



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

Audit of the Public Buildings Service's Use of Contract Employees in the New England and Northeast and Caribbean Regions

Report Number A160134/P/2/R19001
December 12, 2018

Executive Summary

Audit of the Public Buildings Service's Use of Contract Employees in the New England and Northeast and Caribbean Regions

Report Number A160134/P/2/R19001

December 12, 2018

Why We Performed This Audit

The audit was included in the GSA Office of Inspector General's *Fiscal Year 2016 Audit Plan*. The Public Buildings Service's (PBS's) use of contract employees is substantial. In Fiscal Year 2016, GSA's budget included about \$63 million for PBS management support, defined as PBS functions that are contracted out. Accordingly, we performed this audit to determine whether PBS offices in the New England and Northeast and Caribbean Regions: (1) are properly awarding and administering contracts for contractor employees in compliance with applicable regulations and guidance, and (2) have appropriate internal controls in place to ensure effective oversight of contract employees.

What We Found

Our audit disclosed deficiencies in PBS's administration and oversight of contracts for contractor employees in the New England Region (Region 1) and the Northeast and Caribbean Region (Region 2). Specifically, PBS Regions 1 and 2 lack policies and procedures to prevent acquisition personnel from awarding and administering prohibited personal services contracts. As a result, we found that four contracts in Region 1 and five contracts in Region 2 exhibited characteristics of a prohibited personal services contract.

We also found that Region 2 PBS did not comply with applicable regulations and guidance in its acquisitions for contractor support services and as a result, put the government at risk of waste, fraud, and abuse. We identified several areas of inadequate contract administration, including: (1) a contract employee working overtime hours despite the lack of authorized funds for overtime; (2) a contract extended past its allowable time limit; (3) a contract for temporary staffing used beyond its 240 workday limitation; (4) an overpayment of \$2,515 due to an inadequate proposal evaluation; (5) contractor invoices that lacked documentation and were not properly reviewed; and (6) contracts for which contracting officers' representatives (CORs) were not properly designated. Taken together, these findings point to inadequate management and oversight of contractor support services.

What We Recommend

We recommend that:

1. The PBS Regional Commissioners for the New England and Northeast and Caribbean Regions develop, implement, and maintain the management controls and policies and

procedures necessary to ensure that PBS is not awarding and administering contracts in a manner that creates prohibited personal services contracts.

2. The PBS Regional Commissioner for the Northeast and Caribbean Region direct regional management to ensure that:
 - a. Controls are strengthened to ensure that personnel in charge of service contracts adhere to and enforce contract requirements.
 - b. Contract time limits are adhered to.
 - c. Contracting officers are aware of schedule timeframe limitations prior to awarding any contract, especially for Temporary Administrative and Professional Staffing contracts.
 - d. The Region recoups the \$2,515 overpayment identified in this audit.
 - e. Contracting officers analyze proposed prices for accuracy prior to award.
 - f. Contracting officers and CORs review invoices and supporting documentation prior to making any payments to contractors.
 - g. CORs are properly certified and designated prior to being assigned contract oversight responsibilities.

PBS agreed with our findings and recommendations. PBS's comments can be found in their entirety in **Appendix C**.

Table of Contents

Introduction	1
Results	
<i>Finding 1 – PBS Regions 1 and 2 lack policies and procedures to prevent contracting officials from awarding and administering prohibited personal services contracts.....</i>	<i>3</i>
<i>Finding 2 – Region 2 PBS did not comply with applicable regulations and guidance in the award and administration of contracts for contract employees, thereby placing the government at risk of waste, fraud, and abuse.....</i>	<i>7</i>
Conclusion.....	13
<i>Recommendations</i>	<i>13</i>
<i>GSA Comments.....</i>	<i>14</i>
Appendixes	
Appendix A – Scope and Methodology.....	A-1
Appendix B – Contracts Displaying Characteristics of Personal Services Contracts	B-1
Appendix C – GSA Comments.....	C-1
Appendix D – Report Distribution	D-1

Introduction

We performed an audit of the Public Buildings Service's (PBS's) use of contractor employees in the New England Region and Northeast and Caribbean Region.

Purpose

The audit was included in the GSA Office of Inspector General's *Fiscal Year 2016 Audit Plan*. The Office of Management and Budget requires agencies to report annually on their inventories of service contracts to determine whether contract labor is being used appropriately and effectively. PBS's use of contract employees is substantial. In Fiscal Year 2016, GSA's budget included about \$63 million for PBS management support, defined as PBS functions that are contracted out.

Objectives

The objectives of this audit were to determine whether PBS offices in the New England and Northeast and Caribbean Regions: (1) are properly awarding and administering contracts for contract employees in compliance with the applicable regulations and guidance, and (2) have appropriate internal controls in place to ensure effective oversight of contract employees.

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

Background

PBS is the landlord for the civilian federal government. PBS acquires space on behalf of the federal government through new construction and leasing and acts as a caretaker for federal properties across the country. PBS regional offices manage government-owned and leased space for federal agencies within their designated area. PBS's New England Region (Region 1) manages over 11 million square feet of government-owned and leased space for federal agencies in the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. PBS's Northeast and Caribbean Region (Region 2) manages over 12.8 million square feet of federally-owned space and 10.5 million rentable square feet of leased space in New York, Northern New Jersey, Puerto Rico, and the U.S. Virgin Islands.

In performing their duties, Region 1 and Region 2 management both supplement their staffs with contract employees. The contract employees perform various functions, including administrative support, information technology services, project management, and facilities management. Within Region 1 there were 16 embedded contract employees working under four contracts in Fiscal Year 2016. Region 2 had 82 embedded contract employees working

under 15 contracts in Fiscal Year 2016.¹ The total value of these 19 contracts (inclusive of all base and option years) was \$48,733,011.²

¹ The focus of our audit was on contract employees who were physically located in PBS offices (i.e., embedded contract employees). We did not include operation and maintenance contract employees in our audit scope.

² Region 1 contracts were valued at \$10,414,821 and Region 2 contracts were valued at \$38,318,190.

Results

Our audit disclosed deficiencies concerning PBS's administration and oversight of contracts for contract employees. Specifically, PBS Regions 1 and 2 lack policies and procedures to prevent acquisition personnel from awarding and administering prohibited personal services contracts. As a result, we found that four contracts in Region 1 and five contracts in Region 2 exhibited characteristics of a prohibited personal services contract.

We also found that Region 2 PBS put the government at risk because it did not comply with applicable regulations and guidance in its acquisitions for contractor support services. We identified several areas of inadequate contract administration, including: (1) a contract employee working overtime hours despite the lack of authorized funds for overtime; (2) a contract extended past its allowable time limit; (3) a contract for temporary staffing used beyond its 240 workday limitation; (4) an overpayment of \$2,515 due to an inadequate proposal evaluation; (5) contractor invoices that lacked documentation and were not properly reviewed; and (6) contracts for which contracting officers' representatives (CORs) were not properly designated.

Finding 1 – PBS Regions 1 and 2 lack policies and procedures to prevent contracting officials from awarding and administering prohibited personal services contracts.

PBS Regions 1 and 2 need to implement policies and procedures to prevent contracting officials from awarding and administering prohibited personal services contracts. We found that 9 of the 13 service contracts we examined (approximately 65 percent of total award value) demonstrated characteristics of prohibited personal services contracts in violation of Federal Acquisition Regulation (FAR) 37.104, *Personal Services Contracts*.

The FAR defines a personal services contract as a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, government employees. According to FAR 37.104, the government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

FAR 37.104 cites the following six characteristics as a guide in assessing whether a contract is personal in nature:

1. Performance on site.
2. Principal tools and equipment furnished by the government.
3. Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.
4. Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

5. The need for the type of service provided can reasonably be expected to last beyond 1 year.
6. The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, government direction or supervision of contractor employees.

Significantly, the FAR notes that “each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract.”

We found that four contracts from Region 1 and five contracts from Region 2 demonstrated several characteristics of personal services contracts. Specifically, the administration and terms of the contracts gave the appearance that there was relatively continuous supervision and control of contractor personnel by government employees, thereby establishing improper employer-employee relationships.

Our findings are summarized below. **Appendix B** details how each of the nine contracts specifically demonstrated characteristics of personal services contracts.

Contract Administration

We interviewed employees associated with all 13 contracts in our sample in order to examine the effectiveness of contract administration. For the nine contracts in question, we interviewed 38 contract employees and 23 PBS employees associated with these contracts. Based on these discussions, we concluded that these nine contracts met many of the characteristics for personal services found in FAR 37.104. The following summarizes our conclusions.

All contractor personnel that we interviewed worked onsite in various PBS offices and were provided necessary equipment and supplies by PBS. The PBS employees interviewed asserted that their offices would not function properly without the assistance of a majority of the contractor personnel. For example, one PBS employee stated that the office would not be able to operate without the assistance and “it would be devastating if the contract ended.” PBS employees also asserted that more than half the contract employees were performing the same or similar duties as federal employees. Additionally, most of the contract employees interviewed had been working in their current position for more than a year.

Most significantly, it appears that PBS employees maintained relatively continuous supervision of and control over contractor personnel. Supervision and control took the form of routine assignment of tasks to contractor personnel and reporting to PBS personnel on a day-to-day basis. In some instances, PBS employees also interviewed contractor personnel before they started work, approved and disapproved of contractor personnel leave requests, and reviewed and signed contractor personnel timesheets.

Region 1's Acquisition Management Director addressed the topic of supervision and assignment of tasks in relation to two administrative services contracts. He told us that "the Government is not providing direct supervision under the ... contract; rather, it is informing the on-site contractor of services needed that are within the scope of the discipline specifications cited within the contract." He added that "while it may appear that the GSA individual responsible for a particular (contract) employee is 'supervising,' in reality they are actually informing and receiving work products within the contract scope. (The contractor) is providing the actual supervision."

We considered the Director's comments in our analysis; however, we found that these contracts exhibit the characteristics of personal services contracts for two reasons. First, the contractor does not have on site supervision for the contract employees. While this may not be a requirement of the contracts, it creates the appearance that GSA employees are providing on site supervision of and direction to the contract employees. Second, during our interviews of these employees, we were told that PBS staff directly assign them tasks. Therefore, an improper employer-employee relationship appears to exist as the contract employees are seemingly under the relatively continuous supervision and control of government personnel.

Contract Terms

Language in the solicitations for each of the nine contracts either expressly granted supervisory duties to PBS personnel or was inconsistent and vague as to who was responsible for supervising and assigning work to contractor personnel. The following excerpts were taken from solicitations, Requests for Quotation, or Statements of Work (SOWs) from the various contracts:

- In three contracts for administrative support services, the solicitations state that the contracts are not for personal services and the contractor is the legally responsible employer and supervisor and responsible for interviewing personnel to fill contract employee positions. Various job title descriptions state that work is to be performed with supervision or instructions from higher level employees under the general supervision of the Director/Deputy Director, and the supervisor sets the overall objectives. However, the job descriptions do not state whether the supervisor is a contractor or PBS employee. Our interviews with contractors and PBS employees confirmed that contractor personnel's tasks were assigned and reviewed by government employees.
- The SOW for a contract for rent bill management services stated that several PBS employees would assign work "At the request of PBS associates (realty specialists, Regional Program Manager (RPM), account managers, asset managers, etc.) the Contractor performs data entry"

In addition, the SOW did not state who is responsible for the supervision of contractor personnel. Our interviews with contractors and PBS employees confirmed that

contractor personnel received daily work assignments from several PBS employees and were supervised by a government employee.

- The SOW for an administrative and staffing support services contract stated that contractor personnel under the task order shall not be placed in a position where there is an appearance that they are employed by the federal government, or are under the supervision, direction, or evaluation of a federal employee. However, four position descriptions in the SOW stated that contractor personnel will perform tasks under the supervision and direction of GSA personnel.
- The SOW for a property management services contract stated that the COR will assume supervision and control over contractor personnel's day-to-day activities. Specifically, the contract stated that the COR will assign specific duties and responsibilities to the contract property managers (contractor employees), and provide all supervisory direction, including setting scheduled work day hours, overtime, etc. The contract also stated that the contract property manager will report to the COR on a daily basis to review schedules and assignments.
- Contracts for computer aided design and data and administrative management support services stated that the contractor would assign a lead supervisory contractor (team lead) to each contract and that contractor-supplied personnel are employees of the contractor and under the administrative control and supervision of the contractor. However, the SOWs also stated the contractor would work closely and respond to work requests from the GSA PBS managers, project managers, asset managers, and leasing specialists/leasing contracting officers.

Interviews with contractors and PBS employees confirmed that the contractor assigned a team lead to each contract; however, contractor personnel stated that their tasks were mostly assigned and supervised by PBS employees and not the team leads. In addition, several contractor personnel stated they have little interactions with their team lead.

- A contract for web and application developers stated that at the discretion of the COR, an interview with the proposed personnel (contractor employee) may be required to verify that the proposed substitute has qualifications equal to, or greater than, the person to be replaced.

All five contractor employees interviewed stated they were interviewed by PBS employees prior to commencing work. Interviews conducted with a PBS employee corroborated this information.

Lack of Internal Policies and Procedures

PBS lacks internal policies and procedures to comply with FAR requirements governing personal services contracts. Contracting officers in Region 2 stated that the region does not have policy or guidance designed to prevent the award and administration of a personal services contract. Region 1 contracting officers could not specify any guidance specific to their region, but indicated that they discuss information and guidance on non-personal services with the contractor and the COR after award.

Contracting officers, CORs, and government personnel working directly with contractor employees must communicate effectively to ensure there is proper contract oversight. Embedded contractors are more susceptible to personal services situations because of the day-to-day interaction with government staff. Accordingly, PBS needs to strengthen controls, including the development of appropriate policies and procedures, to ensure that contracts are not awarded and administered in a manner that creates prohibited personal service contracts.

Finding 2 – Region 2 PBS did not comply with applicable regulations and guidance in the award and administration of contracts for contract employees, thereby placing the government at risk of waste, fraud, and abuse.

Compliance with regulations and guidance is essential to an organization's ability to achieve its objectives and respond to risks. In examining contracts awarded and administered in Region 2 for the services of contract employees, we identified poor contract administration practices, which resulted in several areas of noncompliance with applicable regulations and guidance. Specifically, we found that: (1) a contract employee worked overtime hours despite the lack of authorized funding for overtime, (2) a contract was extended past its allowable time limit, (3) a contract for temporary staffing was used beyond its 240 workday limitation, (4) a contractor was overpaid due to an inadequate proposal evaluation, (5) contractor invoices lacked supporting documentation and were not properly reviewed, and (6) CORs were not properly designated.

Contractor Employee Worked Without Authorized Funds

Region 2 issued a task order for property management services on September 18, 2015. The SOW provided that the contract employee's supervisor must formally request overtime in writing from the COR prior to actual hours being worked, and must receive written approval from the COR before allowing the employee to work overtime.

Effective February 1, 2016, the contracting officer issued Modification PS-01 to add three additional property manager positions to the contract. The modification authorized funds for regular hours and reimbursable travel expenses related to the position roles and responsibilities; however, it did not authorize funds for overtime hours.

Our examination of Fiscal Year 2016 timesheets revealed that a contractor employee worked a total of 35 hours of overtime during the months of February, March, and April of 2016. However, these overtime hours were not reflected in the corresponding invoices. According to the contracting officer, GSA did not have enough funds to cover the overtime. As a result, the contractor agreed to only bill for regular hours worked and to wait to bill the overtime hours pending further resolution.

In September 2016, when funds were available, the contracting officer issued Modification PO-03 that included \$2,288 to pay the contractor for the outstanding overtime hours. The contracting officer also stated that the COR/GSA project manager was not aware of the overtime services provided by the contractor until after the contractor employee worked the overtime hours.

Contract Extended Beyond Time Limitation

A Region 2 contract for construction management services had a start date of November 2, 2011, with a 1-year base and four 1-year option periods. The contract stated that its term shall not exceed 5 years, including all options periods.

During Option Year 3, the contracting officer issued three modifications that extended Option Year 3 for a total of 1 year, from October 1, 2015, to September 30, 2016. After extending Option Year 3 for a full year, Option Year 4 was exercised for the period of October 1, 2016, to September 30, 2017. As a result, the contract with options and extensions was in effect for 5 years and 11 months.

FAR 17.204, *Contracts*, states that unless otherwise approved in accordance with agency procedures, service contracts shall not exceed a term of 5 years, including the base and option years. However, contracting officers can extend performance for a maximum of 6 months beyond the service contract limitation and at the rates specified in the contract by citing FAR 52.217-8, *Option to Extend Services*. Therefore, after all options and the permissible 6-month extension, this contract's performance period ended on May 2, 2017. At that point, the original contract was not valid, and therefore, could not be extended any further. As a result of exercising Option Year 4 through September 30, 2017, this contract was improperly extended beyond the permissible FAR limit.

A follow-on contract was eventually awarded on September 22, 2017. The new contract was awarded at hourly rates that were 10.38 percent less than those charged under the prior contract. Using the negotiated rates, we calculated that GSA may have saved \$27,619 if it had timely awarded the new contract instead of improperly extending the original contract past its time limit.

Temporary Staffing Exceeded Workday Limitation

On December 30, 2014, Region 2 awarded a task order to provide administrative support and professional staffing for various locations in Region 2. The task order had a 1-year base and four 1-year option periods and was awarded against a blanket purchase agreement that was established against a Temporary Administrative and Professional Staffing (TAPS) contract.

TAPS contracts fill positions on a temporary basis. According to the Code of Federal Regulations (5 CFR Part 300, Subpart E):

An agency may enter into a contract ... with a temporary help service firm for the brief or intermittent use of ... private sector temporaries when ... (a) one of the following short-term situations exist – (1) an employee is absent for a temporary period ..., or (2) an agency must carry out work for a temporary period which cannot be delayed ... because of a critical need.

Further, the following time limits are imposed by the CFR:

[A]n individual employee of any temporary help firm may work at ... an agency for up to 120 workdays in a 24-month period.... An agency may make an exception for an individual to work up to a maximum of 240 workdays only when the agency has determined that using the services of the same individual for the same situation will prevent significant delay.

We found that contractor staff were hired under this task order far in excess of the 240 workday maximum. Moreover, the task order includes terms that are inconsistent with the intent of a TAPS contract. For example, the solicitation includes a Seniority List clause that essentially allows contract staff to continue their positions with a succeeding contractor while retaining their original anniversary dates for determining benefits that are based on length of service. This does not comply with the CFR's mandate which limits the use of TAPS services to cover temporary absences or work that must be carried out for a temporary period. The solicitation also includes a listing of staff with locations (i.e., the government office they service) and start dates (i.e., anniversary dates). *Figure 1* is an excerpt of this listing. Note that anniversary dates go back as far as 2002.

Figure 1 - Excerpt of Staff Listing From TAPS Solicitation

Title	Location	Start Date/ Expiration Date	Vacation	GSA Hourly Rate	Total Bill Rate	Annual Hours	Annual Total
Word Processor II	201 Varick St	3/19/2008 / 1/31/2015	3 weeks	\$ 20.88	\$ 20.88	1888	\$ 39,421.44
Secretary II	26 Federal Plaza	11/25/2002/ 1/31/2015	4 weeks	\$ 45.68	\$ 45.68	1888	\$ 86,243.84
Word Processor II	26 Federal Plaza	2/7/2006 / 1/31/2015	3 weeks	\$ 20.86	\$ 20.86	1888	\$ 39,383.68
Secretary II	26 Federal Plaza	3/21/2006 / 1/31/2015	3 weeks	\$ 24.82	\$ 24.82	1888	\$ 46,860.16

The annual hours forecasted in the solicitation equate to 236 workdays (1888 ÷ 8). So there is an inherent presumption that the initial 120 workday limit will be exceeded, and the 240 workday exception will almost be exhausted. The Seniority List clause, with the accompanying anniversary dates and length of service based benefits, essentially renders the 240 workday limitation moot.

Our review of invoices confirmed that contract staff worked beyond the 240 workday limit. For the period of July 2015 through September 2016, we noted 15 contract employees whose hours billed ranged from 1,944 to 2,450.5. At 8 hours per day, each contract employee worked between 243 days and 306 days during this 15-month period.

The TAPS contract states that if an order is received with a requirement in excess of the maximum time limitation, then the contractor will inform the ordering agency and the order will be considered as an open market order. This did not occur. In addition, the contracting officer indicated that he was not aware of the time limitation associated with the use of a TAPS contract.

Overpayment of \$2,515

The contracting officer overlooked an error in a price proposal for additional services added to an existing contract, resulting in an overpayment of \$2,515.

The contracting officer procured services to provide support for a Region 2 PBS digitization project. In response to the solicitation, the contractor submitted a price proposal for various periods, including June 1, to July 21, 2016. For this period, the contractor proposed 336 hours (42 days x 8 hours per day) at \$52.39 per hour, or \$17,603.04. However, during this period, there were actually only 36 available workdays. Therefore, the proposed amount should have been corrected to \$15,088.32 (36 days x 8 hours per day x \$52.39 per hour), or \$2,515 less than proposed.

The contractor's proposal resulted in a firm-fixed price order. Therefore, the invoice related to this period was not based on hours worked. Rather, it was based on a percentage of completion, calculated using the contractor's proposed amount that was accepted by the contracting officer. Consequently, PBS overpaid \$2,515 for this service.

Invoices Approved Without Documentation or Review

Contracting personnel in Region 2 approved invoices without proper documentation to support the hours billed. In addition, the CORs did not ensure the accuracy of mileage reimbursement rates for travel submitted by contractor employees in accordance with Federal Travel Regulation 301-10.301.

PBS awarded a task order for construction management services on September 29, 2011. The task order was for a base year and four 1-year options. The contractor invoiced GSA based on the number of labor hours its employees worked. We selected a sample of invoices from Fiscal Year 2016 to review and requested timesheets from the contracting officer. However, no timesheets had been submitted with the invoices to substantiate hours worked by contractor employees.

GSA Acquisition Manual 542.7003(a), *Additional Internal Controls*, prescribes that contracting officers should provide for the review of time records for labor-hour contracts performed at a government facility or elsewhere. The contracting officer stated that to verify the hours worked, the CORs contact the PBS project managers who work directly with the contractor employees. However, when we interviewed the CORs, they told us that none of them had contacted project managers to verify hours worked by contractor employee personnel.³ For the sample of invoices we reviewed, contracting staff approved \$460,002 of payments to the contractor without documentation to substantiate hours worked.

The task order also allowed reimbursement of travel expenses in accordance with the Federal Travel Regulations. The reimbursement rate for use of a personally owned vehicle was \$0.575 per mile effective January 1, 2015, and \$0.54 per mile effective January 1, 2016. However, our invoice review showed that contractor employees used incorrect mileage rates.

Of the six invoices we sampled, two used a rate lower than the allowable reimbursement rate and four used a rate higher than the allowable reimbursement rate. The CORs who reviewed the invoices stated they assumed the contractor employees were using the correct reimbursement rates. While the overbilling amount was immaterial, it is important to note that all of the invoices we sampled contained an error. As a consequence, this issue could be more widespread. GSA Acquisition Manual 542.7003(b) states that contracting officers should use any reasonable and reliable method or procedure to enable the government to determine the correctness of charges. Accordingly, contracting personnel should review the reimbursement rates during the invoice review process.

³ One COR asserted that he started to contact project managers in July 2016 to verify hours worked; however, the July 2016 invoice was not part of our sample.

CORs Were Not Properly Designated

Contracting officers did not always designate and authorize, in writing, the COR assigned to manage and oversee contracts for the services of contractor employees. In addition, one COR did not have a required certification or designation letter.

FAR 1.602-2, *Responsibilities*, requires contracting officers to designate and authorize, in writing and in accordance with agency procedures, a COR for all contracts, as appropriate.⁴ The designation letter must outline the COR's responsibilities under the contract and the limitations to the COR's authority. In addition, the Office of Management and Budget's Office of Federal Procurement Policy requires CORs to be certified under the Government-wide Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) Program.⁵

During our audit, we identified five contracts for which CORs were not properly designated:

- For one contract for construction management services, we found that the COR who had previously worked under this contract was not able to find his designation letter, nor could the contracting officer find it in the contract file.
- For two contracts for property management services, the CORs stated that they did not receive a designation letter, nor was there a letter in the files.
- The COR for a contract for property management services stated that he did not have the FAC-COR certification or a designation letter.
- For a contract for web and application development services, we found that the COR who had been performing contract oversight for over a year was issued a designation letter after our inquiry.

CORs that are not officially designated, in writing, have not been granted specific contractual authority. As a result, their actions on behalf of the government could have negative consequences.

In summary, we found that Region 2 PBS did not comply with applicable regulations and guidance in its acquisitions for contractor support services. Poor contracting places the government and taxpayer dollars at risk. Therefore, Region 2 PBS management should strengthen its oversight of service contracts and ensure that contracting staff adhere to applicable regulations and guidance.

⁴ The FAR requires a COR designation for all contracts and orders other than firm-fixed price, and for firm-fixed price contracts and orders as appropriate.

⁵ The FAC-COR Program requirements are governed by the Office of Federal Procurement Policy's September 6, 2011, memo *Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)*.

Conclusion

Our audit disclosed deficiencies concerning PBS's administration and oversight of contracts for contract employees. Specifically, PBS Regions 1 and 2 lack policies and procedures to prevent acquisition personnel from awarding and administering prohibited personal services contracts. As a result, we found that four contracts in Region 1 and five contracts in Region 2 exhibited characteristics of a prohibited personal services contract.

We also found that Region 2 PBS put the government at risk because it did not comply with applicable regulations and guidance in its acquisitions for contractor support services. We identified several areas of inadequate contract administration, including: (1) a contract employee working overtime hours despite the lack of authorized funds for overtime; (2) a contract extended past its allowable time limit; (3) a contract for temporary staffing used beyond its 240 workday limitation; (4) an overpayment of \$2,515 due to an inadequate proposal evaluation; (5) contractor invoices that lacked documentation and were not properly reviewed; and (6) contracts for which contracting officers' representatives (CORs) were not properly designated.

As a result, PBS regional management in Regions 1 and 2 should improve its controls over the award and administration of service contracts to ensure compliance with all applicable regulations and guidance.

Recommendations

We recommend that:

1. The PBS Regional Commissioners for the New England and Northeast and Caribbean Regions develop, implement, and maintain the management controls and policies and procedures necessary to ensure that PBS is not awarding and administering contracts in a manner that creates prohibited personal services contracts.
2. The PBS Regional Commissioner of the Northeast and Caribbean Region direct regional management to ensure that:
 - a. Controls are strengthened to ensure that personnel in charge of service contracts adhere to and enforce contract requirements.
 - b. Contract time limits are adhered to.
 - c. Contracting officers are aware of schedule timeframe limitations prior to awarding any contract, especially for TAPS contracts.
 - d. The Region recoups the \$2,515 overpayment identified in this audit.
 - e. Contracting officers analyze proposed prices for accuracy prior to award.
 - f. Contracting officers and CORs review invoices and supporting documentation prior to making any payments to contractors.

- g. CORs are properly certified and designated prior to being assigned contract oversight responsibilities.

GSA Comments

PBS agreed with our findings and recommendations. PBS’s comments can be found in their entirety in **Appendix C**.

Audit Team

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

Steven Jurysta	Regional Inspector General for Auditing
Victoria Nguyen	Audit Manager
Yajaira Torres	Auditor-In-Charge
Blayne Einstein	Auditor

Appendix A – Scope and Methodology

Our audit scope consisted of a judgmental sample of 13 out of 19 services contracts for embedded contractors who work in PBS Regions 1 and 2 offices during Fiscal Year 2016. The total award value of the 19 contracts was \$48.7 million, and the estimated value of our 13 sampled contracts was \$34.5 million.

To accomplish our objectives, we:

- Reviewed relevant criteria, including the FAR and PBS policies and procedures;
- Reviewed contract files for a sample of 13 contracts and task orders;
- Reviewed additional information provided by PBS for each contract in our sample;
- Reviewed PBS Regions 1 and 2 organizational structures;
- Determined whether task order awards comply with applicable regulations and contract/schedule requirements;
- Analyzed resumes for a sample of contract employees to determine if qualifications are met;
- Compared invoices paid by PBS to contract employee timesheets submitted to PBS;
- Reviewed Federal Travel Regulations reimbursement rates;
- Reviewed the Office of Management and Budget’s Circular A-123 Appendix C with regards to improper payments;
- Interviewed the contracting officers, contract employees, and other relevant personnel regarding supervision of contract employees;
- Analyzed PBS's procedures and control processes for overseeing contract employees;
- Compared responses from interviews with contractor personnel and government employees to criteria in FAR 37.104;
- Applied the six criteria identified in FAR 37.104(d) to each sampled contract;
- Interviewed contracting officers and reviewed internal policies on the use of FAR 52.217-8 (Option to Extend Services Clause);
- Reviewed policies regarding time limitations on the use of TAPS contracts;
- Reviewed FAR authorities cited in modifications to determine if the contracting officers were applying them consistently; and
- Reviewed contract actions data reported in the Federal Procurement Data System – Next Generation.

We conducted the audit between September 2016 and April 2018 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.

Appendix A – Scope and Methodology (cont.)

Internal Controls

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

Appendix B – Contracts Displaying Characteristics of Personal Services Contracts

The following nine contracts met many of the descriptive elements for personal services found in FAR 37.104, as discussed below.

PBS Region	Contractor Name	Contract/Task Order #	Service Description	Contractor Employees Answers										PBS Employees Answers				
				# of Contractor Employees Interviewed During the Audit	Works on Site In PBS Office	Tools & Equipment Supplied by Government	Report to PBS Employee on a Day to Day Basis	Tasks Routinely Assigned to Contractor by PBS Employee(s)	Interviewed by PBS Employee(s) prior to Starting	Leave Approved by PBS Employee(s)	Timesheets Approved By PBS Employee(s)	Need for Type of Service is Greater than 1 Year	Contractor Employees Performing Similar Duties as Civil Service Personnel	Services Applied Directly to Agency Mission	Approves Contractor Employee Leave	Approves Contractor Employee Timesheets	Contractor Employee Interviewed	
1	Patriot Technologies LLC	GS-01P-12-BW-D-0004	Administrative Support Services	10	10	10	10	10	10	10	2	-	10	4	10	4	-	9
1	Patriot Technologies LLC	GS-01-P-16-BW-D-7010	Administrative Support Services	10	10	10	10	10	10	10	2	-	10	4	10	4	-	9
1	Gemini Tech Services	GS-01-P-16-BW-C-7012	Administrative Support Services	10	10	10	10	10	10	10	2	-	10	4	10	4	-	9
1	Booz Allen Hamilton	GS-P-01-15-BW-0046 / GS-P-01-15-BW-7001	Rent Bill Management Services	3	3	3	3	3	-	2	-	3	3	3	-	-	-	-
2	Career Management Associates	GS-P-02-15-PV-5006 / GS-P-02-15-PV-7008	Administrative and Professional Staffing	13	13	13	13	9	11	12	13	12	3	9	8	13	4	4
2	Prosource Consulting LLC	GS-P-02-15-PI-7008	Property Management Services	2	2	2	2	2	2	2	-	2	2	-	2	-	2	2
2	MTI	GS-P-02-16-DT-7084	Computer Aided Design	2	2	2	2	2	1	-	-	2	2	-	-	-	-	-
2	MTI	GS-P-02-16-DT-7086	Data and Administrative Management Support	3	3	3	2	3	1	-	-	2	3	3	-	-	-	-
2	Comtech	GS-P-00-13-CY-5043	Web and Applications Developers	5	5	5	2	2	5	5	-	5	3	5	5	-	5	5
				38	38	38	34	33	30	23	13	36	20	30	19	13	20	20

Notes:

We interviewed 23 PBS employees and the 38 contractor employees they oversaw. Seven of the twenty-three PBS employees were responsible for multiple contractor personnel.

GS-01-P-16-BW-D-7010 was a sole-source bridge contract to GS-01P-12-BW-D-0004. GS-01-P-16-BW-C-7012 was a follow-on contract to GS-01-P-16-BW-D-7010. All three contracts had the same contractor employees.

Appendix B – Contracts Displaying Characteristics of Personal Services Contracts (cont.)

The following discussion provides details concerning how the various personal services characteristics manifested themselves in the nine contracts and supports the data on the preceding page.

Onsite Contractor Performance. All 38 of the contractor personnel interviewed worked onsite in various PBS offices. Therefore, this element pertains to all nine contracts.

Equipment and Supplies Furnished to Contractor Personnel. PBS provided the necessary equipment and supplies (computer, desk, etc.) to all 38 of the contractor personnel. Therefore, this element pertains to all nine contracts.

Services are Applied Directly to Agency Mission. PBS employees stated that their offices would not be able to function properly without the assistance of 30 of the 38 (78.9 percent) contractor personnel. The following comments are excerpts from our interviews with PBS employees who supervised contractor personnel:

- “It would be very difficult ... it would be devastating if the contract ended.” [*Contract No. GS-01-P-16-BW-C-7012*]
- “Our office operations would be severely affected if the assistance ... was not available.” [*Contract No. GS-P-02-15-PV-5006*]
- “The work will not get done.” [*Contract No. GS-P-00-13-CY-5043*]

Government Personnel Performing Similar Duties as Contractor Personnel. PBS employees stated that there were federal government employees performing the same or similar duties as 20 of the 38 (52.6 percent) contractor personnel. The type of services provided by contractor personnel that were also performed by government employees varied. For example:

- Administrative support services for Region 1 provided under Contract Numbers GS-01P-12-BW-D-0004, GS-01-P-16-BW-D-7010, and GS-01-P-16-BW-C-7012: Each contract had four contractor personnel performing similar duties as government employees.
- Rent bill management services for the Portfolio Management Division in Region 1 provided under Contract Number GS-P-01-14-BW-0046: Three contractor personnel were performing similar duties as government employees. In addition, a former contract employee was hired as a PBS employee and currently performs many of the same job functions he did as a contractor employee.

Appendix B – Contracts Displaying Characteristics of Personal Services Contracts (cont.)

- Administrative support services for Region 2 provided under Contract Number GS-P-02-15-PV-5006: Three contractor personnel were performing similar duties as government employees.
- Property management support services for Region 2 provided under Contract Number GS-P-02-15-PI-7008: Two contractor personnel were performing similar duties as government employees. According to a PBS employee, one of the contractor employees is currently filling a vacant GSA position.
- Computer aided design and space planning support services for Region 2 provided under Contract Number GS-P-02-16-DT-7084: Two contractor personnel were performing similar duties as government employees.
- Data management services for Region 2 provided under Contract Number GS-P-02-16-DT-7086: Three contractor personnel were performing similar duties as government employees.
- Application development, maintenance and user support for Region 2 provided under Contract Number GS-P-00-13-CY-5043: Three contractor personnel were performing similar duties as government employees.

Services Provided for Greater Than 1 Year. All nine of the contracts and their respective services were needed for greater than 1 year. In addition, 36 out of 38 (94.7 percent) contractor personnel interviewed have been working in their respective positions for greater than 1 year.

Routine Assignment of Tasks, Supervision, and Control of Contractor Personnel. From our interviews with 38 contractor personnel and with 23 PBS employees working directly with contractor personnel, it appears that PBS employees maintained relatively continuous supervision of and control over contractor personnel. Supervision and control took the form of routine assignment of tasks to contractor personnel and reporting to PBS personnel on a day-to-day basis. In some instances, PBS employees also interviewed contractor personnel prior to them starting work, approved and disapproved of contractor personnel leave requests, and reviewed and signed contractor personnel timesheets. For example:

- 34 of 38 (89.5 percent) contractor personnel stated they report to a PBS employee on a day-to-day basis. Three contractor personnel stated they report to both the contractor's team leader and a PBS employee. Only one contractor employee stated he only reports to the contractor's team leader on a daily basis.

Appendix B – Contracts Displaying Characteristics of Personal Services Contracts (cont.)

- 33 of 38 (86.8 percent) contractor personnel stated that PBS employees routinely assign them tasks. Only three employees stated that the contractor’s team leader assigns them tasks. The other two contractor personnel stated that they are not assigned tasks by PBS or the contractor. Most PBS employees interviewed corroborated this information, stating that they routinely assign tasks to 30 of the 38 (78.9 percent) contractor personnel.
- 26 of 38 (68.4 percent) contractor personnel stated that PBS employees reviewed their work. One contractor said that the work is reviewed by both PBS and the contractor’s team leader, and eleven contractors stated that their work is not reviewed by PBS employees.
- 30 of 38 (78.9 percent) contractor personnel stated that PBS employees interviewed them prior to starting work. Only eight contractors stated GSA PBS employees did not interview them. Fifteen PBS employees stated they interviewed 20 of 38 contractor personnel prior to starting work.
- 13 of 38 (34.2 percent) contractor personnel stated that their timesheet is reviewed/approved by PBS employees. Twenty-five contractor personnel stated that PBS does not review/approve their time sheets; however, two of these contractors stated that PBS required them to sign a daily time sheet, and three contractors stated that they are required to input their leave in an internal office calendar. Nine PBS employees stated they review/approve 13 contractor personnel timesheets.
- 17 of 38 (44.7 percent) contractor personnel stated that PBS employees approve/disapprove their leave requests. Six contractor personnel stated that their leave is approved/disapproved by both the contractor and PBS, and fifteen contractor personnel stated that PBS employees do not approve/disapprove their leave requests. Ten PBS employees stated they approve/disapprove 19 of the 38 contractor personnel’s leave requests, and thirteen PBS employees stated they do not approve/disapprove 19 of the 38 contractor’s leave requests.


Appendix C – GSA Comments



Public Buildings Service

November 21, 2018

MÉMORANDUM FOR STEVEN JURSYTA
REGIONAL INSPECTOR GENERAL FOR AUDITING
NORTHEAST AND CARIBBEAN REGION (JA-2)

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

FROM: GLENN ROTONDO
REGIONAL COMMISSIONER
NEW ENGLAND REGION
PUBLIC BUILDINGS SERVICE (1P)

DARREN E. GOMEZ
ACTING REGIONAL COMMISSIONER
NORTHEAST AND CARIBBEAN REGION
PUBLIC BUILDINGS SERVICE (2P)

SUBJECT: Response to Office of Inspector General (OIG) *Audit of the Public Buildings Service's Use of Contract Employees in the New England and Northeast Caribbean Regions (A160134)*

The Public Buildings Service (PBS) appreciates the opportunity to comment on the draft audit report dated October 23, 2018. PBS reviewed the report regarding the identified areas of concern. Below is our response.

Recommendation 1 – The PBS Commissioners for the New England and Northeast and Caribbean Regions develop, implement, and maintain the management controls and policies and procedures necessary to ensure that PBS is not awarding and administering contracts in a manner that creates prohibited personal services contracts.

Finding – PBS Regions 1 and 2 lack policies and procedures to prevent contracting officials from awarding and administering prohibited personal services contracts.

Response: Our response for this finding is a joint response from the New England (R1) and Northeast Caribbean (R2) Regions. PBS concurs with the finding and recommendation.

One World Trade Center
New York, NY 10007

www.gsa.gov

Appendix C – GSA Comments (cont.)

Recommendation 2 – The PBS Regional Commissioner of the Northeast and Caribbean Region direct regional management to ensure that:

- a. **Controls are strengthened to ensure that personnel in charge of service contracts adhere to and enforce contract requirements.**

Finding - Contractor Employee Worked Without Authorized Funds

Response: PBS R2 concurs with this finding.

- b. **Contract time limits are adhered to.**

Finding - Contract Extended Beyond Time Limitation

Response: PBS R2 concurs with this finding.

- c. **Contracting officers are aware of schedule timeframe limitations prior to awarding any contract, especially for TAPS contracts.**

Finding: Temporary Staffing Exceeded Workday Limitation

Response: R2 concurs with this finding.

- d. **The Region recoups the \$2,515 overpayment identified in this audit.**

Finding - Overpayment of \$2,515

Response: PBS R2 concurs with this finding.

- e. **Contracting officers analyze proposed prices for accuracy prior to award.**

Finding – This finding is related to item d above.

Response - PBS R2 concurs with this finding.

- f. **Contracting officers and CORS review invoices and supporting documentation prior to making any payments to contractors.**

Finding – Invoices approved without documentation or review

Response: PBS R2 concurs with this finding.

- g. **CORs are properly certified and designated prior to being assigned contract oversight duties.**

Finding - CORS were not properly designated

Response: R2 concurs without comment.

If you have any questions related to this memorandum, please contact James Adamo, Director, R1 Acquisition Management Division at 617-565-8619 or Maureen Lennon, Director, R2 Acquisition Management Division at 212-264-9141.

Appendix D – Report Distribution

GSA Administrator (A)

PBS Commissioner (P)

PBS Deputy Commissioner (P)

PBS Chief of Staff (P)

Regional Commissioner, PBS (1P)

Acting Regional Commissioner, PBS (2P)

PBS Regional Counsels (LD1, LD2)

Directors, PBS Acquisition Management Division (1PQ, 2PQ)

Chief Administrative Services Officer (H)

Audit Management Division (H1EB)

Assistant Inspector General for Auditing (JA)

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