



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

# Audit of the GSA Public Buildings Service's Commercial Parking Outleases

Report Number A180039/P/4/R20006  
March 31, 2020

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## **Executive Summary**

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### **Audit of the GSA Public Buildings Service's Commercial Parking Outleases**

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#### **Why We Performed This Audit**

The Public Buildings Service's (PBS's) Outlease Program leverages PBS's authorities to lease vacant or underutilized space to state or local government and private sector entities to increase funds from operations. From October 2012 through January 2018, PBS generated \$14.9 million from parking outleases, 67 percent of which resulted from outlease agreements with commercial parking management companies.

We performed this audit to determine whether PBS: (1) awarded commercial parking outleases that represent the best interests of the government in accordance with applicable laws, regulations, and PBS guidance; and (2) administered outleases in accordance with PBS guidance and contract requirements.

#### **What We Found**

PBS improperly awarded and administered commercial parking outleases resulting in the misuse of the Public Buildings Cooperative Use Act of 1976, violations of PBS guidance, and lost revenue. We found that PBS used the act to enter into parking outlease agreements when it did not apply and did not comply with competition requirements. Further, PBS did not establish market-based rental rates for outleases, violating PBS guidance and resulting in estimated revenue losses of more than \$2.2 million. In addition, PBS exceeded its delegated authority by extending parking outleases beyond 5 years. Lastly, we found that PBS did not verify the accuracy of variable rent payments to ensure that commercial parking management companies are submitting the correct amount.

#### **What We Recommend**

We recommend that the PBS Commissioner ensures that PBS:

1. Uses and complies with the proper authorities when entering into and administering commercial parking outleases.
2. Establishes rental rates for parking outleases that are equivalent to market rates for comparable space in accordance with PBS guidance.
3. Assesses whether the 5-year outlease term limitation established in the *GSA Delegations of Authority Manual* is meeting its intended purpose of protecting assets from being encumbered by long-term outleases. If not, modify the *GSA Delegations of Authority Manual* accordingly.
4. Verifies reports generated by commercial parking management companies and reconciles fees collected when variable payment terms are included in a parking outlease.

The PBS Commissioner agreed with our recommendations, but only partially agreed with **Finding 1**. In particular, the Commissioner disagreed with our determination of the number of commercial outleases that improperly invoked the Public Buildings Cooperative Use Act of 1976 and our calculation of estimated revenue losses. He also did not agree that PBS exceeded its delegated authority by extending parking outleases beyond 5 years. However, the Commissioner did not provide information in his response that was sufficient to affect our findings and conclusions.

PBS's written comments are included in their entirety in **Appendix D**. Our complete response to these comments is included in the **Conclusion** section of the report.

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## **Introduction**

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We performed a nationwide audit of the Public Buildings Service's (PBS's) commercial parking outleases.

### **Purpose**

PBS's Outlease Program generated \$14.9 million from parking outleases from October 2012 through January 2018, 67 percent of which resulted from outlease agreements with commercial parking management companies. The purpose of the audit was to determine whether PBS effectively met legislative requirements and followed its own guidance when outleasing federally owned parking assets to commercial firms.

### **Objectives**

Our audit objectives were to determine whether PBS: (1) awarded commercial parking outleases that represent the best interests of the government in accordance with applicable laws, regulations, and PBS guidance; and (2) administered outleases in accordance with PBS guidance and contract requirements.

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

### **Background**

A commercial parking outlease is a contractual arrangement in which a commercial parking management company (outlease tenant) obtains the right to use parking space under PBS's control in return for regular rental payments to PBS. Rental payments may be a fixed amount or a variable amount based on the number of occupied spaces at a parking location. Commercial parking outleases are executed under PBS's Office of Portfolio Management and Customer Engagement's Outlease Program.

The mission of the Outlease Program is to reduce temporary vacant or underutilized space in order to increase funds from operations until space is needed by federal agencies. The program is staffed by two national outlease program managers who are responsible for policy, training, and all elements of program management necessary for PBS regional staff to execute outlease agreements.

In order to execute an outlease agreement, regional asset managers must first determine that space is vacant or underutilized, meaning there is no need in the near future for a federal customer agency to occupy the space. Next, the regional Office of Portfolio Management notifies the contracting officer conducting the outlease action that the space is available and suitable for outleasing. Regional contracting officers then use the legal authorities and PBS guidance shown in *Figure 1* to execute commercial parking outleases.

**Figure 1 – PBS’s Legal Authorities and Guidance for Parking Outleases**



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## Results

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PBS improperly awarded and administered commercial parking outleases, resulting in the misuse of the Public Buildings Cooperative Use Act of 1976 (CUA), violations of PBS guidance, and lost revenue. We found that PBS used the CUA to enter into parking outlease agreements when it did not apply and did not comply with competition requirements. Further, PBS did not establish market-based rental rates for outleases, violating PBS guidance and resulting in estimated revenue losses of more than \$2.2 million. In addition, PBS exceeded its delegated authority by extending parking outleases beyond 5 years. Lastly, we found that PBS did not verify the accuracy of variable rent payments to ensure that commercial parking management companies are submitting the correct amount.

**Finding 1 – PBS improperly awarded and administered commercial parking outleases, resulting in misuse of the CUA, violations of PBS guidance, and estimated lost revenue of more than \$2.2 million.**

We found that PBS misused the CUA, did not comply with its own guidance, and did not comply with competition requirements when awarding parking outleases. PBS also did not establish market-based rental rates as required by PBS guidance and as a result, lost more than an estimated \$2.2 million in revenue. Finally, PBS did not receive approval for outlease terms greater than 5 years as required by PBS guidance. These deficiencies are discussed in detail below.

### Improper Use of the CUA and Violations of PBS Guidance

As noted in *Figure 1*, PBS executes parking outleases under a variety of authorities. For 7 of the 18 parking outleases in our audit sample, PBS invoked the CUA. These seven outleases accounted for 51 percent of the total revenue for commercial parking outleases during our audit period (see **Appendix C** for more details on our audit sample).

The CUA authorizes PBS to lease space on a major pedestrian access level to firms engaged in commercial parking activity with the intent to stimulate pedestrian traffic in public buildings. PBS's *Retail Tenant Services Desk Guide* contains language consistent with the intent of the CUA, by providing that PBS should weigh "the critical need for easy, unfettered public access" early in the planning stage of any project initiated under the CUA.<sup>1</sup>

PBS's *Outlease Program Guide* also contains examples of PBS outleases that were awarded to commercial parking management companies consistent with the CUA and PBS's *Retail Tenant Services Desk Guide*. These include outleases for: (1) after-hours valet parking for the general

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<sup>1</sup> PBS Retail Tenant Services Center for Expertise, *Retail Tenant Services Desk Guide*, 2001, p.14.

public on an on-going basis for special events and (2) public parking for an entire garage or a large portion thereof.<sup>2</sup>

However, we found that in six of the seven parking outleases executed under the CUA, access is restricted to authorized personnel and there is no major pedestrian and public access. As a result, PBS improperly invoked the CUA for these outleases and did not comply with its own guidance.

We asked the national outlease program manager (PM) to provide rationale for use of the CUA in locations with restricted access. The PM stated that the authority for any proposed parking outlease depends upon the specific facts and circumstances of the case, and that it is within the discretion of the contracting officer to identify the appropriate authority. Further, the PM stated that contracting officers determined that the outleased parking locations in our audit sample were on major pedestrian access levels.

However, the contracting officers invoked the CUA when it clearly did not apply. In all six cases, PBS's actions directly conflict with the major pedestrian access requirements of the CUA and public access requirements in PBS guidance. For example, Region 5 executed an outlease at the Federal Parking Facility in Columbus, Ohio, for the outlease tenant to exclusively administer monthly parking contracts with federal employees. Outleased parking spaces in this agreement are located above the fourth floor of a secured parking garage. The lower floors are used for government-owned vehicles included under federal tenant agencies' occupancy agreements; therefore, the outlease spaces are not on a major pedestrian access level and the general public cannot access the outleased spaces. Nevertheless, the contracting officer determined that the outlease spaces were located on a major pedestrian access level.

In this instance, as well as in five additional parking outleases we sampled, PBS misused the CUA by invoking its authority when it did not apply. By invoking the CUA, PBS avoided competition as discussed below.

### **Lack of Competition for Parking Outleases**

PBS did not meet competition requirements for outleases awarded under the CUA and the Federal Property and Administrative Services Act of 1949 (FPASA). We found that PBS did not promote competition for parking outleases as required by the CUA. Additionally, we found that PBS did not follow advertisement requirements when executing an outlease under the FPASA.

The CUA allows PBS to negotiate commercial parking outleases without competitive bids, but requires that outleases contain terms and conditions to promote competition and protect the public interest. Additionally, PBS's *Retail Tenant Services Desk Guide* states that a formal

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<sup>2</sup> PBS Office of Portfolio Management and Customer Engagement, *Outlease Program Guide*, 2018, p.33.



advertisement or notice of intent is required for outleases under the FPASA.<sup>3</sup> Also, PBS's *Outlease Program Guide* states:<sup>4</sup>

While advertising is encouraged to generate good market response, conducting sealed bids and other competitive acquisition requirements are not required. As always, it is the responsibility of the Contracting Officer (CO) to obtain the best deal in the interest of the federal government.

However, we found that PBS failed to promote competition in six parking outleases executed under the CUA. PBS extended existing leases or executed non-competitive consecutive leases with the same tenant for terms longer than 5 years. For example, in April 2002, PBS Region 5 executed an outlease for federal parking at the Federal Parking Facility in Columbus, Ohio, with an outlease tenant without competition. Under this agreement, PBS executed two extensions resulting in a total outlease term of 18 years.

When we asked the PM what lease terms and conditions are used to promote competition in non-competitive outleases, the PM provided GSA Form 3486, *U.S. Government Lease of Real Property*. The PM stated that the form is the standard contract template for all outleases. We reviewed the form and found that it does not contain any terms related to competition. The PM also told us that contracting officers have both the authority and knowledge to modify standard terms and conditions as necessary. Our review of the six outleases showed that the contracting officers did not modify the leases to include terms to promote competition.

We also found that PBS did not issue a formal advertisement or notice of intent for consecutive outleases executed under the FPASA. In January 1998, PBS executed an outlease in Region 9 for the Edward R. Roybal Federal Building and Courthouse in Los Angeles, California. The outlease was awarded without competition for the outlease tenant to provide parking for personal vehicles of federal employees. PBS subsequently executed three separate agreements without competition with the same tenant resulting in a total effective outlease term of more than 24 years. The subsequent agreements include parking spaces located at the 300 North Los Angeles Street Federal Building in Los Angeles, California. The current contracting officer, who executed the current outleases in 2017, was not aware of the requirement to advertise or issue a formal notice of intent.

Although outleasing is not subject to the Competition in Contracting Act or the Federal Acquisition Regulation, lack of competition constrains PBS's ability to ensure that negotiated terms and conditions are in the best interest of the government.

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<sup>3</sup> PBS Retail Tenant Services Center for Expertise, *Retail Tenant Services Desk Guide*, p.6.

<sup>4</sup> PBS Office of Portfolio Management and Customer Engagement, *Outlease Program Guide*, 2018, p.7.

## Failure to Establish Market-Based Rental Rates

The CUA and PBS's *Outlease Program Guide* require that PBS establish rental rates for leased space equivalent to the prevailing commercial rate for comparable space. However, PBS failed to comply with these requirements, resulting in estimated revenue losses of more than \$2.2 million from January 2013 through December 2017.

PBS contracting officers told us they survey end-user parking rates at other parking locations in close proximity to the PBS-controlled location to determine appropriate end-user parking rates. They also told us they rely on the fair annual rent for a single parking space as the baseline to determine end-user parking rates.

The fair annual rent is the annual amount of rent that may reasonably be expected for the right to the agreed-upon use of real property, as established by competition in the open market. PBS contracts with independent third-party appraisers to determine these rates. Rates are reviewed and approved by PBS's chief regional appraisers. We found that end-user parking rates at six locations were lower than the fair annual rent. This occurred because PBS contracting officers did not adjust end-user rates based on market conditions or requested overrides to the fair annual rent rates.

For example, at the Region 4 Pine Street Parking Deck in Atlanta, Georgia, end-user rates remained the same for more than 17 years with no adjustments for changing market conditions. In addition, at the Region 7 G.T. Mickey Leland Federal Building in Houston, Texas, the contracting officer requested approval to charge a below-market rate due to the historical rate of the previous outlease and federal employee needs. The contracting officer cited increased cost of living and widespread furloughs being experienced by government employees as support. The established end-user rates at this location were on average 60 percent less than the fair annual rent rates.

As a result of not using comparable commercial rates, we estimate that PBS lost more than \$2.2 million in revenue from January 2013 through December 2017. See *Figure 2* for total estimated lost revenue from PBS's actions. Additional detail is located in **Appendix B**.

**Figure 2 – Estimated Lost Revenue for PBS Parking Outleases**

Building Name	Location	Lost Revenue
Pine Street Parking Deck	Atlanta, GA	\$388,626
Federal Parking Facility	Columbus, OH	582,300
G.T. Mickey Leland Federal Building	Houston, TX	1,008,413
Cesar E. Chavez Memorial Building	Denver, CO	73,080
Edward R. Roybal Federal Building and Courthouse	Los Angeles, CA	169,135
300 North Los Angeles Street Federal Building	Los Angeles, CA	59,277
<b>Total</b>		<b>\$2,280,831</b>

According to PBS’s *Outlease Program Guide*, it is the responsibility of the contracting officer to obtain the best deal in the interest of the federal government. However, in each of these instances, PBS’s outleases did not meet this standard.

**Outlease Terms Beyond 5 Years Exceeded Delegated Authority**

PBS contracting officers exceeded their delegated authority by extending outleases beyond a 5-year term without the appropriate level of approval.

According to the *GSA Delegations of Authority Manual*, the PBS Commissioner or Deputy Commissioner must approve outlease terms longer than 5 years for outleases executed under the CUA and the FPASA. However, for the five parking outleases listed in *Figure 3*, we found that PBS either extended an existing outlease or executed a new outlease with the same tenant—effectively increasing the total outlease term beyond 5 years without approval.

**Figure 3 – Effective Outlease Terms Beyond 5 Years**

Building Name	Location	Total Term
Charles E. Bennett Federal Building	Jacksonville, FL	15 years, 2 months
Paul G. Rogers Federal Building and Courthouse	West Palm Beach, FL	12 years, 2 months
Cesar E. Chavez Memorial Building	Denver, CO	10 years
Edward R. Roybal Federal Building and Courthouse	Los Angeles, CA	24 years, 1 month
300 North Los Angeles Street Federal Building	Los Angeles, CA	12 years, 7 months

When we asked the PM to provide support for PBS’s decisions, the PM stated that based on discussions with a GSA Office of General Counsel attorney, a region can negotiate extensions and renewal options or execute a new lease as long as the terms of the new action do not exceed the 5-year term limit. The PM also stated:

The intent of this restriction in the Delegation Manual is to prevent a Lease Contracting Officer from encumbering an asset with a long-term outlease; accordingly, Lease Contracting Officers are prohibited from entering into an outlease with a firm-term greater than 5 years. Unexercised renewal options are not counted toward the 5-year term limit until they are executed.

The PM also told us that extensions and renewals are allowed as long as they do not individually exceed the 5-year term limit—even if the extensions and renewals result in total outlease terms beyond 5 years. An attorney with GSA’s Office of General Counsel agreed with the PM’s interpretation.

The PM evaluated the five outleases against the GSA counsel’s guidance and found that one outlease executed by Region 4 at the Charles E. Bennett Federal Building in Jacksonville, Florida, violated the 5-year limitation because the contracting officer did not obtain approval to execute

a 5-year extension with an exercised 5-year renewal option. The contracting officer stated that he was not aware of the requirement to obtain approval. Although the effective terms for the other four outleases ranged from 10 to 24 years, the PM asserted that these outleases conformed to counsel's guidance.

Notwithstanding the PM's assertion, the *GSA Delegations of Authority Manual* does not provide the regions with independent authority to extend the initial term of the lease beyond 5 years through the exercise of options or renewals. The manual states that the authority to enter into leases executed under the CUA and FPASA is "not delegated [to regions] for leases exceeding five years."

As noted in the PM's response above, the intent of the manual's 5-year limitation is to prevent a contracting officer from encumbering an asset with a long-term outlease. However, GSA's position that a region can negotiate extensions and renewal options or execute a new lease as long as the terms of the new action do not exceed the 5-year term limit has the practical effect of circumventing the 5-year limitation. Therefore, PBS contracting officers exceeded their delegated authority by awarding extensions and renewals that resulted in total outlease terms of more than 5 years without the appropriate level of approval. If PBS's intent is to grant the regional offices authority to exercise renewal options or extend leases beyond a 5-year term, the manual should be modified accordingly.

In sum, PBS improperly awarded six outleases under the CUA at locations with restricted access. PBS did not establish market-based rental rates on six outleases as required by the CUA and PBS policy, resulting in estimated lost revenue of more than \$2.2 million. PBS also failed to promote competition in six outleases under the CUA, did not issue a formal advertisement or notice of intent for one outlease, and exceeded its delegated authority.

**Finding 2 – For two outleases with variable rent payments, PBS did not verify that commercial parking management companies are submitting the correct amount.**

For two outleases with variable rent payments, PBS did not confirm the accuracy of the outlease revenue. Instead, PBS relied solely on the reporting by the commercial parking management companies and did not ensure that the payments submitted to PBS were for the correct amount.

According to PBS's *Outlease Program Guide*, contract administration is a critical aspect of outleasing.<sup>5</sup> PBS contracting officers rely on the building management staff to provide oversight of commercial parking outleases. We found that neither the contracting officer nor building management staff reviewed reports generated by the outlease tenant to support variable payment amounts for accuracy in two locations. Unlike outleases with a fixed monthly rent payment, these two outleases include terms that allow the outlease tenant to submit variable payments based on the number of occupied spaces.

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<sup>5</sup> PBS Office of Portfolio Management and Customer Engagement, *Outlease Program Guide*, 2018, p.56.

First, in Region 4 at the Pine Street Parking Deck in Atlanta, Georgia, the outlease tenant submits a monthly payment that varies based on the number of occupied spaces. We found that neither the contracting officer nor the building manager verified the outlease tenant's monthly occupancy reports. The contracting officer told us that the outlease tenant tracks occupancy based on the number of access cards used to enter and exit the parking facility each month. However, during the 17-year outlease term, the outlease tenant issued more access cards than spaces in the garage. This makes it difficult for PBS to reconcile occupancy and payments because it is not reflective of the actual number of parking spaces occupied. The contracting officer also told us that there is no validation of the outlease tenant's records due to resource limitations. As a result, PBS has not confirmed the accuracy of more than \$209,000 in variable rent payments from 2013 to 2017.

Second, in Region 5 at the Federal Parking Facility in Columbus, Ohio, the outlease includes an "abatement" clause which allows the outlease tenant to take an annual credit for unused parking space. The outlease tenant tracks occupancy on a monthly basis and submits an annual report to the contracting officer that includes abatement amounts by month. According to PBS's *Outlease Program Guide*, the contracting officer is responsible for determining the annual credit amount.<sup>6</sup> However, we found that the contracting officer does not have a sufficient process in place to confirm the annual credit amount.

The contracting officer told us that although the abatement clause is "impossible to manage," he relies on the building management staff to confirm the reasonableness of the annual credit amount based on their observations of the number of occupied parking spaces in the deck. The building manager told us that his staff also analyzes data on active access card usage on an annual basis to assess the occupancy of the parking deck. However, he stated that his office does not receive monthly reports from the outlease tenant, as required by the contract. Thus, the building manager is unable to reconcile monthly abatement totals reported in the outlease tenant's annual report to the actual monthly occupancy. The contracting officer stated that the credit amounts do not warrant dedicated time of the building manager. As a result, PBS has not confirmed the accuracy of more than \$44,000 in credits taken by the outlease tenant from 2013 to 2017.

In order to comply with PBS guidance, PBS staff should reconcile reports generated by commercial parking companies to fees collected when variable payment terms are included in an outlease.

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<sup>6</sup> PBS Office of Portfolio Management and Customer Engagement, *Outlease Program Guide*, 2018, p.61.

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## Conclusion

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PBS improperly awarded and administered commercial parking outleases, resulting in the misuse of the CUA, violations of PBS guidance, and lost revenue. We found that PBS improperly used the CUA to enter into parking outlease agreements when it did not apply and did not comply with competition requirements. Further, PBS did not establish market-based rental rates for outleases, violating PBS guidance and resulting in estimated revenue losses of more than \$2.2 million. In addition, PBS exceeded its delegated authority by extending parking outleases beyond 5 years. Lastly, we found that PBS did not verify the accuracy of variable rent payments to ensure that commercial parking management companies are submitting the correct amount.

To address these issues, PBS should establish and implement internal controls over outleases to ensure that these agreements comply with applicable laws, regulations, and policies. PBS should also develop controls for outleases with commercial parking companies to verify the accuracy of rental payments and credits.

### Recommendations

We recommend that the PBS Commissioner ensures that PBS:

1. Uses and complies with the proper authorities when entering into and administering commercial parking outleases.
2. Establishes rental rates for parking outleases that are equivalent to market rates for comparable space in accordance with PBS guidance.
3. Assesses whether the 5-year outlease term limitation established in the *GSA Delegations of Authority Manual* is meeting its intended purpose of protecting assets from being encumbered by long-term outleases. If not, modify the *GSA Delegations of Authority Manual* accordingly.
4. Verifies reports generated by commercial parking management companies and reconciles fees collected when variable payment terms are included in a parking outlease.

### GSA Comments

The PBS Commissioner agreed with our recommendations, but only partially agreed with *Finding 1*. In particular, the Commissioner disagreed with our determination of the number of commercial outleases that improperly invoked the CUA and our calculation of estimated revenue losses. He also did not agree that PBS exceeded its delegated authority by extending parking outleases beyond 5 years. PBS's written comments are included in their entirety in **Appendix D**.

## OIG Response

We reviewed the Commissioner’s response; however, it did not include information that was sufficient to affect our findings and conclusions. Specific disagreements are discussed below.

### Number of Commercial Outleases that Improperly Cited the CUA

PBS disagrees with our determination that PBS’s actions directly conflict with the major pedestrian access requirements of the CUA and public access requirements in PBS guidance in six of seven outleases executed under the CUA. PBS asserts that three of the six outleases complied with the CUA because the parking facilities encouraged public access and were accessible at the pedestrian level, supported organizations engaged in commercial activities, or both.

As discussed in *Finding 1*, the CUA authorizes PBS to lease space on a major pedestrian access level to firms engaged in commercial parking activity with the intent to stimulate pedestrian traffic in public buildings. PBS’s *Retail Tenant Services Desk Guide* contains language consistent with the intent of the CUA, by providing that PBS should weigh “the critical need for easy, unfettered public access” early in the planning stage of any project initiated under the CUA.

However, the locations in dispute do not provide parking to the general public. For example, in *Figure 4* below, the photo of the Paul G. Rogers Federal Building’s parking facility shows that public parking is expressly prohibited. Similarly, during lease negotiations for the Autec Building in West Palm Beach, Florida, the PBS contracting officer stated in an email to the outlease tenant that, “We will be imposing access restrictions on the people paying parking to employees/contractors or other appropriately credentialed people.” Finally, the lease for the Pine Street Parking Deck authorizes public parking; however, the lessor must obtain consent from PBS in order to lease parking spaces to the general public. Our interviews of PBS regional staff and the outlease tenant revealed that the general public does not have access to the parking deck and thus, the lease is not compliant with pedestrian access requirements of the CUA and public access requirements in PBS guidance.

**Figure 4 – Paul G. Rogers Federal Building Parking Lot Signage**



## Estimated Lost Revenue

PBS disagrees with our calculation of estimated lost revenue, asserting that we did not properly account for parking operator specific costs and variable rent provisions. The Commissioner's response states:

PBS was unable to validate OIG's calculation of lost revenue, since OIG did not provide PBS the specific calculations by project despite our repeated requests for that information.

Our methodology is detailed in **Appendix B** of this report. In addition, we met with PBS on three occasions to conduct a walk-through of our methodology and address management's questions.<sup>7</sup> In our March 3, 2020, meeting, we explained that the contracting officer should have considered the outlease tenant's costs and adjusted the fair annual rent rates when establishing the outlease tenant's rent in the lease agreement. We also explained that based on our review of financial data provided by several outlease tenants, increasing below market end-user rates to market rates would not have a material impact on operating expenses or profit allowed in the original agreement.

Additionally, PBS asserts that we did not consider variable rent provisions in which the tenant's monthly rent paid to PBS would vary based on occupancy. However, in our meeting with PBS on March 3, 2020, we requested occupancy data for each location in order to address PBS's concern. PBS only provided occupancy data for the G.T. Mickey Leland Federal Building. Thus, we are unable to make adjustments to our estimate based on variable rent provisions.

## Contracting Officers Exceeded Delegated Authority

Finally, PBS asserts that it did not violate the 5-year term limitation in the *GSA Delegations of Authority Manual* because none of the five leases we identified were extended for a firm-term at any time greater than 5 years. The manual states that the authority to enter into leases executed under the CUA and FPASA is "not delegated [to regions] for leases exceeding five years." The manual does not distinguish between base years, option years, or renewals. Therefore, as presented in *Figure 3 on page 7*, the effective terms of the leases exceeded 5 years.

In sum, we stand behind our conclusions reached in *Finding 1*. Although PBS disagrees with portions of the finding, we are encouraged that management agrees with the report recommendations. If properly implemented, these recommendations will help PBS improve the management of its commercial parking outlease program.

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<sup>7</sup> The audit team met with PBS on November 27, 2019; December 12, 2019; and March 3, 2020.



## **Audit Team**

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

Nicholas Painter  
Elizabeth Telo  
Alenda Blackwell

Regional Inspector General for Auditing  
Audit Manager  
Auditor-In-Charge

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## **Appendix A – Scope and Methodology**

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We reviewed PBS’s award and administration of outlease agreements with commercial parking management companies to determine whether PBS followed applicable laws, regulations, and PBS guidance. Specifically, we selected a judgmental sample of 13 occupancy agreements and 18 corresponding commercial parking agreements, representing 71 percent of the total revenue from commercial parking outleases for the period of October 2012 through January 2018 (see **Appendix C** for more details on our audit sample).

To accomplish our objectives, we:

- Reviewed commercial parking outlease agreements for our sampled occupancy agreements;
- Reviewed parking outlease authorities;
- Reviewed PBS national and regional guidance to include the *Retail Tenant Services Desk Guide*, *Outlease Program Guide*, and the *Clarification of Outlease Rent Rate Process* memorandum;
- Interviewed PBS staff who were knowledgeable about the outlease program and held responsibility for reviewed locations;
- Interviewed outlease tenants and reviewed occupancy, rate, and revenue data, and conducted physical site visits at outlease locations; and
- Obtained and reviewed data from PBS staff and the following PBS systems: Occupancy Agreement Tool and Appraisal Data System.

We conducted the audit between December 2017 and April 2019 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.

## **Appendix B – Estimated Lost Revenue for PBS Parking Outleases**

This appendix lists the six locations where PBS failed to comply with the requirements under the CUA and PBS guidance to establish market-based rates. We compared actual outlease tenant rates to the appraised rates for each location from January 2013 through December 2017.

<b>Building Name, Location</b>	<b>Actual (Note 1)</b>	<b>Appraised (Note 2)</b>	<b>Lost Revenue (Note 3)</b>
Pine Street Parking Deck, Atlanta, GA	\$ 843,700	\$ 1,620,953	\$ 388,626
Federal Parking Facility, Columbus, OH	1,350,000	1,932,300	582,300
G.T. Mickey Leland Federal Building (FB) Houston, TX	638,400	1,646,813	1,008,413
Cesar E. Chavez Memorial Building, Denver, CO	641,520	714,600	73,080
Edward R. Roybal FB and Courthouse, Los Angeles, CA	784,240	953,375	169,135
300 North Los Angeles Street FB, Los Angeles, CA	131,520	190,797	59,277
<b>Totals</b>	<b>\$ 4,389,380</b>	<b>\$ 7,058,838</b>	<b>\$ 2,280,831</b>

### **Notes:**

1. Amounts represent the actual rate for a single parking space charged by the outlease tenant multiplied by the total number of spaces in the agreement.
2. Amounts represent the fair annual rent rate for a single parking space multiplied by the total number of spaces in the agreement. We used the fair annual rent as the market rate for a single space because it is established by a third-party independent appraiser, reviewed and approved by PBS's regional chief appraisers, and is therefore more reliable than the surveys performed by contracting officers.

PBS raised concerns about the estimated lost revenue, stating that the calculated amounts do not consider the outlease tenants' operating expenses. However, outlease tenants' operating expenses for these facilities consist primarily of administrative costs to administer parking contracts and collect monthly parking fees and are not a factor of revenue collected. Increasing below market end-user rates to market rates would not have a material impact on operating expenses or profit allowed in the original agreement.

3. Amounts represent the difference between the actual and appraised amounts with the exception of the Pine Street Parking Deck. In this agreement, the contract specifies a cap for additional rent due to PBS if the end-user rate increases. This amount reflects relevant contractual adjustments.

## Appendix C – Audit Sample

This appendix lists the 13 occupancy agreements and the 18 corresponding commercial parking outlease agreements included in our audit sample. The sample represents 71 percent of the total revenue from commercial parking outleases for our audit period of October 2012 through January 2018.

Occupancy Agreement	Building Name	Location	Agreement Number(s)
AFL04900	Charles E. Bennett FB	Jacksonville, FL	GS-04P-OFL25130
AFL05720	Paul G. Rogers FB and Courthouse	West Palm Beach, FL	GS-04P-OFL25048
AFL05781	Autec Building	West Palm Beach, FL	GS-04P-OFL00048
AGA03663	Pine Street Parking Deck	Atlanta, GA	GS-04P-OGA25129
AOH05598	Federal Parking Facility	Columbus, OH	GS-05B-33128
AOK03026	Tulsa Federal Building	Tulsa, OK	GS-07P-OOK02480
ATX08834	G.T. Mickey Leland FB	Houston, TX	GS-07P-OTX02473
			GS-07P-13-JU-C-0078
ATX09522	A. Maceo Smith FB	Dallas, TX	GS-07P-07-UA-A-0097
ATX09523	Terminal Annex FB	Dallas, TX	47PH0217C0001
ACO06326	Cesar E. Chavez Memorial Building	Denver, CO	GS-08P-11-OL-015
			GS-08P-OCO30015
ACA11489	1064 Mission Street	San Francisco, CA	GS-09P-OCA11489
ACA11857	Edward R. Roybal FB and Courthouse	Los Angeles, CA	9PXE98-121
	Edward R. Roybal FB and Courthouse and 300 North Los Angeles Street FB	Los Angeles, CA	GS-09P-OCA00128
	Edward R. Roybal FB and Courthouse	Los Angeles, CA	GS-09P-OCA00137
	300 North Los Angeles Street FB	Los Angeles, CA	GS-09P-OCA00138
AWA05970	Tacoma Union Station Parking	Tacoma, WA	GS-10P-OWA00015

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## Appendix D – GSA Comments

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Public Buildings Service

March 18, 2020

MEMORANDUM FOR NICHOLAS PAINTER  
REGIONAL INSPECTOR GENERAL FOR AUDITING  
SOUTHEAST SUNBELT REGION AUDIT OFFICE (JA-4)

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

SUBJECT: Response to the Office of Inspector General's Draft Audit Report entitled  
*GSA Public Buildings Service's Commercial Parking Outleases,*  
*Report Number (A180039)*

Thank you for the opportunity to review and comment on the subject audit report. The Public Buildings Service (PBS) has reviewed the report and agrees with the recommendations of the Office of Inspector General (OIG), but does not agree with all the report's findings, and offers the following comments for your further consideration.

**Finding 1** – PBS improperly awarded and administered commercial parking outleases, resulting in misuse of the Public Buildings Cooperative Use Act (CUA), violations of PBS guidance, and estimated lost revenue of more than \$2.2 million.

- PBS partially agrees with Finding Number 1 in the report. While we agree with the finding that there were some commercial parking outleases that improperly invoked the CUA, PBS disagrees with the number of commercial parking outleases that were improperly awarded under the CUA and with the estimate of lost revenue.

The report indicates that six of the seven outleases that invoked the CUA as the appropriate authority improperly invoked the CUA. We agree that three of those six outleases improperly invoked the CUA; however, we believe that the other three complied with the CUA in that the parking garages encouraged public access and were accessible at the pedestrian level or supported organizations engaged in commercial activities, or both.

Recommendation 1 – That the PBS Commissioner ensure that PBS uses and complies with the proper authorities when entering into and administering commercial parking outleases.

- PBS agrees with Recommendation Number 1 in the report, and will establish and implement internal controls so that commercial parking outleases comply with the proper authorities.

The report further found that PBS did not meet competition requirements for outleases awarded under the CUA and the Federal Property and Administrative Services Act of 1949 (FPA), and that PBS did not promote competition for parking outleases as required by the CUA and PBS guidance.

- PBS agrees that certain outleases did not adequately promote competition as required by the CUA and FPA. PBS will establish and implement internal controls so that all outleases follow procedures that promote competition to the maximum extent practicable to protect the public interest.

The report also concluded that PBS did not establish market-based rental rates for outleases in violation of PBS guidance, resulting in estimated revenue losses of more than \$2.2 million.

- PBS disagrees with the estimated amount of revenue losses, as OIG may not have properly accounted for parking operator-specific costs and variable rent provisions.

The CUA requires the Administrator to establish a rental rate equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the public building. The Outlease Contracting Officer has discretion when establishing this rate and can use a variety of methods, including a Fair Annual Rent (FAR) appraisal or an independent assessment of local market rates based upon available research tools. OIG calculated estimated lost revenue based upon a comparison of FAR appraised rates for individual parking spaces to actual rents paid by individual parkers as determined through OIG's data collection methods, which data and data collection methods were not shared with PBS. While the FAR appraisal-based rental rate is typically an effective method to determine market rent, using an unadjusted FAR appraisal-based rent rate does not produce a market rate for parking operator outleases, as the FAR rent does not account for outlease-specific parking operator costs, including payment collection labor costs, onsite parking operation labor costs, overhead, profit, and, in some cases, physical maintenance of the garage. These costs are subsumed in the net rent received by GSA from the commercial parking operator lessee and are, therefore, not comparable to a FAR appraisal-based parking rental rate that represents the market value for a parking space without regard to operating and

maintenance costs. These costs typically represent an estimated 25% to 30% of gross revenues. Moreover, some of the outleasing contracts contained variable rent provisions in which the parking operator compensated GSA for only the parking spaces that were leased each month. PBS believes the estimate of lost revenues for the parking operator leases is significantly overstated, since the estimate does not properly account for parking operator-specific costs and variable rent provisions. PBS was unable to validate OIG's calculation of lost revenue, since OIG did not provide PBS the specific calculations by project despite our repeated requests for that information.

**Recommendation 2** – That the PBS Commissioner establish rental rates for parking outleases that are equivalent to market rates for comparable space in accordance with PBS guidance.

- PBS agrees with Recommendation Number 2 in the report, and will establish and implement controls over parking operator outleases so that the Outlease Contracting Officer can determine and support market rental rates for parking outleases.

Finally, the report found that PBS contracting officers exceeded their delegated authority by extending outleases beyond a 5-year term without the appropriate level of approval.

- PBS disagrees with this finding, as all five leases cited in the report were not extended for a firm term at any time greater than five years. PBS disagrees that the 5-year term limitation in the *GSA Delegations of Authority Manual* (Delegations Manual) was violated.

**Recommendation 3** – That the PBS Commissioner assesses whether the 5-year outlease term limitation established in the Delegations Manual is meeting its intended purpose of protecting assets from being encumbered by long-term outleases. If not, modify the Delegations Manual accordingly.

- PBS agrees with Recommendation Number 3 in the report, and will assess whether the 5-year outlease term limitation established in the Delegations Manual is meeting its intended purpose of protecting assets from being encumbered by long-term outleases and, if not, will modify the Delegations Manual accordingly.
- PBS will revise the *Outlease Program Guide* to clarify that, for purposes of the 5-year term limitation, the only period that should be considered is the then-current firm term of the outlease.



**Finding 2** – For two outleases with variable rent payments, PBS did not verify that commercial parking management companies are submitting the correct amount.

- PBS agrees with Finding Number 2 in the report.

**Recommendation 4** – That the PBS Commissioner verify reports generated by commercial parking management companies and reconciles fees collected when variable payment terms are included in a parking outlease.

- PBS agrees with Recommendation Number 4 in the report, and will establish and implement internal controls over outleases to verify reports generated by commercial parking management companies and reconcile fees collected when variable payment terms are included in a parking outlease.

PBS provided technical comments to OIG that elaborate on PBS's disagreements with the report's findings. If you have any questions, please contact Stuart Burns, Assistant Commissioner, Office of Portfolio Management and Customer Engagement, at (202) 969-7263.

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## ***Appendix E – Report Distribution***

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GSA Administrator (A)

GSA Deputy Administrator (AD)

Commissioner (P)

Acting Deputy Commissioner (P)

Acting Chief of Staff (WPB)

Deputy Chief of Staff (WPB)

Director, Office of Portfolio Management and Customer Engagement (PTC)

Chief Administrative Services Officer (H)

Audit Management Division (H1EB)

Assistant Inspector General for Auditing (JA)

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