated hurricane-related information to customer agencies.*

While there were no SOPs in place during the Katrina preparations and response, PBS did attempt to keep customers apprised of hurricane-related information using a variety of communication tools. PBS contacted customer agencies before Katrina hit, posted

information on the GSA website, and set up an information hotline. Additionally, tenants indicated that building managers also gave in-person notification and assisted with preparations, although the extent of this notification and assistance varied. This outreach helped to assist customer agencies in preparing for the storm as well as restoring operations.

*PBS has taken steps to address the lack of SOPs.*

After Katrina, Region 4 PBS assembled a cross-divisional Disaster After-Action Review Team (DART) to review the 2005 lessons learned and document SOPs for future disasters. The DART developed a comprehensive set of disaster SOPs for Region 4 PBS that describes the roles and responsibilities of the various disciplines involved with disaster preparation and response. Per Region 4 management, these SOPs are the “foundation for workers with any level of experience.” Region 4 has shared these SOPs with Region 7 personnel. Further, Region 4 developed a hurricane preparedness PowerPoint presentation for clients that provides information about the disaster preparation and response process. This presentation describes lessons learned from past hurricane seasons, as well as measures that PBS has taken to prepare for future hurricanes. It also included storm projections and pre- and post-storm instructions for the 2006 season. As of April 1, 2007, Region 7 PBS created the Emergency Management & Security Division (7PS), which is dedicated full time to emergency management, preparation and response. Each member of the division has hands on experience from prior disasters (many from Katrina) and is trained to handle disasters of this scope and magnitude.

While PBS has taken steps to address the lack of SOPs, improvement efforts need to be continued and enhanced. The SOPs refer to a “hurricane planning checklist” that should be reviewed by service centers prior to hurricane seasons and used during the execution phase of a hurricane response, but do not clearly enumerate actual building-level preparations. Further, they do not address the responsibilities of Operations and Maintenance (O&M), elevator, and cleaning contractors. PBS should develop and incorporate a comprehensive “checklist” that clearly identifies building-level preparations, including those to be performed by contractors, to ensure measures are taken to adequately safeguard real property assets during future disasters. If PBS’s intent is for the “hurricane planning checklist” to be developed and tailored at the service center or building level, PBS should take measures to ensure that these checklists are actually developed and made available to appropriate personnel. Additionally, PBS should update the “Hurricane Preparedness” presentation and present or distribute it to PBS tenants before each hurricane season.

**Since the hurricane, PBS has improved its methodology to perform damage assessments for Government owned buildings.**

In Region 4, there were 189 leased and 14 GSA-owned locations in the FEMA declared Disaster Area. In Region 7, 49 leased and 13 GSA-owned locations were affected. In total, PBS had to assess hurricane damage at 265 buildings in the Southeast Sunbelt and

Greater Southwest regions. This posed a daunting task for PBS given the condition of the affected regions after the storm.

To perform building assessments, Region 4 and Region 7 took slightly different approaches. Region 4 used multi-disciplinary, geographically dispersed teams of GSA employees to perform the assessments for GSA-owned buildings, while Region 7 utilized both GSA employees and contractors. In Region 4, assessment teams were pre-deployed to Birmingham, AL before the storm so they could deploy quickly to the impact zone once the storm had passed. Assessors were onsite within 24-72 hours of the hurricane. In Region 7, contractors were given notice to proceed on September 2, 2005; however, they were unable to enter the New Orleans area due to access restrictions. On September 8, 2005, PBS employees accompanied contractors to begin assessing building damage, but in some cases could not perform complete assessments until flood waters receded. Both regions also used the Department of Health and Human Services, Federal Occupational Health Service, with whom GSA has an Interagency Agreement for industrial hygiene and environmental safety related matters.

The methodology used by GSA and by contract assessors to perform building assessments was essentially the same. Initial assessments dealt primarily with gauging the status of a building's envelope, e.g., walls, windows, doors, and roof, from the effects of wind and water damage. Assessors also evaluated utility availability by consulting local officials, when available, or through observation. Once observations of the building envelope and area utility service status were completed, assessors attempted building entry to perform floor-by-floor, room-by-room damage evaluations. When building entry was not possible, assessors would visually survey the building interior to the extent allowed by its window placement. Once a building had been assessed, the information was documented and relayed to the regional offices.

*Region 4 PBS has developed an interactive assessment tool to assist with future building damage assessments.*

After Hurricane Katrina, Region 4 developed "PC Tablets" to assist with the assessment process. These tools are pre-loaded with the data necessary to perform assessments (e.g. building info, GPS maps, contact info, etc.). This lessens the administrative burden for building assessors working in the field, as assessors need to input only actual assessment data. Assessments performed using these PC Tablets are interactive, taking assessors through a series of conditional questions. Assessment data is time stamped, so confusion derived from conflicting information in changing conditions can be avoided. Region 4 shared these PC Tablets with Region 7, which planned to begin using the tool in 2007. PBS should continue to enhance and utilize these PC Tablets during future disaster responses.

**Due to the increased demand for construction services in disaster areas, PBS encountered high building repair costs.**

The widespread devastation caused by Katrina created an intense demand for remediation and repair services, forcing GSA to compete with local businesses for a limited number of contractors, supplies, and services. In the urgency to restore and repair damaged facilities, PBS absorbed high building repair costs for both the Dan M. Russell Jr. Courthouse in Gulfport, MS and the John A. Campbell USCT in Mobile, AL projects.

*To repair and remediate the Dan M. Russell Jr. Courthouse, PBS absorbed high costs for the extended use of a time and materials contract.*

The Dan M. Russell Jr. Courthouse in Gulfport, MS suffered extensive damage from the hurricane. To begin the repair and remediation process, the contracting officer (CO) hired an estimating contractor the day after the hurricane. However, the contractor could only see the surface damage and, therefore, PBS could not develop a clear scope of work. Given the uncertainty of the scope of work required, PBS determined that its best available option was to award a time and materials contract for the remediation and repair work. Per the CO, the intention was to change from a time and materials contract to fixed pricing as soon as possible. The expectation was that remediation work would be performed on a time and materials basis. When that was completed, they would have a better idea of what was necessary to repair the building and could then switch to a firm fixed priced contract. However, per the CO, there was no “meeting of the minds” for the initial contract among the CO, the contractor, and the project manager. As a result, the time and materials basis was used for some of the build-back work and only the final portion of the contract was fixed price. The extended use of the time and materials contract placed the responsibility for all costs, including any contractor inefficiencies, on PBS.

In addition, the time and material contract provided for the application of a [redacted by GSA OIG] percent burden for overhead and an additional [redacted by GSA OIG] percent profit. Due to the urgency of the requirement, the labor rates for the contract were not initially negotiated. When the contractor submitted the labor rates, it provided only the billing rates and did not break down their content. When PBS’s estimator reviewed the billing rates and determined that they were fair and reasonable given the market conditions, he believed that the rates included overhead and profit. However, since the contractor did not provide detail for the rates, PBS personnel were unable to determine whether the rates had already been burdened with overhead and profit. When the contractor billed under the time and materials portion of the contract, it applied the additional [redacted by GSA OIG] percent overhead and [redacted by GSA OIG] percent profit to the billing rates, which, according to the contracting officer, may have added between \$500,000 and \$1 million to the repair costs. The CO expressed concern over the rates, but ultimately constructively accepted them by approving the invoices for payment.

*The cost of remediation and repair for the John A. Campbell USCT and Federal Building included a premium for the post-hurricane market conditions.*

After developing a scope of work and estimates for the John A. Campbell USCT and Federal Building in Mobile, AL, PBS negotiated a contract with an 8(a) small business to perform repair work in the Courthouse and Federal Building. PBS elected to use an 8(a) small business so that it could award a contract quickly. (Since the contract value was less than \$3 million, PBS could award the contract to an 8(a) firm without competition.) While the contractor submitted a proposal that was considerably higher than the government estimate, PBS estimated that there should be a 50 percent premium because of the increase in material costs and trouble finding labor. To reach the contract price, they added 50 percent to the government estimate, then added lodging and per diem since the contractor was from out-of-state. The contracting officer for this repair work indicated that PBS could have competed the contract and awarded a “cleaner” contract had they been able to put together a better scope of work. Additional work was necessary for John A. Campbell USCT and Federal Building, but the building manager elected to perform the work via a partition contractor because the 8(a) firm’s pricing was deemed unreasonable.

*PBS has taken steps to improve future disaster repair contracting efforts, but should explore additional alternatives.*

To avoid similar contracting difficulties in future disaster situations, GSA has awarded indefinite delivery, indefinite quantity (IDIQ) contracts for disaster assistance. The intent of these contracts is to enable GSA to remediate and take the necessary actions quickly without having to negotiate under urgent and compelling circumstances. However, IDIQ contractors may be subject to similar labor and material shortages that occurred in the aftermath of Katrina and may not be able to respond to PBS contract requests. As such, PBS needs to explore additional alternatives for procuring and administering repair and remediation contracts to control costs when responding to a disaster.

**In Region 7, PBS was unable to exercise the Fire and Casualty Damage clauses for hurricane-damaged leased space within the allowed timeframe.**

The GSA General Counsel’s Office disseminated guidance regarding leased space damaged by Hurricane Katrina to both Region 4 and Region 7 on September 7, 2005. This guidance was passed on to various PBS personnel, and was intended to assist realty professionals who were dealing with hurricane-damaged GSA leasehold interests. The guidance directs PBS personnel to examine lease General Clauses and Supplemental Lease Agreements to determine if the Fire and Casualty Damage clause was intact or if it had been modified. If intact (see 552.270-7 to the right), PBS

**552.270-7 Fire and Casualty Damage.**

As prescribed in 570.603, insert the following clause:

**FIRE AND CASUALTY DAMAGE (SEP 1999)**

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty. If so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

personnel should follow the appropriate protocol; if not, personnel should contact Regional Counsel for further instruction. Despite the dissemination of this guidance, PBS could not always perform damage assessments and exercise the Fire and Casualty Damage clause for partially destroyed properties within the 15 calendar day period allowed. As a result, GSA agreed to lease buyout agreements costing more than \$5 million.

PBS's ability to notify lessors of the Government's decision to exercise the Fire and Casualty Damage clause for partially destroyed properties appears to have been inhibited by a number of factors. First, the degree of devastation caused by Hurricane Katrina made it difficult for PBS to assess properties in the impact zone in order to make the decision of whether or not to exercise the clause. For many buildings located in the New Orleans area, it was physically impossible to perform the assessments because access to the respective areas was not available during that timeframe. Flooding, mold remediation, and other damage and environmental concerns caused by Katrina also made it difficult to access damaged buildings. Further, even in the event that they could perform assessments, lessors had evacuated the area and could not be located or contacted within the required timeframe. Additionally, PBS's labor force was focused on finding space for displaced tenants and returning the Federal Government to operational status. Lastly, there was confusion as to when notification of termination had to occur, and what "notification" actually means. The boilerplate Fire and Casualty Damage clause states that the Government should give "written notice to the lessor within 15 calendar days of the fire or casualty" for partially destroyed properties. However, this clause was modified for some leases, requiring notice within 15 days of the *determination*. PBS attempted to preserve its rights under the fire and casualty damage clause by sending letters to lessors on September 12, 2005, notifying them that GSA would make a determination of tenantability when able to access the properties. However, since these letters were not actual notices of termination, the termination rights under the clause expired.

Because of the difficulty in exercising the Fire and Casualty Damage clause Region 7 PBS agreed to a number of lease buyouts. Total buyout costs in Region 7 exceeded \$5 million, including \$4 million for one lease that represented 62 percent of the total remaining full term rent net operating expenses. Below is a listing of leases that were terminated via buyout agreements:

- **GS-07B-14881:** The firm term of this 21,000 rentable square feet (rsf) Social Security Administration (SSA) lease was 15 years, ending on July 15, 2017, with no termination rights other than those based on performance. As a result of the hurricane, this location was initially inaccessible. According to GSA's inspection report dated September 22, 2005, the building had sustained severe damage due to approximately three feet of water that flooded the building. On October 4, 2005, the U.S. Public Health Service determined that the building was not occupiable and the building systems were not operational. On October 28, 2005, GSA informed the lessor that it may terminate the lease and inquired about buying out the lease. Subsequently, on January 27, 2006, SSA notified GSA that they would

exercise their right to vacate this lease in 120 days. GSA did not terminate the lease until July 13, 2006, via Supplemental Lease Agreement (SLA) #7. SLA #7 terminated the lease effective August 31, 2005, with a one-time lump sum payment of \$3,952,039. This represented 49 percent of the \$7.9 million aggregate rental consideration on the lease if carried to term, or 62 percent of the remaining rental consideration.

- **GS-07B-15405:** The term of this 7,164 rsf Department of Labor lease for the Administrative Law Judges was 15 years, with termination rights after December 31, 2008, in addition to those based on performance. On October 28, 2005, the contracting officer communicated to the lessor that the Government terminated the lease based on the Fire and Damage Casualty clause. However, on November 1, 2005, the lessor rejected the Government's use of the Fire and Casualty Damage Clause since the Government failed to provide termination notice within 15 days of the hurricane. The parties negotiated a buyout agreement for \$205,000.
- **GS-07B-15352:** This was a lease construction project. Site work had begun before Katrina, but construction had not. After Hurricane Katrina hit, the demographics of New Orleans changed such that SSA no longer needed the office and canceled their request for the space. PBS had termination rights after the 8<sup>th</sup> year of this lease and entered into negotiations with the lessor, ultimately agreeing to a \$770,000 buyout.
- **GS-07B-13829:** PBS attempted to suspend rents due to flooding damage on October 1, 2005. However the lessor disagreed since damage was limited to the first floor. PBS negotiated a reduced rent for vacant facilities, and terminated the lease under Supplemental Lease Agreement #8, effective August 31, 2005, for a one-time lump sum payment of \$85,000. The firm term of the lease was to expire January 15, 2007.

While these buyout agreements resulted in substantial initial cash outflow, the Government has the potential to recover some buyout costs in the event the properties are re-let or sold during the remaining term of the respective Government leases. PBS should follow up with lessors and take measures to ensure refunds are received as appropriate. Further, to prevent similar situations from occurring after future disasters, PBS should alter the boilerplate Fire and Casualty Damage clause to allow for situations where it is unable to access leased buildings, assess building damage, or contact lessors. Per the Acting Assistant Commissioner, Office of National Customer Service Management, the Office of General Counsel has proposed such changes and the revised clause has been included as part of the overall rewrite of the Solicitation For Offers (SFO). Further, PBS planned to release the clause to the regions through a Realty Services Letter. PBS should follow through with these efforts to update the boilerplate clause.

**To ensure customer needs were met, PBS used different approaches to provide space.**

In the days following Hurricane Katrina, replacement office space for displaced businesses was at an unprecedented premium. To procure temporary space for displaced tenant agencies, Region 7 and Region 4 took different approaches. While Region 4 was able to temporarily house most displaced tenants in modular units, Region 7 met customer requirements by awarding temporary leases. However, due to the prevailing market conditions, PBS was not always able to procure short term leases or leases with termination rights.

*Region 4 effectively used modular unit rentals to temporarily house displaced tenants.*

In Region 4, Realty Services attempted to identify space before Katrina struck in the event temporary space was needed. As part of their preparations, contract specialists made contact with trailer companies, which ultimately became “lifesavers” for PBS and its tenants since they could get units when others couldn’t. Most displaced tenants in Region 4 were housed in these units, procured via GSA schedules, because many permanent structures were damaged. In Gulfport, trailers were the only space available. PBS was also able to minimize costs by using modular units, as rental agreements generally had 6-month terms with options. Agencies were able to extend rental agreements without unnecessarily entering into long-term leases.

*To meet customer space needs, Region 7 awarded temporary leases with no termination rights, resulting in rental payments for vacant properties and buyout agreements.*

Region 7 PBS issued 42 temporary leases to house displaced tenants in leased space, with lease terms ranging from 45 days to 3 years (with termination rights after 1 year). Due to the tight real estate market after the hurricane, PBS, in some instances, had to lease space for terms longer than the expected need in order to get the space and was unable to negotiate lease termination rights. Further, client requirements were often uncertain, as tenant agency needs were very fluid in the days following Katrina. We reviewed 13 of the 42 temporary leases and found that eight leases did not contain termination clauses. We also found that in 12 cases, customer agencies vacated before lease expiration. While FEMA took over payments for one lease, GSA was responsible for rental payments for the remaining 11.

Region 7 PBS also paid \$674,951 in rental payments and buyout agreement costs for leased space that was never occupied. The lease was awarded in anticipation of occupancy by multiple law enforcement agencies for emergency and turnaround space. However, the contracting officer for this lease rotated out of Baton Rouge and the space was never occupied, forcing GSA to cover rental payments and buyout costs.

Region 7 PBS attempted to minimize costs for vacant leased space by trying to find other tenants, but was unsuccessful in its efforts due to the degree of devastation in the area. PBS also attempted to negotiate reduced rent for vacant space and turned off utilities. Despite these efforts, the Government incurred expenses totaling nearly \$1.2 million for



the 13 leases reviewed for rental payments and buyout agreements for leased space that was vacated before lease expiration. PBS should follow up with lessors and take measures to ensure refunds are received as appropriate for terminated leased space that is sold or re-let after government buyouts.

**Hurricane Katrina rendered some GSA customer space un-tenantable, causing PBS to sustain net rent revenue losses of approximately \$10.1 million.**

Per the September 14, 2005 "Pricing and Billing Clarification for Space Actions Associated with Hurricane Katrina," PBS did not charge its customers rent for space that was determined to be un-tenantable as a result of Hurricane Katrina. For leased space, PBS terminated or suspended leases for those properties that were un-tenantable, thereby limiting losses to rent revenue for damaged GSA-owned properties and the PBS fee for leased space. In total, PBS lost approximately \$10.1 million in rent revenue for Hurricane Katrina damaged properties.

*Region 4 lost approximately \$3.2 million in rent revenue for owned and leased properties.*

Region 4 lost approximately \$3.1 million in rent revenue for GSA-owned properties damaged by Hurricane Katrina (as of March 2007). Additionally, Region 4 lost over \$900,000 in rent revenue for leased space. However, GSA's losses for leased space were limited to the PBS fee since PBS cancelled or suspended leases for un-tenantable properties effective August 29, 2005. Fees lost were approximately \$68,000, bringing total effective lost revenue to nearly \$3.2 million.

*Region 7 sustained net rent revenue losses of approximately \$6.9 million.*

Region 7 sustained considerably larger losses, losing approximately \$1.5 million in September 2005, \$11.1 million in FY 2006, and \$90,000 in FY 2007 (as of December 2006). Total lost revenue was approximately \$12.7 million. Region 7 gained replacement revenue of approximately \$5.8 million to offset these losses, bringing net losses to roughly \$6.9 million.

**GSA spent approximately \$103 million to repair GSA-owned properties damaged by Hurricane Katrina.**

In addition to losing rent revenue, GSA also incurred approximately \$103 million in expenses to repair properties damaged by Hurricane Katrina. In Region 7, FY 2005-07 BA 54<sup>1</sup> obligations for Katrina-related building repairs totaled \$53.8 million. Of this amount, \$35.6 million was used for the U.S. Customs House in New Orleans. Region 4 BA 54 obligations for the same period totaled \$31.3 million, including \$10.5 million for repairs at the Dan M. Russell Jr. U.S. Federal Building and Courthouse in Gulfport, MS, and an additional \$1.3 million for its annex. Additionally, Regions 4 and 7 collectively

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<sup>1</sup> BA54 is the budget account for non-prospectus repair and alteration.

obligated an additional \$17.9 million from BA 61<sup>2</sup> for Katrina-related expenses. GSA has received approximately \$75 million in supplemental funding to offset these expenses: \$38 million from the December 31, 2005 Defense Appropriations Act (PL 109-148), and an additional \$37 million from the June 15, 2006 Emergency Supplemental Act (PL 109-234).

## **Conclusion**

Our audit identified a number of issues that impeded PBS's ability to prepare for and respond to Hurricane Katrina. First, PBS had limited disaster-related standard operating procedures (SOPs) in place prior to Hurricane Katrina. In Region 7, no disaster preparation plans were in place other than identifying first responders prior to Katrina. In Region 4, only limited guidance was available at the service center level. While PBS has since taken steps to address the lack of SOPs, these efforts need to be continued and enhanced.

PBS was generally efficient in the damage assessment process and has developed a "PC Tablet" to facilitate future damage assessments. However, the repair process did not always go smoothly. The widespread devastation caused by Katrina created an intense demand for remediation and repair services, forcing GSA to compete with local businesses for a limited number of contractors, supplies, and services. As a result, the Government paid inflated prices in some instances. In the case of the Dan M. Russell Jr. Courthouse in Gulfport, MS, PBS absorbed the costs for the extended use of a time and materials contract for remediation and repair work. For repair work performed at the John A. Campbell USCT in Mobile, AL, PBS absorbed a 50 percent disaster premium. In an effort to prevent similar problems for future disasters, PBS has awarded IDIQ contracts for remediation and repair services. However, PBS still needs to explore other alternatives for procuring and administering repair and remediation contracts to control costs when responding to a disaster.

Hurricane Katrina left disastrous conditions in its wake which inhibited PBS's ability to exercise the Fire and Casualty Damage clause for hurricane-damaged leased space. This clause, which allows the government to terminate partially destroyed leases for space rendered un-tenantable by fire or other casualty, requires the Government to give written notice to the lessor within 15 calendar days of the fire or other casualty in order to exercise the clause. PBS's inability to exercise this clause was particularly costly in Region 7, where GSA agreed to lease buyout agreements costing the Government more than \$5 million. To prevent this in the future, PBS should alter the Fire and Casualty Damage clause to address similar situations.

Lastly, as a result of market conditions and uncertain customer requirements after the hurricane, PBS awarded some temporary leases with terms longer than client requirements and no termination rights. While Region 4 was successful in its use of modular unit rentals to temporarily house displaced tenants, market conditions in the New Orleans area led Region 7 to award temporary leases with terms that were often

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<sup>2</sup> BA 61 is the budget account for real property operations.

greater than tenants needed, ultimately resulting in vacant space and buyout agreements. We reviewed 13 of the 42 temporary leases awarded in Region 7 and found that in 11 cases, customer agencies vacated before lease expiration. While PBS attempted to minimize costs for vacant space by trying to find other tenants, negotiating reduced rent, and turning off utilities, PBS still incurred nearly \$1.2 million in rental payments and buyout agreements for these 11 leases. To minimize these costs, PBS should follow up with lessors and take measures to ensure refunds are received as appropriate for terminated leased space that is sold or re-let after government buyouts.

### **Recommendations**

To improve PBS's disaster preparations and response, we recommend that the Commissioner of the Public Buildings Service should:

1. Ensure that disaster related standard operating procedures are developed and building-level disaster preparations, including those to be performed by contractors, are developed for buildings in hurricane zones to ensure measures are taken to adequately safeguard real property assets during future disasters;
2. Ensure steps are taken to prepare tenants in hurricane zones before each hurricane season, such as updating and providing Region 4's "Hurricane Preparedness" presentation;
3. Continue to enhance and improve its damage assessment capabilities, such as the "PC Tablets," developed by Region 4 personnel, for future disaster responses;
4. Explore alternative methods to procure and administer repair and remediation contracts to control costs after a major disaster;
5. Ensure that measures are taken to follow up with lessors and obtain refunds as appropriate for terminated leased space that is re-let or sold after government buyouts; and
6. Follow through with efforts to update the boilerplate Fire and Casualty Damage clause to allow for situations where PBS is unable to access leased buildings, assess building damage, or contact lessors in order to prevent buyout agreements situations from occurring in future disasters.

### **Management Controls**

We evaluated the internal controls relating to the PBS's disaster preparation and response that were appropriate to meet the objectives of this audit. Relevant internal controls issues are discussed in the context of the audit findings.

## **Management Comments**

In general, PBS has concurred with all of the recommendations. However, PBS has taken exception to the context in which some of the findings have been presented. PBS's comments are included in Appendix A of this report and the Audit Response is included as Appendix B.

# Appendix A

## Management Comments



GSA Public Buildings Service

MAR 10 2008

MEMORANDUM TO R. NICHOLAS GOCO  
DEPUTY ASSISTANT INSPECTOR GENERAL  
FOR REAL PROPERTY AUDITS (JA-R)

FROM: DAVID L. WINSTEAD  
COMMISSIONER (P) *David L. Winstead*

SUBJECT: Draft Report: Audit of PBS's Response to Hurricane Katrina,  
Report Number A070075

The Public Buildings Service (PBS) thanks you for the opportunity to review and comment on the draft report, "Audit of PBS's Response to Hurricane Katrina."

The Office of the Inspector General's (OIG) draft report identifies four objectives for its audit and six recommendations to PBS for improving its disaster preparation and response processes.

We believe the report's objectives are valid, and we support this independent review for its value in providing an additional perspective on lessons learned in quantifying the costs of Hurricane Katrina to the Government and the FBF and in establishing benchmarks for future reference. However, PBS takes exception to the context in which some of the findings are presented in the draft report. Some of our concerns are included below and more specific concerns are detailed in the attached, "Corrections and Updates to the Draft OIG Report."

The draft report in several instances describes the costs incurred by the Government and attributes the costs to PBS's failures to anticipate or take actions that could have mitigated the financial costs to the Government. These transactions include the repair work for the Dan M. Russell Jr. Federal Building and Courthouse in Gulfport, MS, the repair work for the John A. Campbell Courthouse and adjacent Federal Building in Mobile, AL, and the lease terminations in the transactions mentioned. However, the report fails to sufficiently take into consideration the PBS efforts to re-open and restore Government operations in light of the post-disaster changed market conditions. PBS incurred increased costs in taking reasonable actions to respond to the disaster under the extreme circumstances existing after the storm. It should be noted that due to the magnitude of the disaster, PBS anticipated challenges with increased expenses and generally negotiated the most favorable terms available at the time.

U.S. General Services Administration  
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Washington, DC 20405-0002  
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The report lends itself to the assumption that there were a multitude of available options. It also assumes that management should have been involved in a cost avoidance plan rather than operation recovery plan that would best protect the interest of our assets and our customers. This is especially evident in the report's depiction of how PBS procured temporary leased facilities for its customer agencies. Although the OIG does not specifically refer to these temporary leases as Continuity of Operations Planning (COOP) Alternate Operating Facilities, in fact, the activation of customer agency COOP plans is what drove this unprecedented temporary lease acquisition. We believe the draft audit report inadequately factors the emergency nature of the temporary lease acquisitions and local market conditions into its determinations as to whether the actions taken by PBS were appropriate or not. Moreover, we believe it is inappropriate for the OIG to audit the emergency procurement of alternate operating facilities under the same pricing criteria used for normal PBS lease acquisitions. The private sector, faced with the same available commercial space, was subject to the same market as the Federal Government to re-establish operations. The premiums paid for emergency lease acquisitions were clearly documented in the response to Hurricane Katrina, and PBS continues to believe the prices it paid for space were fair and reasonable given the circumstances.

On the whole, PBS believes it acted reasonably in its response to Hurricane Katrina, given the conditions, circumstances, and constraints of a disaster of this magnitude. We also believe that this was a successful endeavor that demonstrates the tremendous efforts of the entire organization, as well as the challenging and heroic efforts of the many associates on the ground who played key roles in the quick re-opening of the Federal Government in the aftermath of the storm.

The National Response Framework (NRF) and its Emergency Support Functions provide national policy and procedures to manage natural disasters and other emergencies as they occur. PBS, for its part, is committed to safeguarding the Federal Government's real property assets and providing space and services to our customers. In furtherance of supporting the NRF, GSA executed a Memorandum of Agreement with the Federal Emergency Management Agency (FEMA) on June 18, 2007, to establish a framework for the provision of resource support and other space and services to FEMA during declared national disasters. In addition, PBS has implemented some of the measures and processes that are included in the draft audit report's recommendations. We will also prepare a corrective action plan to address the final recommendations upon receipt of the final audit report.

As a final point, PBS believes that the OIG missed a great opportunity to draw attention to the Federal Government as a whole to ensure that providing space in the aftermath of any major emergency is scalable, flexible, and adaptable, as stipulated in the NRF. Greater emphasis is needed on having the flexibility to respond appropriately to the variables of each situation. Response to emergencies is not merely a PBS action defined by internal processes and procedures that befit our normal business operations;

it is a coordinated effort by all responsible Federal agencies. Once defined by the demands of National Continuity Planning guidelines, PBS can then adopt appropriate operating procedures to provide unique and vital space and services.

The enclosed technical comments that update and clarify statements in the draft report are incorporated herein by reference. Again, thank you for the opportunity to respond to the draft report. Should you have any questions, please contact Mr. Anthony E. Costa, Deputy Commissioner, on (202) 501-1100.

Attachment

**CORRECTIONS AND UPDATES TO THE DRAFT  
OFFICE OF THE INSPECTOR GENERAL'S (OIG) REPORT  
"AUDIT OF PBS'S RESPONSE TO HURRICANE KATRINA," (A070075)  
GENERAL SERVICES ADMINISTRATION, PUBLIC BUILDINGS SERVICE**

Recommendations: PBS generally agrees with the recommendations with some qualifications as noted below.

1. *Ensure that disaster-related standard operating procedures (SOPs) are developed and building-level disaster preparations, including those to be performed by contractors, are developed for buildings in hurricane zones to ensure measures are taken to adequately safeguard real property assets during future disasters.*

PBS's Response: PBS partially concurs with the recommendation because we believe adequate plans were in place that were used to respond to the emergency appropriately and that no level of planning can address all possible contingencies. We agree that better follow through on taking preventive measures could have been done in some cases and we have made a more comprehensive effort to educate PBS building personnel on what preventive actions should be taken in anticipation of an approaching hurricane. GSA has an effective training and planning system in place that allows it to respond to emergency situations with associates and resources that meet customer needs.

The OIG recommends that SOPs and preparedness measures conform to directives found in the National Continuity Policy (HSPD-20). In response, a natural tendency will be to try to cover every exigency without the necessary customer input or involvement. We believe it is equally important that customer agencies develop continuity of operation and preparation (COOP) planning to ensure the efficacy of the over-all Federal response plan.

2. *Ensure steps are taken to prepare tenants in hurricane zones before each hurricane season, such as updating and providing Region 4's "Hurricane Preparedness" presentation.*

PBS's Response: PBS partially concurs. We concur that we have a responsibility to prepare our buildings and our tenants in hurricane zones for hurricane season. However, all Federal agencies also have a responsibility to prepare themselves for hurricane season and make sure that their COOP plans are in place and up-to-date. Federal agencies are primarily responsible for their own COOP plans. GSA is there to assist in acquiring alternate sites for Federal agencies and to prepare and protect our buildings.



3. *Continue to enhance and improve PBS's damage assessment capabilities, such as the "PC Tablets", developed by Region 4 personnel, for future disaster responses.*

PBS's Response: PBS concurs.

4. *Explore alternative methods to procure and administer repair and remediation contracts to control costs after a major disaster.*

PBS's Response: PBS concurs; however, based on our years of experience in the market and basic economics, we have found that the Government or any consumer of real estate-related services will face increases in rent for leased space and in costs for labor and materials to make repairs to damaged property. This is especially true under market conditions created in the aftermath of a storm, such as, Hurricane Katrina.

5. *Ensure that measures are taken to follow up with Lessors and obtain refunds as appropriate for terminated leased space that is re-let or sold after Government buyouts.*

PBS's Response: PBS concurs.

6. *Follow through with efforts to update the boilerplate Fire and Casualty Damage clause to allow for situations where PBS is unable to access leased buildings, assess building damage, or contact s to prevent buyout agreements from occurring in future disasters.*

PBS's Response: PBS concurs. PBS will pursue this change to the Fire and Casualty Damage clause.

Other PBS comments and clarifications with page number references for the OIG's consideration:

**1. Page 2.**

*Objectives, Scope, and Methodology.*

PBS's Response: There is no reference to whether the OIG interviewed customer agencies to gauge GSA's performance in finding alternative space and restoring building operations in Federal facilities after the storm. GSA did a great deal of work to assist with the delivery of alternative space and the restoration of building operations that resulted in the re-opening of the Federal Government and the restoration of Government services in a relatively short period of time. It would be beneficial to obtain some feedback from the agencies in that regard.

**2. Page 3, Par. 2, first and second sentences.**

*In the aftermath of the hurricane, PBS quickly deployed personnel to assess and repair damaged buildings as well as meet customer agency space needs. However, the demand for construction services and leased space was high and as a result, PBS had to absorb high repair and leasing costs in an effort to restore buildings quickly and respond to customers needs.*

PBS's Response: The first sentence is complimentary to GSA, and the second sentence states a fact about market prices. The second sentence begins with the word "however," which gives a negative connotation when there should be none. We suggest deleting the word "However" and beginning the second sentence with "The demand...."

**3. Pages i, 3, 4, and 5.**

*Standard Operating Procedures topics.*

PBS's Response: Continuity of Operations (COOP) plans were in place at all Region 7 Service Centers prior to Hurricane Katrina. Although the plans were in place before the hurricane, some of them have been updated since the storm.

**4. Page 3, Par. 2, line 8.**

*PBS absorbed more than \$5 million because it was unable to execute the Fire and Casualty Damage clause on several existing leases.*

PBS's Response: PBS disagrees with this conclusion. The Fire and Casualty Damage clause effective at that time and in some of the leases posed some complications for the Government; however, the costs incurred in the examples cited in the report arose from a change in the needs of the customer agencies and not the failure to execute the Government's rights under the clause. The report accurately describes the timing limitations imposed by the clause that required a determination on whether the premises were tenantable within 15 days of the date of the casualty (and consequently a decision on whether or not to terminate the lease). In many cases, it was impossible to make that determination within the prescribed time. Because of the impossibility of performance, the Office of General Counsel (OGC) issued guidance to put the Lessors on notice of the Government's actions and intentions and to preserve the Government's rights under the clause. We were challenged by Lessors in some cases on our rights to timely exercise the clause, but to conclude that, as a result, the Government absorbed damages to the extent of \$5 million is inaccurate. As described in more detail below, most of the damages incurred from lease terminations and buyouts were not due to the casualty clause, but rather from a change in the housing requirements of the tenant agencies.

**5. Page 3, Par. 4.**

*PBS had limited SOPs in place prior to Hurricane Katrina.*

PBS's Response: The report fails to give PBS credit for the COOP plans that were and are in place in each of the affected regions. The draft report implies that the intent of the OIG is to address a perceived need for SOPs that cover preventive measures in preparation for hurricanes. If so, this should be more specifically stated because COOP plans and procedures were in place, as well as storm preparation plans.

**6. Page 4, Par. 2.**

*No regional or building level plans were in place.*

PBS Response: Regional COOP plans were in place.

**7. Pages 7 and 8.**

*In the urgency to restore and repair damaged facilities, PBS absorbed high building repair costs for both the Dan M. Russell Jr. Courthouse in Gulfport, MS, and the John A. Campbell USCT in Mobile, AL, projects.*

PBS's Response: PBS senior regional officials made a conscious decision to take appropriate action based on a thorough review of the situation at the time. Under the circumstances, the time and material (T&M) contract form was considered the best business contract solution. This particular contract had a fixed rate of 10% G&A/Overhead and 10% Profit for a "not-to-exceed" estimate. Due to the extreme urgency of the requirement, direct labor rates were not negotiated prior to performance. The contractor submitted wage rates for review and approval throughout the performance of work. Rates submitted consisted of a single figure with no breakout of content. Requests for Technical Evaluation were submitted to GSA Estimators and reviewed by them. Their final determination was that the rates were fair and reasonable based on local industry knowledge.

Although the prices were eventually accepted, the Contracting Officer (CO) had concerns whether the rates were loaded or base rates. The Contractor refused to provide more detailed documentation despite repeated requests. However, since the rates were evaluated and determined reasonable, the rates were subsequently accepted and paid by the CO.

Post Katrina, skilled contractors and labor forces were in short supply and in high demand. All sectors of the economy required contractors and labor, including DOD, high profile and deep-pocket casinos, other private industries and state, county, and city governments. Further, the materials and supplies were extremely scarce and at a premium due to lack of available transportation and petroleum. While the CO was

concerned with labor rates containing overhead and profit, they were ultimately determined by GSA to be fair and reasonable, based on market conditions during that unprecedented time. Additional supporting documentation regarding the subject courthouse remediation and repairs was previously provided to the OIG.

**8. Page 7, par. 2.**

*When the contractor billed under the T&M portion of the contract, it applied 10% overhead and 10% profit to the billing rates, which, according to the CO, added between \$500,000 and \$1 million to the repair costs.*

PBS's response: PBS suggests that the OIG consider removing this reference from the report or, at minimum, qualifying this in the report as a possibility because the ultimate review by PBS determined the prices to be reasonable and consistent with the contract.

Due to the magnitude of the loss in the disaster locations and the inability of businesses to function as normal, the competition was limited resulting in COs accepting the best proposed rate available, which sometimes meant accepting the first and only offer.

In addition, the OIG's report does not take into full consideration the market conditions and customer uncertainty under which PBS was acting. PBS lease COs were extremely concerned with some of the prices they had to pay to acquire space under these conditions. Considering the undertone of the OIG's report, COs may be more reluctant to acquire space needed for customers under similar emergency circumstances, which could hamper the progress of responding to the emergency.

**9. Page 7, par. 6 and Page 13, par. 2.**

*While a contractor submitted a proposal that was considerably higher than the Government estimate; PBS estimated that there should be a 50% premium because of the increase in material costs and trouble finding labor.*

PBS response: PBS suggests that the OIG use the following facts for the report (and, if desired, can simply use the details regarding the project that were of the most concern):

PBS awarded three contracts in two divisions in Region 4. First, a roof repair project was completed. Although the Independent Government Estimate (IGE) was \$633,662, the contractor's proposal came in at almost twice that amount (\$1,285,000). The CO successfully negotiated the contract to an award amount of \$626,542. Other projects awarded included a cleanup of the first floor of the Federal Building (carpet replacement and general mitigation) to a partition contractor and also a cleanup of the first floor of the Courthouse, awarded to an

8(a) contractor, which was awarded for \$540,550. As part of the negotiation, the CO consulted with estimating professionals for PBS. They helped develop the premiums involved for the project because of lack of construction materials in the area and the need to bring in and pay housing for out-of-town crews to perform the work, both of which are legitimate costs. Long after Katrina, the Gulf Coast continued to suffer from lack of a local skilled workforce, material shortages and lack of sufficient housing. The CO negotiated to shorten the work period by 25% and even negotiated the contractor workforce to four workers per room (down from private rooms for each worker). The scope may have been considered deficient under normal conditions, but under emergency conditions and in the interest of both protecting the building and preparing it for re-occupancy as soon as possible, a fair and supportable price was paid for the work. Moreover, though the region subsequently developed (and continues to plan for) Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, which may be an option to 8(a), it is likely the premiums associated with the 8(a) firms will also apply to the IDIQs, since most are not local to the area.

**10. Pages 8 through 10 and all other references in the report.**

*In Region 7, PBS was unable to exercise the Fire and Casualty Damage clause for hurricane-damaged leased space within the allowed timeframe.*

PBS's response: PBS and OGC take strong exception to the draft report's conclusions that GSA failed to properly exercise the Fire and Casualty Damage clause in existing leases affected by Hurricane Katrina and that the agency could not terminate those leases as a result.

Further, PBS believes that it acted reasonably in its efforts to use the Fire and Casualty Damage clause contained in leases affected by Hurricane Katrina. Regardless, the draft report suggests that the clause be altered to better account for the kind of situation encountered following Katrina. PBS and OGC agree that such a change to the clause would be beneficial. In fact, OGC developed and provided to PBS shortly after the hurricane an altered version of the Fire and Casualty Damage clause that will address this situation, and which is pending issuance. As noted in the report, OGC provided guidance to the regions shortly after landfall of Hurricane Katrina regarding the Government's rights under the then-standard Fire and Casualty Damage clause. Specifically with respect to many leased buildings located in and around New Orleans, it was physically impossible for GSA to make determinations regarding tenantability of leased space within the 15 calendar-day period referenced in the clause because access to the area was not available within that timeframe. As a result, GSA attempted to send letters to Lessors, within the 15 calendar-day timeframe, notifying them that GSA would make a determination regarding tenantability of the leased space after the agency was able to physically access the premises. While the draft report accurately states these notices were not notices of termination, it fails to recognize that they were never intended for that

purpose. Rather, the notices were intended to seek preservation of the Government's rights under the Fire and Casualty Damage clause until such time as determinations of tenantability could be made. Part of that determination involved not only inspecting the premises but making a good faith effort to contact the Lessors and find out their intentions, ability and timing on restoring the premises.

The draft report appears to suggest that GSA should have preemptively sought to terminate leases under the Fire and Casualty Damage clause prior to the time the agency knew that premises were, in fact, untenable. PBS and OGC believe such a practice, as opposed to the actions the agency actually did take, would have represented an improper exercise of the clause.

PBS also observes that the report's discussion of this issue fails to recognize or account for GSA tenant agency uncertainties following Katrina and how these played a major role in decisions affecting leased space. Agency decisions to seek buyouts of leases following the storm were more a function of tenant agencies deciding not to relocate back into the areas where their leased facilities were located, rather than an inability on GSA's part to exercise the Fire and Casualty Damage clause.

**11. Page 9, Par. 1, last sentence.**

*However, since these letters were not actual notices of termination, the termination rights under the clause expired.*

PBS's Response: PBS disagrees with this conclusion. The actions taken by PBS and OGC were to try to preserve our rights under the clause because of the impossibility of performing under the time constraints and to put the Lessors on notice of the impossibility to make the determination, in part because the leased premises were not accessible by either the Government or the Lessors, as well as the fact that the Lessors were not in a position to advise us on the extent of the damage and their intentions towards restoration.

**12. Page 9, Par. 2, 1st sentence.**

*Because of the difficulty in exercising the Fire and Casualty Damage clause, Region 7 PBS agreed to a number of lease buyouts.*

PBS's Response: Again, PBS believes this is a misleading statement. The lease buyouts were driven primarily by the change in housing requirements of the tenant agencies, notwithstanding the casualty clause.

PBS's response to GS-07B-14881: PBS suggests that the OIG note that the primary decision that initiated the need for a lease buyout was the Social Security Administration's (SSA) announcement in January 2006 that they would not return to the Mid-Cities location. All steps and communication before this date were focused

on preparing the building for SSA's return. With no other space requirement for this location, PBS negotiated a settlement. Sixty-two percent of the total remaining firm term was agreed to because of the Lessor's effort to restore the building after the storm. We suggest that the OIG state for the record that this was a "fair" settlement in view of the unprecedented circumstances.

**13. Page 11, Par. 2.**

*To meet customer space needs, Region 7 awarded temporary leases with no termination rights, resulting in rental payments for vacant properties and buyout agreements.*

PBS's Response. As noted in the agency's comments regarding the draft report's discussion of the Fire and Casualty Damage clause, PBS decisions to seek buyouts of leased space were often the result of tenant agency uncertainties and decisions following the storm not to relocate back to prior leased locations. The draft report fails to recognize that the same may be said for temporary leases awarded following the storm. Moreover, PBS believes the draft report fails to accurately reflect the true nature of market conditions that impacted GSA's ability to procure temporary replacement space for agencies. In the days following the hurricane, replacement housing and office space for displaced businesses and families were at an unprecedented premium. It is unrealistic for the OIG to suggest in its report that PBS should have sought shorter lease terms with greater options to terminate where prevailing market conditions often made obtaining such terms commercially impracticable. PBS believes its actions in providing replacement space for client agencies following Katrina added significant value to the Federal Government's ability to reopen for business following the devastation wrought by the storm. Moreover, PBS believes those replacement lease actions, when executed, were representative of tenant agency requirements as communicated to PBS at the time and were made on fair and reasonable terms that were in the best interests of the agency and the taxpayers.

PBS suggests that the OIG stress that the customer agencies' decisions drive the requirements for temporary space or longer, more permanent leases. Their decisions determine when and where temporary space is needed to restore essential functions. The additional cost of \$1.2 million to reinstate the essential functions of 13 separate agencies in the 13 reviewed leases should be viewed as a corporate decision of GSA based on PBS consultations with its agency customers rather than a loss to the fund. The OIG implies that this was an avoidable error by PBS rather than a result of the real estate market conditions and agencies' requirements as they existed at the time.

**14. Page 13, Par. 1, line 2.**

*PBS did not have disaster-related standard operating procedures (SOPs) in place prior to Hurricane Katrina.*

PBS's Response: Here the report states that no SOPs were in place, but at page 3, the report states, "PBS had limited disaster-related standard operating procedures (SOPs) in place prior to Hurricane Katrina". At minimum, this should be revised to be consistent with page 3. In addition, it should be noted that COOP plans were in place.

**15. Page 13, Par. 2, lines 2-3, 6, 10-13.**

*However the repair process did not always go smoothly. The Government paid inflated prices in some instances. In an effort to prevent similar problems for future disasters, PBS has awarded IDIQ contracts for remediation and repair services. However, PBS still needs to explore other alternatives for procuring and administering repair, and remediation contracts to control costs when responding to a disaster.*

PBS's Response: It is unrealistic to expect things to always go smoothly in responding to a disaster of this size. The Government and the private sector both faced an increase in prices for space, labor, and materials. While steps have been taken to address some of the problems that were encountered in this emergency response, the Government and the private sector will incur increased costs when responding to an emergency like Hurricane Katrina. Steps can be taken to better prepare for these disasters and we can and will continue to implement lessons learned.

**16. Page 13, Par. 3, lines 6-8.**

*PBS's inability to exercise this clause was particularly costly in Region 7, where GSA agreed to lease buyout agreements costing the Government more than \$5 million.*

PBS's Response: Again, we disagree with this conclusion by the OIG. The losses cited were primarily due to the change in the housing requirements of the tenant agencies and not the difficulties in exercising the casualty clause. The OIG does not capture this important factor in its conclusion.

**17. Page 13, par. 4.**

*Lastly, PBS awarded some temporary leases with terms longer than client requirements and no termination rights. While Region 4 was successful in its use of modular unit rentals to temporarily house displaced tenants, market conditions in the New Orleans area led Region 7 to award temporary leases with terms that were often greater than tenants needed, ultimately resulting in vacant space and buyout agreements. We reviewed 13 of the 42 temporary leases awarded in Region 7 and*



*found that in 11 cases, customer agencies vacated before lease expiration. While PBS attempted to minimize costs for vacant space by trying to find other tenants, negotiating reduced rent, and turning off utilities, PBS still incurred nearly \$1.2 million in rental payments and buyout agreements for these 11 leases. To minimize these costs, PBS should follow up with lessors and take measures to ensure refunds are received as appropriate for terminated leased space that is sold or re-let after government buyouts.*

PBS Response: PBS requests that the current paragraph, above, be replaced with:

"Lastly, PBS awarded some long-term temporary leases with no termination rights. While Region 4 successfully employed the use of modular unit rentals to temporarily house displaced tenants, Region 7 awarded temporary leases based on known facts at that time. For example, GSA was often not in a position to know how long a term was needed for the various leases.

- First, many clients' requirements were fluid in the days following the destruction. On the ground, clients were making decisions about whether and how much their employees might work from home; whether to consolidate offices in other locations; and, in some cases, whether to close a particular office completely. Many of these decisions were reversed as more information became available.
- Second, in the remote locations, it was obvious that whether and when other alternate locations would be available was completely unpredictable, and/or whether other entities would lease them before customer agencies were able to finally determine their needs. So it was unclear as to whether PBS could write short-term leases and then move to a more permanent location later. There were many times the leasing specialists simply did not know if the requirement would be for weeks, months, or years because of changing agency needs."

## Appendix B

### Response to Management's Comments

The Office of Inspector General (OIG) thanks the Public Buildings Service (PBS) for its consideration of and comments on the draft report. In response to PBS's concerns, some information in the report has been modified. In addition, several issues are addressed in more detail below.

#### *Overhead and profit for the Dan M. Russell Jr. Courthouse project*

In the case of the Dan M. Russell Jr. Courthouse project, the repair and remediation contractor applied a charge of [redacted by GSA OIG] percent for overhead and [redacted by GSA OIG] percent for profit to its "billable" labor rates. The audit report notes that PBS may have paid twice for overhead and profit, potentially costing the Government between \$500,000 and \$1 million. PBS suggests in its response that the OIG remove this statement or qualify it as a possibility, and further states that the OIG report does not fully consider market conditions and customer uncertainty. PBS states that the labor rates were deemed fair and reasonable.

To date, we have not received a determination by a PBS contracting officer that the labor rates were fair and reasonable. As mentioned in the report, the labor rates submitted for approval consisted of a single figure with no breakout of content, so PBS could not determine the basis for the rates. In discussions with the audit team, the contracting officer and the estimator who evaluated the rates believed that the proposed labor rates included both overhead and profit. The contracting officer stated that it looked like the rates would include overhead and profit when compared to Davis-Bacon wage rates. The contracting officer expressed concern over the rates, but constructively accepted them by approving the invoices for payment. These invoices billed [redacted by GSA OIG] percent overhead and [redacted by GSA OIG] percent profit on top of the labor being billed. As such, PBS was charged in excess of the submitted labor rates. According to the contracting officer, these additional charges may have cost PBS between \$500,000 and \$1 million.

#### *Fire and Casualty Damage clause*

According to the report, PBS was unable to exercise the Fire and Casualty Damage clause for leases in place before the hurricane and as a result, agreed to lease buyout agreements costing more than \$5 million. PBS disagrees with the conclusion and states that the buyouts were implemented due to changing customer needs. PBS's response refers specifically to Social Security Administration lease GS-07B-14881, suggesting that the primary catalyst for the \$3.95 million buyout was the tenant's announcement that it would not return to the space.

However, this is contrary to information in the July 7, 2006 Findings & Determination for Lease GS-07B-14881, which was prepared by regional contracting and legal personnel. According to the document, an inspection report dated September 22, 2005, found the building had sustained severe damage due to approximately three feet of water that

flooded the building. On October 4, 2005, the U.S. Public Health Service inspected the premises and determined that the building was not occupiable and the building systems were not operational. On October 28, 2005, GSA personnel informed the lessor that GSA may decide to terminate the lease and asked if the lessor would agree to a buyout of the remaining term of the lease. Subsequently, on January 27, 2006, the Social Security Administration notified GSA that it would vacate the lease and would not return to this location. The Findings & Determination document further states, “The Government did not exercise its right to terminate the lease within 15 days of the Casualty ... and therefore is obligated to pay reduced rental payments for the remainder of the contract period.”

### *Other Issues*

In some of its comments, PBS is responding to conclusions and suggestions that are not stated in either the final or the draft report. As such, PBS is attributing issues and conclusions to the Office of Inspector General although they are not in the report.

For instance, PBS states in its response that, “we believe it is inappropriate for the OIG to audit the emergency procurement of alternate operating facilities under the same pricing criteria used for normal PBS lease acquisitions.... The premiums paid for emergency lease acquisitions were clearly documented in the response to Hurricane Katrina, and PBS continues to believe the prices it paid for space were fair and reasonable given the circumstances.” PBS later states that, “PBS lease COs were extremely concerned with some of the prices they had to pay to acquire space under these circumstances. Considering the undertone of the report, COs may be more reluctant to acquire space needed for customers under similar emergency circumstances, which could hamper the progress of responding to the emergency.”

However, the draft report does not address premium pricing for facilities leased subsequent to Hurricane Katrina or make pricing comparisons using criteria used for normal lease acquisitions. With regard to replacement leases, the report states that replacement space for displaced businesses was at an unprecedented premium and mentions the difficulties associated with finding space with favorable terms given the prevailing market conditions.

PBS also states in its response, “The draft report appears to suggest that GSA should have preemptively sought to terminate leases under the Fire and Casualty Damage clause prior to the time the agency knew that premises were, in fact, untenable. PBS and OGC believe such a practice ... would have represented an improper exercise of the clause.” The report does not suggest that GSA should have taken any such action. The report recognizes that since many properties were inaccessible and could not be assessed within the 15-day timeframe in the boilerplate Fire and Casualty Damage clause, the clause could not be exercised.

## Appendix C

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