

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

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

A160019/P/4/R17003



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

REPORT ABSTRACT

OBJECTIVES

Our objectives were to determine if:

- PBS enforces the health, safety, and security terms of the full service lease at the Kress Building in Tampa, Florida; and
- PBS's approach to handling mold and other environmental issues exposed tenants to health risks.

Southeast Sunbelt Region Audit Office (JA-4) 401 West Peachtree Street NW, Room 1701 Atlanta, GA 30308 (404) 331-5125

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

WHAT WE FOUND

PBS has not enforced the terms of the full service lease at the Kress Building and may have exposed tenants to health risks.

We identified the following during our audit:

<u>Finding 1</u> – PBS's failure to enforce the terms of the full service lease resulted in inadequate maintenance and repair of the facility.

<u>Finding 2</u> – PBS did not notify the tenants about the presence of black mold in a timely manner, possibly exposing them to health risks.

WHAT WE RECOMMEND

Based on our audit findings we recommend that the Southeast Sunbelt Region PBS Regional Commissioner:

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

GSA COMMENTS

GSA provided information in its response but neither agreed nor disagreed with our findings. However, GSA concurred with our recommendations. In its response, which is included in its entirety in *Appendix C*, GSA requested that we consider information provided in an August 3, 2016, response, including associated attachments, as part of the official response. While we made adjustments to the report based on the information provided, we did not alter our findings. We did not include the response and attachments dated August 3, 2016, due to the volume of the documentation.

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Introduction

We performed a limited scope audit of the Public Buildings Service's (PBS's) management of the environmental, health and safety, and maintenance issues at the Kress Building in Tampa, Florida.

Purpose

We performed this audit in response to complaints received through the Office of Inspector General's Fraud Hotline. The complaints alleged that the Kress Building has a number of issues including water intrusion, termite infestations, poor ventilation, exterior deterioration, and mold. Some tenants have also expressed concerns that the building is making them sick. In addition, there have been numerous complaints about maintenance issues that have not been addressed by the lessor or PBS.

Objectives

The objectives of our audit were to determine if PBS enforces 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.

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

Background

GSA currently leases 26,931 square feet of office and related space at the Kress Building under Lease Number GS-04B-46845 for the U.S. Customs and Border Protection Agency (Customs) located at 1624 East Seventh Avenue in Tampa, Florida. 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. Annual rent is \$673,701. The building currently houses a Customs Field Operations Facility.

When the initial lease was signed, the only tenants were a Customs Management Center and a field office for the Customs Area Port of Tampa.¹ In 2003, Customs' day-to-day operations, staffing, and facility and security requirements changed substantially. Customs attempted to relocate but due to a lack of funding and untimely completion of the new space request, the lease was extended in October 2006. This initial extension was for 10 years, until November 3, 2016.

The Kress Building has had problems over the years with water intrusion, termites, poor ventilation, exterior deterioration, and mold. In addition, Customs has reported a

¹ The Customs Area Port of Tampa is an air and sea port of entry with both passenger and cargo processing responsibility. The port's field office is located in the Kress Building.

number of safety and maintenance-related problems to PBS and the lessor. These include, but are not limited to, failed building safety requirements, pest infestations, unsuitable air conditioning and heating, poor air quality, plumbing problems, roof leaks, and routine facility maintenance and cleaning concerns. In an attempt to address the tenant's concerns, PBS issued a Notice of Non-Compliance to Victoria Properties, LLC in September 2014, stating that the lessor was out of compliance with the maintenance obligations of the lease. The notice mentioned ceiling leaks; heating, ventilation, and air conditioning (HVAC) system maintenance; termite infestation; dirty windows and building exterior; and inadequate cleaning services as items that need to be addressed. It also stated that the lease would default if the lessor did not correct the deficiencies.

The lessor viewed many of the issues as minor or common to all buildings and maintained that the on-site maintenance staff addressed these issues in a timely manner. However, to prove the facility was not a "sick building" or contributing to illnesses claimed by some of the tenants, in July 2015, the lessor contracted with Air Allergen and Mold Testing, Inc. (Air Allergen) to perform indoor air quality testing. The indoor air sampling test results confirmed that the indoor air guality was safe. In the same month, Victoria Properties, LLC wrote a letter to Florida's U.S. Senator Bill Nelson stating, "The reported issues are of absolutely no consequence what so ever." However, Air Allergen's August 2015 test on a ceiling tile sheetrock sample confirmed the presence of black mold in a third floor training room. In September 2015, PBS contracted with Federal Occupational Health, who hired Pure Air Services, Inc. to perform additional airborne sampling tests. Pure Air Services, Inc. concluded that there were a number of potential air and moisture infiltration problems. The company also concluded that while the third floor training room had higher mold levels than the other areas tested, the results for all other areas of the building were within the recommended quidelines.

In December 2015, Victoria Properties, LLC wrote a letter to GSA Administrator Denise Turner Roth, expressing concerns about the tenant's interpretation of the testing in the building. In a reply letter, PBS's Southeast Sunbelt Regional Commissioner acknowledged the lessor's concerns and stated that the indoor air quality report did not reveal environmental conditions that would be harmful to the tenants. However, the tenants continued to report ongoing issues with the building and the lessor. In January 2016, GSA organized a meeting in which the lessor agreed to a corrective action plan to address the list of open issues.

On April 27, 2016, GSA's leasing broker notified the lessor that the Kress Building would not be considered for a new long-term lease because Customs' requirements had changed. However, GSA was still considering a short-term lease extension with the lessor until a new space was located.

As a result of ongoing building and maintenance issues, PBS issued the lessor another Notice of Non-Compliance on August 10, 2016. In its August 24, 2016, response, Victoria Properties, LLC stated that it was a responsive lessor. It also claimed to have addressed some of the issues and was working to resolve the remaining areas of non-

compliance by the end of September 2016. However, GSA later acknowledged that the lessor did not address all the issues by the September 30, 2016, deadline.

On September 9, 2016, GSA signed a short term lease extension with the lessor through November 3, 2018.

Results

PBS has not enforced the terms of the full service lease at the Kress Building and may have exposed tenants to health risks. Specifically, we found that PBS did not hold the lessor accountable for maintenance and repair issues in a timely fashion. In addition, PBS failed to timely notify the tenants about the presence of black mold in a training room.

Finding 1 – PBS's failure to enforce the terms of the full service lease resulted in inadequate maintenance and repair of the facility.

PBS did not hold the lessor accountable for maintenance and repair issues in a timely fashion. Section 7.9 (A) of the lease states:

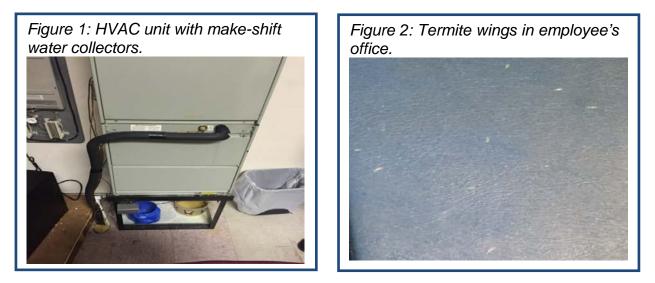
The Lessor is responsible for the total maintenance and repair of the leased premises. All equipment and systems shall be maintained to provide reliable, energy-efficient service without unusual interruption, disturbing noises, exposure to fire or safety hazards, uncomfortable drafts, excessive air velocities, or unusual emissions of dirt.

Customs provided us a log used to track problems in the building dating back to 2007. The log included 208 reported problems from 2015 to 2016, some of which were repeated because the lessor did not address them in a timely manner. Noted building problems included water intrusion, termite infestations, poor ventilation, exterior deterioration, mold, non-working water fountains, and unsatisfactory maintenance and janitorial practices. Neither PBS nor the lessor maintains its own log of reported building problems.

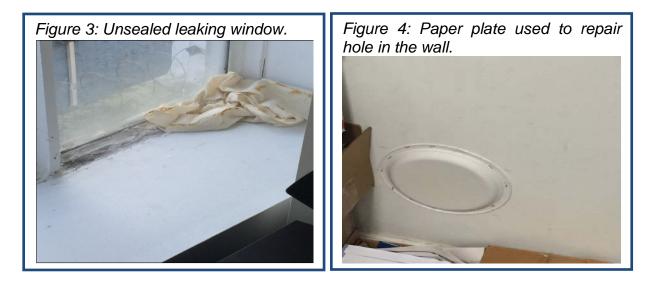
Customs' personnel also noted potential security concerns, such as exterior gates not effectively secured. For example, during our visit to the Kress Building, a Customs agent demonstrated how locked doors could be opened without the use of a key. This is contrary to Section 9.2 of the lease, which states, "The Lessor shall provide a level of security that reasonably prevents unauthorized entry to the space during non-duty hours and deters loitering or disruptive acts in and around the space leased."

Because of numerous tenant complaints, PBS issued a Notice of Non-Compliance to the lessor in September 2014. The notice stated that the lessor was out of compliance with the maintenance obligations of the lease and included a due date of October 31, 2014, to address the issues or PBS could cease rent payments, perform the necessary work, and deduct the cost of repairs from the rent. However, PBS allowed months to pass without satisfactorily addressing the issues with the lessor. The ceiling leaks, HVAC system maintenance, termite infestation, and building exterior mentioned in the September 2014 notice were still unresolved as of our site visit on October 14, 2015.

During our tour of the facility, we noticed HVAC systems that leaked and required water collectors (see *Figure 1*) or daily vacuuming. Although we did not see live termites, we witnessed termite wings on desks and on the floor (see *Figure 2*).



We also observed walls, ceilings, light fixtures, and windows with evidence of past or current water intrusion problems. In some cases, windows had rotting frames sealed by tape or covered with cloth (see *Figure 3*). Finally, during our walk through, Customs and PBS officials also pointed out a number of areas that were poorly maintained or repaired by the lessor. For example, we observed a hole in a hallway wall that the lessor's maintenance personnel concealed with a paper plate (see *Figure 4*).



We selected a sample of 14 reported issues from 2015 and 2016 from the Customs' log to determine if the lessor had satisfactorily addressed the problems. We found that the lessor had addressed eight issues, while six were still open and scheduled to be resolved. The six items not addressed by the lessor have been open for an average of 7 months. See **Appendix B** for additional details.

In January 2016, PBS, Customs, and the lessor met to address the unresolved tenant complaints and develop a corrective action plan. However, since the meeting, the lessor has missed agreed-upon completion dates, and the tenants continued to complain about the problems.

On July 22, 2016, Customs wrote a letter to Southeast Sunbelt Region PBS management reiterating ongoing building maintenance issues and security concerns with the maintenance staff. The security concerns included unprofessional behavior, lack of uniforms or identification, and roaming freely into spaces where sensitive law enforcement matters were discussed. PBS responded by issuing the lessor another Notice of Non-Compliance on August 10, 2016. The notice highlighted ten areas of non-compliance associated with architectural, janitorial, maintenance, and facility safety obligations. In the notice, PBS stated that if the deficiencies were not remedied by September 30, 2016, the government may invoke the Failure in Performance lease clause. The clause states that, in the event of any failure by the lessor to provide any service, utility, maintenance, repair or replacement required under this lease, PBS may perform the requirement and deduct from rental payments the resulting cost to the government, including all administrative costs.² GSA personnel stated that the lessor did not address two of the ten areas of non-compliance by the September 30, 2016, deadline and that they were pursuing the next steps in the cure process.

On December 5, 2016, GSA issued a Notice of Default and Final Opportunity to Cure to the lessor. The notice identified four specific areas of non-compliance with a default date of January 13, 2017. GSA informed the lessor that if the unsatisfactory conditions were not corrected prior to the default date, the Government may, without further notice, correct the conditions and deduct the costs incurred. GSA determined that a cure of the default would cost approximately \$135,800.

We found no instances throughout the term of the lease where PBS withheld rent or performed any of the necessary maintenance or repair work, despite the lessor's repeated failure to do so in a timely manner.

Finding 2 – PBS did not notify the tenants about the presence of black mold in a timely manner, possibly exposing them to health risks.

On August 3, 2015, a portion of a drywall ceiling in a third floor training room fell because of water intrusion in the ceiling (see *Figures 5 and 6*). Black spots were discovered on the ceiling tile, prompting the lessor to remove an 8x10-inch piece and send it to Air Allergen for testing. Air Allergen's report, dated August 7, 2015, confirmed the presence of Stachybotrys, or black mold, on the ceiling tile. After receiving the test results, the lessor's onsite maintenance person sprayed the open area of the ceiling with a mold inhibitor and temporarily covered the open area with plastic film.

² Lease clause 552.270-10.



On August 20, 2015, the lessor provided the test results to PBS's Building Manager, who subsequently forwarded them to a GSA Southeast Sunbelt Region Safety and Environmental employee for analysis and interpretation. While the results of the test were being reviewed, the tenant was not notified by either PBS or the lessor. In addition, neither PBS nor the lessor permanently remediated and repaired the damaged area. The tenants stated that the area was not permanently repaired because GSA advised the lessor not to seal it until the results of recent air quality tests were received and GSA could monitor and inspect the repair.

On September 9, 2015, 33 days after the lessor received the test results, PBS notified Customs of the positive test for black mold. However, during this period, the tenants had access to the training room because it was not fully contained or isolated. As a result, tenants may have been unnecessarily exposed to black mold.

Conclusion

GSA did not enforce the terms of the full service lease and failed to hold the lessor accountable for maintaining the building in an acceptable condition. GSA also did not notify the tenants about the presence of black mold in a timely manner and may have exposed them to health risks.

Recommendations

We recommend that the Southeast Sunbelt Region PBS Regional Commissioner:

- 1. Enforce the terms of the lease and take immediate action to ensure that all necessary maintenance and repairs are addressed.
- 2. Develop and distribute guidance that ensures the immediate communication of environmental concerns and test results to affected building tenants.

GSA Comments

In its December 5, 2016, response to our report, GSA provided information but neither agreed nor disagreed with our findings. However, GSA concurred with our recommendations. In its response, which is included in its entirety in *Appendix C*, GSA requested that we consider information provided in an August 3, 2016, response, including associated attachments, as part of the official response. While we made adjustments to the report based on the information provided, we did not alter our findings. We did not include the response and attachments dated August 3, 2016, due to the volume of the documentation.

Audit Team

This audit was conducted by the individuals listed below:

Arthur Edgar Audit Manager Valerie Smith Auditor-In-Charge

Appendix A – Scope and Methodology

Scope and Methodology

We initiated this limited scope audit as a result of hotline complaints related to water intrusion and mold in the Kress Building in Tampa, Florida. Our audit focused on GSA's management of the environmental, health, and safety issues at the Kress Building.

To accomplish our objectives, we:

- Reviewed GSA policies and procedures and industry guidance associated with water intrusion and mold;
- Reviewed the full service lease (GS-04B-46845) and applicable supplemental lease agreements for the Kress Building;
- Visited the Kress Building to assess the conditions of the property;
- Interviewed officials from PBS, Customs, Pure Air Services Inc., and Victoria Properties, LLC;
- Reviewed emails and other written communications between the lessor, tenant, and PBS officials;
- Reviewed Customs' log of maintenance issues;
- Reviewed indoor air quality and environmental assessment reports; and
- Examined a sample of 14 maintenance issues to determine if the lessor addressed them in a timely and effective manner.

We conducted the audit between October 2015 and April 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Internal Controls

Our assessment of internal controls was limited to those necessary to address the objectives of the audit. Identified internal control issues are discussed in the Results section of this report.

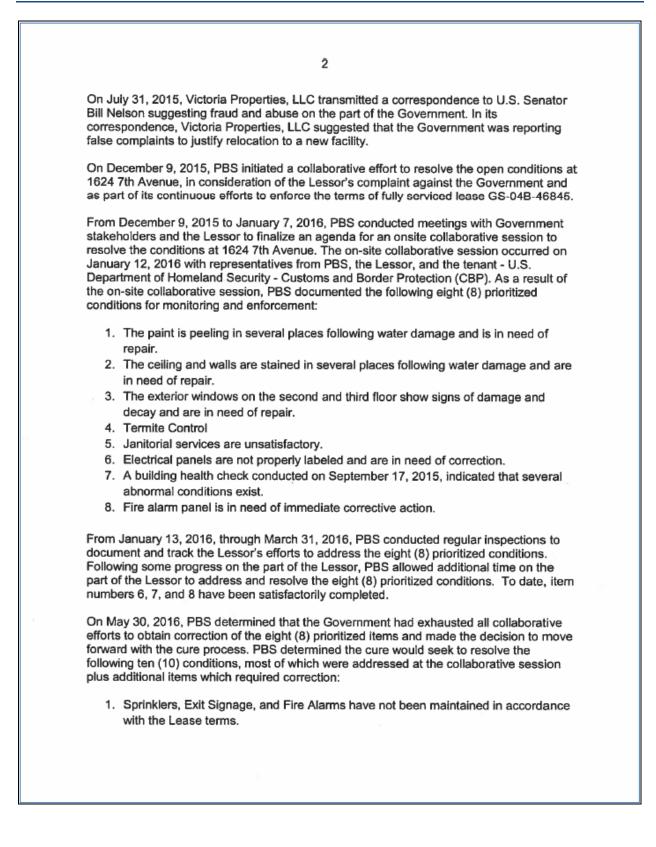
Appendix B – Maintenance Log Testing Sample

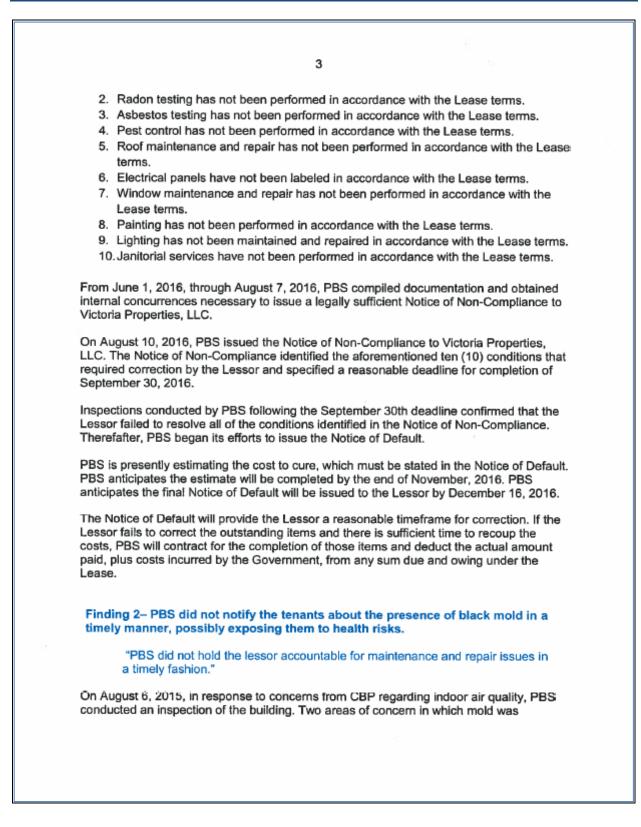
Customs tracks maintenance problems in the building via a spreadsheet. The Customs' log included 208 reported issues from January 2015 to February 2016. This appendix lists the 14 issues we sampled for review from this time period.

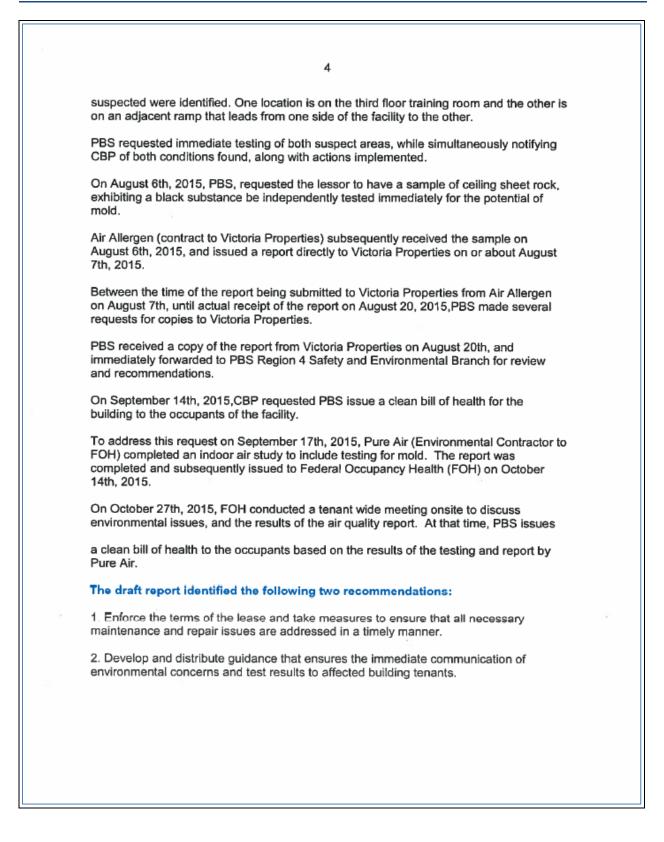
Issue	Date Opened	Status
HVAC – Credit union	05/07/15	Unresolved
Lighting – Out in Stairway	05/20/15	Closed
Bathroom – Directors [sic] toilet not working, has not	06/08/15	Closed
been fixed		
Mold – Black spot growing	08/06/15	Closed
Leak – Training room ceiling	08/07/15	Unresolved
Plumbing – LAN A/C drained directly into plumbing	08/27/15	Closed
vent stack - code violation		
Leak – Window still sealed with duct tape	08/27/15	Unresolved
HVAC – Gym, pan filling up wand [sic] has lifeform	08/27/15	Unresolved
growing in it, mold on wall		
Miscellaneous - We had [the lessor] pull the fire	10/02/15	Closed
alarm and the 3rd floor did not sound at all, 2nd floor		
sounded minimal, and 1st floor sounded normal. 1st		
Floor AC issues		
Back gate – Officer working Sunday stated back gate	11/01/15	Closed
is not working		
Miscellaneous – Parking lot light and the alley light	01/04/16	Closed
over the roll up doors are not working making it dark		
and unsafe		
Miscellaneous – HSDN AC not working.	01/14/16	Closed
Miscellaneous – The temperature the last couple of	01/20/16	Unresolved
days has been cold so we have needed heat. One of		
the officers mentioned needing the heat to [the lessor]		
yesterday and according to the officer, [the lessor]		
just laughed. My office is 68 degrees, the thermostat		
downstairs on the 1st floor is 70. Is this acceptable to		
GSA? [The tenant] has had to wear a coat in the		
office for over a week.		
Miscellaneous – West side 3rd floor women's	02/03/16	Unresolved
restroom water/moisture in wall.		

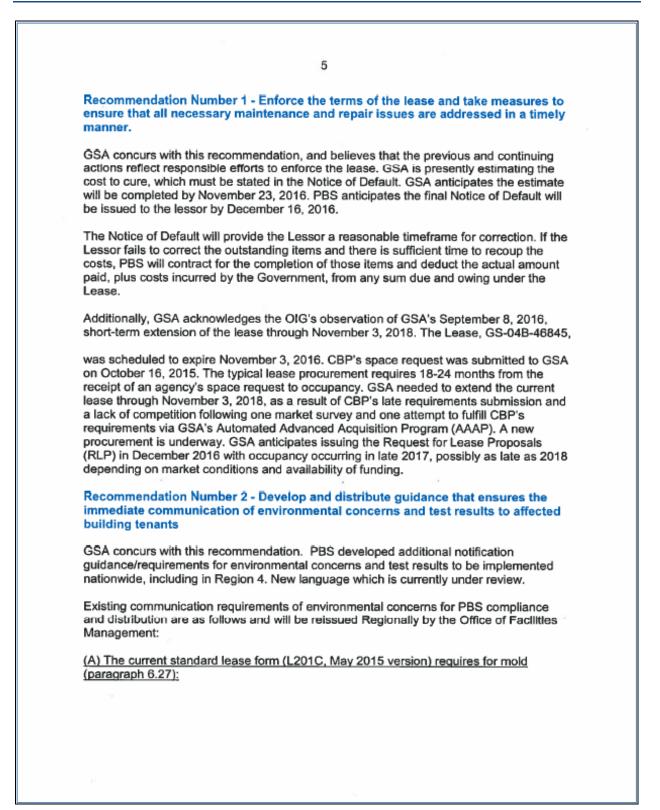
Appendix C – GSA Comments

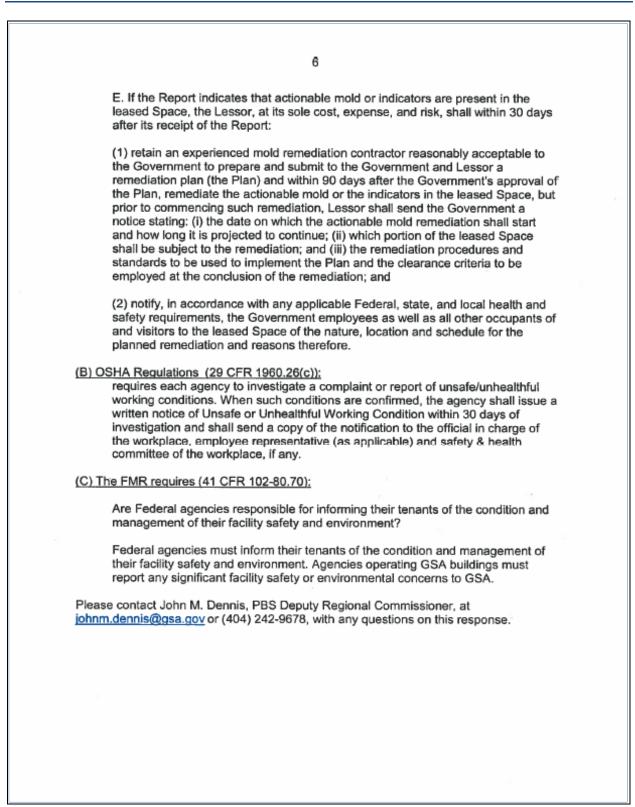
	GSA	Public Buildings Service	
	December 5, 2016	Α.	
	MEMORANDUM FOR:	CAROL F. OCHOA INSPECTOR GENERAL OFFICE OF THE INSPECTOR GENERAL (J)	
	FROM:	NORMAN DONG COMMISSIONER PUBLIC BUILDINGS SERVICE (P)	
	Thank you for the opportunity to review and comment on the draft report entitled PBS Failed to Enforce Kress Building Lease and May Have Exposed Tenants to Health Risks (report number A160019), dated November 4, 2016.		
	Prior to providing GSA's specific responses to the findings and recommendations to the draft report (presented below), GSA would like to acknowledge and thank your office for the additional detail and perspective provided in the draft report's "Background" section. This additional context is helpful in presenting the challenges and complexities associated with this project. Additionally, as part of GSA's response to this draft report, GSA requests the previous responses and associated attachments provided on August 3, 2016, be considered part of the PBS response.		
	Finding 1– PBS's failure to en in inadequate maintenance an	force the terms of the full services lease resulted id repair of the facility.	
	"PBS did not hold the le a timely fashion."	ssor accountable for maintenance and repair issues in	
1	PBS documented its multiple efforts to enforce the terms of fully serviced lease GS-04B- 46845 dating back to September 30, 2014. PBS' efforts have included the initial issuance of a Notice of Non-Compliance, collaborative efforts to obtain resolution, and PBS' most recent efforts to enforce the lease terms via the cure process. The cure process requires the issuance of a Notice of Noncompliance and the issuance of a Notice of Default. Both the Notice of Noncompliance and the issuance of a Notice of Default. Both the Notice of Noncompliance and the issuance of a Notice of Default require that the Government provide the Lessor with a reasonable timeframe for correction. A summary of PBS's efforts dating from September 30, 2014, and the status of the cure is provided herein.		
	On September 30, 2014, PBS is LLC.	sued a Notice of Non-Compliance to Victoria Properties,	
		1800 F Street, NW	
		Washington, DC 20405-0002	
		www.gsa.gov	











Appendix D – Report Distribution

Acting GSA Administrator (A)

PBS Regional Commissioner (4P)

Acting Regional Administrator (4Q)

PBS Commissioner (P)

PBS Deputy Commissioner (PD)

Acting Chief of Staff (P)

Regional Counsel (LD4)

PBS Deputy Regional Commissioner (4P1)

Chief Administrative Services Officer (H)

GAO/IG Audit Management Division (H1G)

Audit Liaison, PBS (P)

Assistant Inspector General for Auditing (JA)

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