



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*



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.

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Region Audit Office (JA-4)
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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:

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

Finding 2 – 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 quality 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 guidelines.

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*).

Figure 1: HVAC unit with make-shift water collectors.



Figure 2: Termite wings in employee's office.



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*).

Figure 3: Unsealed leaking window.



Figure 4: Paper plate used to repair hole in the wall.



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.

Figure 5: Section of drywall ceiling that fell in the third floor training room.



Figure 6: Open ceiling area in the third floor training room.



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 – <i>Credit union</i>	05/07/15	Unresolved
Lighting – <i>Out in Stairway</i>	05/20/15	Closed
Bathroom – <i>Directors [sic] toilet not working, has not been fixed</i>	06/08/15	Closed
Mold – <i>Black spot growing</i>	08/06/15	Closed
Leak – <i>Training room ceiling</i>	08/07/15	Unresolved
Plumbing – <i>LAN A/C drained directly into plumbing vent stack - code violation</i>	08/27/15	Closed
Leak – <i>Window still sealed with duct tape</i>	08/27/15	Unresolved
HVAC – <i>Gym, pan filling up wand [sic] has lifeform growing in it, mold on wall</i>	08/27/15	Unresolved
Miscellaneous – <i>We had [the lessor] pull the fire alarm and the 3rd floor did not sound at all, 2nd floor sounded minimal, and 1st floor sounded normal. 1st Floor AC issues</i>	10/02/15	Closed
Back gate – <i>Officer working Sunday stated back gate is not working</i>	11/01/15	Closed
Miscellaneous – <i>Parking lot light and the alley light over the roll up doors are not working making it dark and unsafe</i>	01/04/16	Closed
Miscellaneous – <i>HSDN AC not working.</i>	01/14/16	Closed
Miscellaneous – <i>The temperature the last couple of 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.</i>	01/20/16	Unresolved
Miscellaneous – <i>West side 3rd floor women's restroom water/moisture in wall.</i>	02/03/16	Unresolved

Appendix C – GSA Comments



Public Buildings Service

December 5, 2016

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 enforce the terms of the full services 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."

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 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 issued a Notice of Non-Compliance to Victoria Properties, LLC.

1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Appendix C – GSA Comments (cont.)

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On July 31, 2015, Victoria Properties, LLC transmitted a correspondence to U.S. Senator Bill Nelson suggesting fraud and abuse on the part of the Government. In its correspondence, Victoria Properties, LLC suggested that the Government was reporting false complaints to justify relocation to a new facility.

On December 9, 2015, PBS initiated a collaborative effort to resolve the open conditions at 1624 7th Avenue, in consideration of the Lessor's complaint against the Government and as part of its continuous efforts to enforce the terms of fully serviced lease GS-04B-46845.

From December 9, 2015 to January 7, 2016, PBS conducted meetings with Government stakeholders and the Lessor to finalize an agenda for an onsite collaborative session to resolve the conditions at 1624 7th Avenue. The on-site collaborative session occurred on January 12, 2016 with representatives from PBS, the Lessor, and the tenant - U.S. Department of Homeland Security - Customs and Border Protection (CBP). As a result of the on-site collaborative session, PBS documented the following eight (8) prioritized conditions for monitoring and enforcement:

1. The paint is peeling in several places following water damage and is in need of repair.
2. The ceiling and walls are stained in several places following water damage and are in need of repair.
3. The exterior windows on the second and third floor show signs of damage and decay and are in need of repair.
4. Termite Control
5. Janitorial services are unsatisfactory.
6. Electrical panels are not properly labeled and are in need of correction.
7. A building health check conducted on September 17, 2015, indicated that several abnormal conditions exist.
8. Fire alarm panel is in need of immediate corrective action.

From January 13, 2016, through March 31, 2016, PBS conducted regular inspections to document and track the Lessor's efforts to address the eight (8) prioritized conditions. Following some progress on the part of the Lessor, PBS allowed additional time on the part of the Lessor to address and resolve the eight (8) prioritized conditions. To date, item numbers 6, 7, and 8 have been satisfactorily completed.

On May 30, 2016, PBS determined that the Government had exhausted all collaborative efforts to obtain correction of the eight (8) prioritized items and made the decision to move forward with the cure process. PBS determined the cure would seek to resolve the following ten (10) conditions, most of which were addressed at the collaborative session plus additional items which required correction:

1. Sprinklers, Exit Signage, and Fire Alarms have not been maintained in accordance with the Lease terms.

Appendix C – GSA Comments (cont.)

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2. Radon testing has not been performed in accordance with the Lease terms.
3. Asbestos testing has not been performed in accordance with the Lease terms.
4. Pest control has not been performed in accordance with the Lease terms.
5. Roof maintenance and repair has not been performed in accordance with the Lease terms.
6. Electrical panels have not been labeled in accordance with the Lease terms.
7. Window maintenance and repair has not been performed in accordance with the Lease terms.
8. Painting has not been performed in accordance with the Lease terms.
9. Lighting has not been maintained and repaired in accordance with the Lease terms.
10. Janitorial services have not been performed in accordance with the Lease terms.

From June 1, 2016, through August 7, 2016, PBS compiled documentation and obtained internal concurrences necessary to issue a legally sufficient Notice of Non-Compliance to Victoria Properties, LLC.

On August 10, 2016, PBS issued the Notice of Non-Compliance to Victoria Properties, LLC. The Notice of Non-Compliance identified the aforementioned ten (10) conditions that required correction by the Lessor and specified a reasonable deadline for completion of September 30, 2016.

Inspections conducted by PBS following the September 30th deadline confirmed that the Lessor failed to resolve all of the conditions identified in the Notice of Non-Compliance. Thereafter, PBS began its efforts to issue the Notice of Default.

PBS is presently estimating the cost to cure, which must be stated in the Notice of Default. PBS anticipates the estimate will be completed by the end of November, 2016. PBS anticipates the final Notice of Default will be issued to the Lessor by December 16, 2016.

The Notice of Default will provide the Lessor a reasonable timeframe for correction. If the Lessor fails to correct the outstanding items and there is sufficient time to recoup the costs, PBS will contract for the completion of those items and deduct the actual amount paid, plus costs incurred by the Government, from any sum due and owing under the Lease.

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

"PBS did not hold the lessor accountable for maintenance and repair issues in a timely fashion."

On August 6, 2015, in response to concerns from CBP regarding indoor air quality, PBS conducted an inspection of the building. Two areas of concern in which mold was

Appendix C – GSA Comments (cont.)

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suspected were identified. One location is on the third floor training room and the other is on an adjacent ramp that leads from one side of the facility to the other.

PBS requested immediate testing of both suspect areas, while simultaneously notifying CBP of both conditions found, along with actions implemented.

On August 6th, 2015, PBS, requested the lessor to have a sample of ceiling sheet rock, exhibiting a black substance be independently tested immediately for the potential of mold.

Air Allergen (contract to Victoria Properties) subsequently received the sample on August 6th, 2015, and issued a report directly to Victoria Properties on or about August 7th, 2015.

Between the time of the report being submitted to Victoria Properties from Air Allergen on August 7th, until actual receipt of the report on August 20, 2015, PBS made several requests for copies to Victoria Properties.

PBS received a copy of the report from Victoria Properties on August 20th, and immediately forwarded to PBS Region 4 Safety and Environmental Branch for review and recommendations.

On September 14th, 2015, CBP requested PBS issue a clean bill of health for the building to the occupants of the facility.

To address this request on September 17th, 2015, Pure Air (Environmental Contractor to FOH) completed an indoor air study to include testing for mold. The report was completed and subsequently issued to Federal Occupancy Health (FOH) on October 14th, 2015.

On October 27th, 2015, FOH conducted a tenant wide meeting onsite to discuss environmental issues, and the results of the air quality report. At that time, PBS issues

a clean bill of health to the occupants based on the results of the testing and report by Pure Air.

The draft report identified the following two recommendations:

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.

Appendix C – GSA Comments (cont.)

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Recommendation Number 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.

GSA concurs with this recommendation, and believes that the previous and continuing actions reflect responsible efforts to enforce the lease. GSA is presently estimating the cost to cure, which must be stated in the Notice of Default. GSA anticipates the estimate will be completed by November 23, 2016. PBS anticipates the final Notice of Default will be issued to the lessor by December 16, 2016.

The Notice of Default will provide the Lessor a reasonable timeframe for correction. If the Lessor fails to correct the outstanding items and there is sufficient time to recoup the costs, PBS will contract for the completion of those items and deduct the actual amount paid, plus costs incurred by the Government, from any sum due and owing under the Lease.

Additionally, GSA acknowledges the OIG's observation of GSA's September 8, 2016, short-term extension of the lease through November 3, 2018. The Lease, GS-04B-46845,

was scheduled to expire November 3, 2016. CBP's space request was submitted to GSA on October 16, 2015. The typical lease procurement requires 18-24 months from the receipt of an agency's space request to occupancy. GSA needed to extend the current lease through November 3, 2018, as a result of CBP's late requirements submission and a lack of competition following one market survey and one attempt to fulfill CBP's requirements via GSA's Automated Advanced Acquisition Program (AAP). A new procurement is underway. GSA anticipates issuing the Request for Lease Proposals (RLP) in December 2016 with occupancy occurring in late 2017, possibly as late as 2018 depending on market conditions and availability of funding.

Recommendation Number 2 - Develop and distribute guidance that ensures the immediate communication of environmental concerns and test results to affected building tenants

GSA concurs with this recommendation. PBS developed additional notification guidance/requirements for environmental concerns and test results to be implemented nationwide, including in Region 4. New language which is currently under review.

Existing communication requirements of environmental concerns for PBS compliance and distribution are as follows and will be reissued Regionally by the Office of Facilities Management:

(A) The current standard lease form (L201C, May 2015 version) requires for mold (paragraph 6.27):

Appendix C – GSA Comments (cont.)

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E. If the Report indicates that actionable mold or indicators are present in the leased Space, the Lessor, at its sole cost, expense, and risk, shall within 30 days after its receipt of the Report:

(1) retain an experienced mold remediation contractor reasonably acceptable to the Government to prepare and submit to the Government and Lessor a remediation plan (the Plan) and within 90 days after the Government's approval of the Plan, remediate the actionable mold or the indicators in the leased Space, but prior to commencing such remediation, Lessor shall send the Government a notice stating: (i) the date on which the actionable mold remediation shall start and how long it is projected to continue; (ii) which portion of the leased Space shall be subject to the remediation; and (iii) the remediation procedures and standards to be used to implement the Plan and the clearance criteria to be employed at the conclusion of the remediation; and

(2) notify, in accordance with any applicable Federal, state, and local health and safety requirements, the Government employees as well as all other occupants of and visitors to the leased Space of the nature, location and schedule for the planned remediation and reasons therefore.

(B) OSHA Regulations (29 CFR 1960.26(c)):

requires each agency to investigate a complaint or report of unsafe/unhealthful working conditions. When such conditions are confirmed, the agency shall issue a written notice of Unsafe or Unhealthful Working Condition within 30 days of investigation and shall send a copy of the notification to the official in charge of the workplace, employee representative (as applicable) and safety & health committee of the workplace, if any.

(C) The FMR requires (41 CFR 102-80.70):

Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

Federal agencies must inform their tenants of the condition and management of their facility safety and environment. Agencies operating GSA buildings must report any significant facility safety or environmental concerns to GSA.

Please contact John M. Dennis, PBS Deputy Regional Commissioner, at johnm.dennis@gsa.gov or (404) 242-9678, with any questions on this response.

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)