



Office of Audits  
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# The GSA Public Buildings Service's Special Programs Division Is Not Effectively Managing Reimbursable Work Authorizations

Report Number A210045/P/2/R23001  
December 2, 2022

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## ***Executive Summary***

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### **The GSA Public Buildings Service's Special Programs Division Is Not Effectively Managing Reimbursable Work Authorizations**

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

The Special Programs Division (SPD) is a division of the GSA Public Buildings Service's (PBS's) Office of Project Delivery. PBS formally established the SPD in October 2008 as the Land Ports of Entry Special Programs Division; however, since that time, the SPD's mission and customer base have expanded considerably. The SPD currently executes and manages national projects and programs across all GSA regions, and provides assistance when a region's workload becomes overwhelming.

All funding for the SPD is provided through reimbursable work authorizations (RWAs). An RWA is an interagency agreement PBS uses to provide goods and services to other federal agencies. Because RWAs are primarily funded through customer agencies' appropriated funding, the SPD is responsible for careful stewardship of these funds to ensure they are properly managed. As of April 20, 2021, the SPD managed a portfolio of 228 active RWAs, totaling over \$528 million.

Prior GSA Office of Inspector General audit reports have identified deficiencies in PBS's management of RWAs. Because this represents an area of significant risk, this audit was included in our *Fiscal Year 2020 Audit Plan*. Our objective was to determine whether PBS's SPD has effective controls over its acceptance, management, administration, and funding of RWAs in accordance with all applicable laws, regulations, and GSA policies.

#### **What We Found**

We found that the SPD is not effectively fulfilling its stewardship responsibilities. The SPD is accepting and executing RWAs from customer agencies without sufficient consideration of applicable laws, regulations, and GSA policies. We found that the SPD violated federal appropriations law. Specifically, the SPD violated the *bona fide* needs rule by accepting an RWA with poorly defined requirements and adding work locations to another RWA more than 2 years after acceptance. The SPD also violated federal regulations and GSA policy because it did not contractually obligate four RWAs within a reasonable time frame and update milestone schedules for the RWAs in a timely manner. Additionally, the SPD did not close out an RWA in a timely manner and made multiple attempts to use the residual balance for out-of-scope work.

## What We Recommend

We recommend that the PBS Commissioner takes action to ensure that the SPD:

1. Properly trains its employees in the acceptance, execution, and closeout of RWAs in accordance with applicable laws, regulations, and GSA policies.
2. Properly oversees project managers and other acquisition personnel regarding any RWA contract administration, including modifications and closeouts.
3. Adequately documents delays, and all efforts to rectify those delays, when contract award cannot be completed within a reasonable time, or when mutually agreed-upon milestone dates cannot be met.
4. Implements controls to meet reasonable time requirements for contractual obligations. As part of these controls, ensure the SPD works with customer agencies to expeditiously cancel RWAs that cannot proceed within a reasonable time.
5. Implements controls to ensure that substantially completed RWAs are identified and closed out according to applicable GSA policies.

In its response, PBS agreed with our report recommendations and provided general comments on the *bona fide* needs rule. These comments did not affect our finding and conclusions. GSA's written comments are included in their entirety in **Appendix D**.

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## Introduction

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We performed an audit of the GSA Public Buildings Service's (PBS's) Special Programs Division (SPD) to determine if it manages its reimbursable work authorizations (RWAs) in accordance with applicable laws, regulations, and GSA policies.

### Purpose

Prior GSA Office of Inspector General audit reports have identified deficiencies in PBS's management of RWAs. Because this represents an area of significant risk, this audit was included in our *Fiscal Year 2020 Audit Plan*.

### Objective

The objective of this audit was to determine whether PBS's SPD has effective controls over its acceptance, management, administration, and funding of RWAs in accordance with all applicable laws, regulations, and GSA policies.

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

### Background

The SPD is a division of PBS's Office of Project Delivery. It is based in Denver, Colorado, and reports directly to the Assistant Commissioner for the Office of Project Delivery in Washington, D.C. The SPD's Program and Project Management Branch consists of a Director, a Branch Chief, five full-time employees, and nine contractor employees. PBS informally established the SPD in 2002 to support the U.S. Department of Homeland Security's technology programs. PBS formally established the SPD as the Land Ports of Entry Special Programs Division in 2008. The division has since evolved into a service provider to numerous customer agencies. These services include, but are not limited to:

- Planning
- Design and construction
- Program/project and construction management
- Maintenance, repair, and operations
- Acquisition services

The SPD's mission is to deliver rapid project management and acquisition solutions nationally. The SPD currently executes and manages national projects and programs across all GSA regions, and provides assistance when a region's workload becomes overwhelming.

All funding for SPD projects is provided through RWAs, which are interagency agreements PBS uses to provide goods and services to other federal agencies. In general, PBS accepts RWAs for

work in buildings under GSA’s jurisdiction, custody, and control using its reimbursable authority under the Property Act.<sup>1</sup> PBS may also accept RWAs under the Economy Act for work in buildings that are not owned by GSA.<sup>2</sup>

RWAs are primarily funded through the customer agencies’ appropriated funding. These agreements authorize GSA to provide services to the customer agency and then be reimbursed for the costs plus an applicable fee. The fee is designed to cover all of the SPD’s employee salaries and benefits, office overhead, and travel costs. As of April 20, 2021, the SPD managed a portfolio of 228 active RWAs, totaling over \$528 million.

### RWA Stewardship

Because RWAs are funded through customer agency appropriations, it is critical that PBS’s SPD provides careful stewardship of the RWAs. According to PBS’s *Reimbursable Work Authorization National Policy Manual* (RWA Policy), which establishes PBS’s requirements for its RWA program and other GSA policies, this means that the SPD must execute RWAs in accordance with applicable appropriations law.<sup>3</sup> Principally, the SPD must ensure that RWAs comply with the *bona fide* needs rule and are not improperly used to extend the life of a customer agency’s appropriations.<sup>4</sup>

The *bona fide* needs rule is a long-established provision of federal appropriations law, which states:

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability.... However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

In short, an obligation, whether through a contract or an interagency agreement like an RWA, must meet a legitimate—or *bona fide*—need of the fiscal year in which the funds were appropriated by the Congress. Agencies cannot use current year funds for a future year’s need. Accordingly, PBS and GSA policies require that the SPD carefully manages RWAs throughout the RWA life cycle to ensure compliance with the *bona fide* needs rule.

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<sup>1</sup> The Federal Property and Administrative Services Act of 1949, referred to in this report as “the Property Act,” was codified in Titles 40 and 41 of the U.S. Code. Reimbursable authority is mentioned at 40 U.S.C. 592(b)(2).

<sup>2</sup> 31 U.S.C. 1535, *Agency agreements*, is also known as the Economy Act.

<sup>3</sup> RWA National Policy Manual PBS 1000.2B, August 2020.

<sup>4</sup> 31 U.S.C. 1502(a), *Balances available*, is commonly known as the *bona fide* needs rule.

As shown in **Appendix B**, PBS has broken down the RWA life cycle into numerous phases. These phases essentially consist of acceptance, execution, and completion and financial closeout. These primary phases, and the associated requirements for ensuring compliance with the *bona fide* needs rule, are described below.

- **Acceptance** – Upon receiving an initial work request from the customer agency, PBS works to refine the customer agency’s requirements and estimate the cost of the work. The customer agency subsequently includes the refined requirements and order amount on an RWA form (GSA Form 2957), signs the form, and submits it to PBS. In accordance with the RWA Policy, PBS must review the RWA to ensure that it represents a *bona fide* need of the customer agency prior to acceptance. To do so, PBS must ensure that the customer agency’s description of requirements clearly defines the work requested. The description of requirements must include sufficient detail to develop a cost estimate and award a contract in a timely manner. Once this is confirmed, the responsible PBS official signs and accepts the RWA.
- **Execution** – After accepting the RWA, PBS must demonstrate that a *bona fide* need exists by working expeditiously to contractually obligate the customer agency’s funding. According to the RWA Policy:

Even after PBS makes a determination that the requested work represents a *bona fide* need of the customer based on a sufficiently detailed description of work and accepts the RWA, the *bona fide* need may be questioned if too much time elapses before PBS contractually obligates the customer’s funds.

Accordingly, the General Services Administration Acquisition Manual (GSAM) requires that PBS must contractually obligate the customer agency funding provided through RWAs within a reasonable time.<sup>5</sup> The GSAM defines a reasonable time as 90 calendar days unless another time frame is established in the RWA. The RWA Policy adds that if the PBS project manager determines contract award will not happen within the reasonable time frame, the project manager must provide the customer agency with a milestone schedule that clearly identifies when contract award will take place. If the funding is not contractually obligated in the reasonable time frame and a milestone schedule is not provided to the customer agency, the project manager must document a written justification in the RWA Entry and Tracking Application (RETA), which is PBS’s RWA document repository and processing system.

- **Completion and Financial Closeout** – According to the RWA Policy, PBS must enter the completion date in RETA within 30 calendar days of substantial completion. PBS must then work toward financial closeout to return any residual funding to the customer agency. Prompt completion and financial closeout also promote compliance with the

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<sup>5</sup> GSAM 517.502(c), *Reasonable Time*.

*bona fide* needs rule, particularly for time-limited customer agency funding (i.e., annual or multiple-year funding) that is available for obligation for a specific period of time. PBS must ensure that the residual funds are not used for work that is not consistent with the customer agency's original requirements to prevent violations of the *bona fide* needs rule through the use of prior year funds for current year needs.

### Previous GSA Office of Inspector General Audit Reports on PBS's Management of RWAs

Our office has previously identified deficiencies in PBS's management and oversight of RWAs. Examples include:

- A January 2017 audit memorandum, *Review of Reimbursable Work Authorizations Managed by the PBS Pacific Rim Region Service Centers*, in which we found that the PBS Pacific Rim Region's service centers did not award contracts against RWAs within established time frames.<sup>6</sup> The service centers did not award contracts for 21 of 25 RWAs tested within the 90-day time frame required by PBS policy or include required written justifications documenting the reason for noncompliance with the reasonable time rule. In addition, service center personnel were not monitoring contracts completed against RWAs to ensure that contractors adhered to schedule contract completion dates.
- A January 2017 audit report, *Procurement and Internal Control Issues Exist within PBS's Brooklyn/Queens/Long Island Service Center*, in which we found that the service center violated the reasonable time requirement because it did not contractually obligate an RWA until 4.5 years after acceptance.<sup>7</sup>
- A September 2014 audit report, *Reimbursable Work Authorizations for the Peachtree Summit Building Violated Appropriations Law and GSA Policy*, in which we found that PBS violated appropriations law and GSA policy by accepting RWA amendments that used expired funds for work unrelated to the scope of the original RWA.<sup>8</sup>
- A September 2008 audit report, *Audit of Reimbursable Work Authorizations*, in which we found issues that impact the effectiveness of and accountability over the RWA process.<sup>9</sup> Specifically, RWA files did not have a documented description of requirements at the time of acceptance of the RWA; and PBS accepted RWAs for other than a current *bona fide* need. We also found that significant periods of time elapsed between RWA approval and the first contract actions.

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<sup>6</sup> Audit Memorandum Number A150036, January 26, 2017.

<sup>7</sup> Report Number A130003/P/2/R17002, January 20, 2017.

<sup>8</sup> Report Number A130110/P/4/R14006, September 30, 2014.

<sup>9</sup> Report Number A060101/P/2/R08006, September 30, 2008.

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## Results

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### **Finding – The SPD is not effectively fulfilling its stewardship responsibilities, resulting in violations of applicable laws, regulations, and GSA policies.**

As steward of the customer agency funding, the SPD is responsible for managing the RWA and its associated funding in accordance with applicable laws, regulations, and GSA policies. In practice, this means that the SPD should only accept RWAs with clearly defined descriptions of requirements and contractually obligate and close out the RWAs in a timely manner.

However, we found that the SPD is not effectively fulfilling its stewardship responsibilities. The SPD is accepting and executing RWAs from customer agencies without sufficient consideration of applicable laws, regulations, and GSA policies. We found that the SPD violated federal appropriations law. Specifically, the SPD violated the *bona fide* needs rule by accepting an RWA with poorly defined requirements and adding work locations to another RWA more than 2 years after acceptance. The SPD also violated federal regulations and GSA policy because it did not contractually obligate four RWAs within a reasonable time frame and update milestone schedules for the RWAs in a timely manner. Additionally, the SPD did not close out an RWA in a timely manner and made multiple attempts to use the residual balance for out-of-scope work.

#### **The SPD Violated Appropriations Law by Violating the *Bona Fide* Needs Rule**

An RWA, like any interagency agreement, is an obligation of a customer agency's funding. To represent a valid obligation, an RWA must meet a legitimate need arising in (or in some cases arising before, but continuing to exist in) the fiscal year for which the customer agency's funding was received. This provision of appropriations law is commonly known as the *bona fide* needs rule.<sup>10</sup>

The RWA Policy requires a "careful review" of an RWA using time-limited funds (i.e., annual or multiple-year appropriations) prior to acceptance to confirm that the RWA represents a current year *bona fide* need of the customer. As part of this review, PBS must ensure that the RWA includes a clear and sufficiently detailed description of requirements so that PBS can contractually obligate the customer agency's funding within the GSAM's reasonable time requirement and deliver the requested work.

As described on the following page, we found that the SPD's acceptance of RWAs with poor descriptions of requirements, improper addition of out-of-scope work, and failure to meet the reasonable time requirement resulted in *bona fide* needs rule violations.

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<sup>10</sup> 31 U.S.C. 1502(a), *Balances available*, is commonly known as the *bona fide* needs rule.

***RWA N1834107 – Los Angeles Deferred Inspection Office Renovation – U.S. Customs and Border Protection.*** RWA N1834107 did not represent a valid *bona fide* need because it did not include a clear description of requirements and was not contractually obligated in a timely manner.

The U.S. Customs and Border Patrol (CBP) signed the RWA on September 27, 2018, using \$598,969 of Fiscal Year (FY) 2018 annual funding. The description of requirements stated that the RWA was for “minor office alterations” to renovate and reconfigure 2,400 square feet of space to “utilize space more efficiently” and procure and install a new telephone system. CBP’s description of requirements was unclear because it did not give a detailed description of the work that needed to be completed under the RWA. The specific office alterations and work to reconfigure the space had yet to be defined.

In accordance with the RWA Policy, the SPD was required to review the description of requirements to ensure that CBP’s request represented a current year *bona fide* need. However, the SPD did not conduct this review and accepted the RWA on September 27, 2018, even though the description of requirements was unclear. When we asked SPD why they accepted the RWA without confirming *bona fide* need, the Director stated, “We don’t determine the *bona fide* need. The customer agency sends a signed RWA which identifies their need.”

In a further sign that the RWA did not represent a *bona fide* need, the SPD was unable to contractually obligate CBP’s funding within a reasonable time because CBP needed to solidify its project requirements. As shown in the timeline in *Figure 1* on the next page, CBP’s project requirements changed numerous times between acceptance of the RWA in September 2018 and finalization of the project scope in November 2020.

**Figure 1 – Timeline of Events for RWA N1834107**

Date	Event
September 27, 2018	The SPD accepts CBP’s RWA in the amount of \$598,969.
October 24, 2018	Site visit by the SPD. According to the SPD project manager, CBP began revising its requirements immediately after the initial project meeting.
June 21, 2019 (239 calendar days after site visit)	The SPD project manager reduced the scope of work (SOW) and corresponding estimate. The SPD provided the estimate to CBP along with an updated milestone schedule, indicating contractual obligation of the funds by October 16, 2019, if CBP could agree on the SOW. <sup>11</sup>
August 1, 2019	CBP submitted an RWA amendment to reduce the project’s scope and de-obligate \$405,881 from the original amount of funding.
September 20, 2019	CBP requested to cancel the RWA amendment.
September 27, 2019	The CBP project manager stated, “I think we’re just going to leave the RWA for now and move forward with the project.” The SPD program analyst canceled the de-obligation request.
January 31, 2020 (After 4 months of inactivity)	The SPD program analyst asked the SPD project manager about the status of the RWA. The SPD project manager replied that “[CBP is] still working on the scope revision.”
March–April 2020	The SPD project manager worked with CBP to complete the SOW.
June 16, 2020	In an email to the SPD contracting officer, the SPD project manager wrote, “I received word from CBP yesterday afternoon that they ARE NOT [author’s emphasis] revising the SOW as they had previously indicated ... there will be no revisions.”
June–September 2020	The SPD worked with the U.S. Small Business Administration to obtain approval to award the contract to a sole-source 8(a) contractor. The SPD received its approval on September 18, 2020.
November 10, 2020	The SPD and CBP finalized the SOW.
January 14, 2021	The SPD contractually obligated \$528,356.

As shown above, CBP’s requirements were not finalized until November 2020—not September 2018, when the RWA was accepted by the SPD. This resulted in an actual violation of the *bona fide* needs rule because CBP’s needs were not defined until FY 2021. Accordingly, it was impermissible for the SPD to fund these requirements using CBP’s FY 2018 annual funding.

According to the SPD project manager, the CBP’s indecisiveness substantially delayed the project. He stated that customers are allowed to refine the original scope, but that CBP could not decide on the changes. PBS’s RWA Policy provides that in cases where limited project activity occurs, a follow-up letter should be sent to push the customer agency to finalize the scope. If no action is taken, the RWA Policy further provides that PBS should unilaterally cancel

<sup>11</sup> The scope of work is a document that clearly defines the objectives and requirements of the customer request, summarized in the Description of Requirements. It is developed after the RWA is accepted.

the RWA due to a lack of project activity.<sup>12</sup> However, the SPD neither sent follow-up letters to CBP nor took action to unilaterally cancel the RWA.

In response to our finding, PBS officials told us that:

It's not unusual for GSA to accept an RWA based on varying levels of requirements. This does not negate the customer agency's bona fide need. The project manager continued to communicate with CBP to finalize the SOW for acquisition/solicitation. The customer engagement constitutes continued work on the RWA, SOW and need for the project. At no time did the customer agency want to cancel the project. They were only considering reducing the scope. Project discussions are always ongoing/continuous, but are not always uploaded into RETA.

However, to meet the *bona fide* needs rule, the customer agency's description of requirements must clearly define the work requested and include sufficient detail to develop a cost estimate and award a contract in a timely manner. In this case, CBP's description of requirements was not clear when the SPD accepted the RWA and was subject to constant revision due to what SPD's own staff described as CBP's "indecisiveness" about the RWA requirements. Taken together, the lack of clearly defined requirements at the time of RWA acceptance and the ever-evolving nature of CBP's requirements afterward clearly demonstrate that the RWA did not represent a valid *bona fide* need for FY 2018.

***RWAs N1618129 and N2147453 – Office of Regulatory Affairs Training Hub Telepresence System – U.S. Department of Health and Human Services, U.S. Food and Drug Administration.***

The SPD improperly added work for two telepresence locations that were not included in the RWA's original description of requirements. In doing so, the SPD funded a current year need with prior year funding and violated the *bona fide* needs rule.

The SPD accepted RWA N1618129 on November 29, 2016, in the amount of \$2,299,000 for a "survey and build-out of the [Office of Regulatory Affairs'] Training Hub Telepresence system using a managed network service provider at 10 locations." The U.S. Food and Drug Administration (FDA) funded the RWA using FY 2017 annual funding.

The RWA's description of requirements specified 10 FDA locations across the country. However, on May 24, 2019—over 2 years after accepting the RWA—the SPD project manager and contracting officer modified the contract at the customer's request to add work at two locations: Maitland, Florida; and Nashville, Tennessee. This resulted in an actual violation of the *bona fide* needs rule because the FDA's need for telepresence systems in the Maitland and Nashville locations did not arise until FY 2019. Therefore, it was impermissible for the SPD to fund the work at these locations with the FDA's FY 2017 annual funding.

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<sup>12</sup> RWA Policy 4.1.5.1.2. *PBS Unilateral Cancellation*, August 2020.

PBS did not identify this violation until December 9, 2020—more than 1.5 years after the contract modification and 4 years after accepting the RWA. To rectify the violation, the SPD and FDA executed a new RWA (N2147453) on March 9, 2021, which cited FY 2019 annual funds. On August 26, 2021, the SPD transferred the costs associated with the Maitland and Nashville locations from RWA N1618129 to the new RWA. To accomplish this transfer, PBS's Financial Services Division allowed "several one-time policy deviations" to fix this RWA and stated that these deviations "would likely not be granted again."

Notwithstanding these corrective actions, deficiencies in the SPD's RWA oversight allowed for the *bona fide* need violation to occur in FY 2019 and go undetected for over a year, pointing to needed improvements in the SPD's internal controls.

### **The SPD Violated Regulations and GSA Policy by Failing to Obligate RWA Funds within a Reasonable Time Frame**

The reasonable time requirement is established by both GSAM 517.502(c) and the RWA Policy. The GSAM defines a reasonable time as 90 calendar days unless another time frame is established in the RWA. The RWA Policy adds that if the PBS project manager determines contract award will not happen within the reasonable time frame, the project manager must provide the customer agency with a milestone schedule that clearly identifies when contract award will take place.

The reasonable time requirement is intended to help demonstrate compliance with the *bona fide* needs rule. As described below, we found that the SPD did not comply with the reasonable time requirement for four RWAs.

***RWA N1571363 – Installation of ePACS Readers at GSA-Leased Locations for Farm Service Agency.*** In 2016, the U.S. Department of Agriculture's Farm Service Agency submitted an order to GSA's Federal Acquisition Service for the installation of Electronic Physical Access Control System (ePACS) readers at 42 unspecified lease locations. The order cited FY 2016 annual funding totaling \$376,066. On September 4, 2016, the order was subsequently transferred to the SPD and accepted as an RWA because it involved real property services that the Federal Acquisition Service is not authorized to provide.

After accepting the RWA, the SPD determined that it was significantly underfunded because it did not account for the labor hours and contractor overhead, bonding, and profit necessary to complete the project. As a result, the project remained dormant until August 7, 2017—337 days after acceptance—when the SPD updated the milestone schedule. On September 28, 2017, the Farm Service Agency amended the RWA to provide additional funding. On January 29, 2018—almost 1.5 years after acceptance—the SPD entered into a contractual obligation to complete the work.

***RWA N1625523 – Wedge Barrier Replacement for Thurgood Marshall U.S. Courthouse – U.S. Marshals Service.*** PBS’s Northeast and Caribbean Region accepted RWA N1625523 on December 20, 2016. However, after making little progress on the RWA, PBS’s Northeast and Caribbean Region ultimately transferred it to the SPD on April 22, 2019. Although the SPD engaged in project activity by revising the SOW, issuing a request for proposal, and negotiating with the contractor, it missed its milestone schedule award dates when it did not contractually obligate the RWA until July 13, 2021—more than 2 years after it took over the RWA and 4.5 years after acceptance.

According to the SPD project manager, the project delays occurred because the SPD consolidated the contract for the wedge barrier project funded under RWA N1625523 with other RWA-funded barrier replacement projects in New York. The project manager asserted that it was more “efficient” to award the three projects using a single contractor. However, the fact that it took PBS more than 4.5 years to award a contract for work that took only 1 week to complete calls this assertion into question.

***RWA N1791457 – Blue Water Bridge Plaza Hardening – CBP.*** The SPD accepted RWA N1791457 on September 21, 2018, in the amount of \$1,225,296 using FY 2018 annual and multiple-year funding to design, supply, and install necessary security and infrastructure upgrades. According to the original milestone schedule, the SPD should have contractually obligated the accepted funds by March 2019, but did not do so. The SPD updated the milestone schedule on February 4, 2019. After it did not meet the estimated award date listed on the updated milestone schedule, the SPD did not update the milestone schedule again until July 11, 2021—more than 2.5 years after acceptance. Subsequent to our audit fieldwork, the SPD contractually obligated the funding on August 17, 2022—almost 4 years after accepting the RWA.

The SPD project manager told us that his predecessor failed to properly develop the project to meet CBP’s needs. The project manager has since worked with SPD to refine the project requirements, but stated that his efforts were delayed by travel restrictions imposed in response to the COVID-19 pandemic. Once he was able to visit the site, the project manager determined that additional funding would be needed to complete the requested work. In July 2021, CBP provided the additional funding; however, the SPD continued to revise the SOW and contract solicitation until it contractually obligated the funding.

***RWA N2026684 – Multi-Port Perimeter Fencing for Land Port of Entry Housing - CBP.*** On September 22, 2020, the SPD accepted RWA N2026684 in the amount of \$1,027,630 using FY 2020 annual funds to install fencing and security measures to ensure the safety of the officers and families who occupy the housing at the three land port of entry (LPOE) locations: Eastport, Idaho; Piegan, Montana; and Turner, Montana. According to the original milestone schedule, the SPD should have contractually obligated the accepted funds by December 17, 2020; however, it did not meet that deadline. The SPD updated the milestone schedule on January 20, 2021. After it did not meet the revised award date of April 1, 2021, the SPD did not update the

milestone schedule until January 10, 2022. Subsequent to our audit fieldwork, the SPD contractually obligated the funding on September 29, 2022—2 years after accepting the RWA.

The delay primarily arose because the SPD accepted the work at Eastport, Idaho, under the wrong legal authority. The SPD accepted the RWA using its authority under the Property Act.<sup>13</sup> Because CBP owns the housing at the Eastport LPOE, the SPD should have accepted this portion of the work under the Economy Act.<sup>14</sup> The RWA has since been amended to return the \$423,585 associated with the housing at the Eastport LPOE to CBP; however, the remaining balance of \$604,045 remains unobligated.

### **The SPD Did Not Close Out an RWA in a Timely Manner**

When the work requested under an RWA has been completed, PBS must exercise proper stewardship of the customer’s funding by promptly closing the order and returning residual funds to the customer agency. Doing so allows the customer to effectively manage its budgetary accounts. It also protects against the improper use of residual balances for work that does not fill a *bona fide* need of the funding originally provided by the customer agency. As described below, the SPD did not close out RWA N1786556 in a timely manner. Instead, the SPD project manager made multiple attempts to use the residual balance for work that did not represent a valid *bona fide* need.

On September 24, 2018, the SPD accepted RWA N1786556 to replace the primary inspection booth at the CBP LPOE in Sasabe, Arizona. CBP authorized \$396,158 for the project. On February 7, 2020, PBS completed the project at a total cost of \$281,430, leaving a residual balance of \$114,728 on the RWA. In accordance with the RWA Policy, the SPD should have worked with the GSA Office of the Chief Financial Officer (OCFO) to enter the substantial completion date in RETA within the required 30 calendar days, or by March 8, 2020. However, the SPD failed to do so.

Because the RWA remained open with no financial activity, it was flagged as high-risk during unfilled customer order reviews conducted by the SPD program analyst in January 2021 and the OCFO in June 2021.<sup>15</sup> In response to the SPD program analyst’s inquiry, the SPD project manager asked the OCFO to keep the RWA open, claiming that CBP wanted to use the residual funding of \$114,727 for a project that was in the acquisition planning phase. He stated, “We’re currently in the process of soliciting for the contract to obligate the remaining funds on the Sasabe, AZ RWA and need to keep it open.”

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<sup>13</sup> 40 U.S.C. 592(b)(2).

<sup>14</sup> 31 U.S.C. 1535.

<sup>15</sup> The goal of these reviews is to determine the validity of the unfilled customer order balance that PBS reports on its financial statements.

During this time, the project manager made several attempts to use the residual funding for work that was outside of the RWA's description of requirements and would have resulted in a violation of the *bona fide* needs rule. Among other things, the project manager asked the SPD contracting officer to award a contract for a second new security booth; however, the contracting officer refused because the requested work was out of scope. According to the SPD project manager, CBP wanted to use the remaining funds because it was reluctant to lose them.

When we brought the RWA to the attention of SPD officials on July 9, 2021, they said it was necessary to keep the RWA open to complete final "punch list" items for the project, which they could not yet verify due to COVID-19 travel restrictions. However, records clearly indicate that the work was completed on February 7, 2020.

Ultimately, the substantial completion date was recorded on November 23, 2021—over 1.5 years after the work was completed. This led to a significant delay in the return of the funding to the customer agency. The funding should have been returned to CBP after the last bill date of March 19, 2020. Instead, the SPD did not send a financial closeout letter, de-obligate the funds, and return the funds to the customer agency until February 15, 2022—almost 2 years after substantial completion.

Overall, the issues described in the sections above show that the SPD is not providing effective stewardship of customer agency funds because it is accepting and executing RWAs from customer agencies without sufficient consideration for applicable laws, regulations, and GSA policies. SPD officials routinely told us that they are not responsible for determining whether RWAs meet *bona fide* need requirements. SPD officials also stressed their willingness to keep RWAs open for extended periods with no activity in pursuit of customer satisfaction. However, these positions contradict the SPD's mission, applicable laws, regulations, and GSA policies governing interagency agreements.

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## Conclusion

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We found that the SPD is not effectively fulfilling its stewardship responsibilities. The SPD is accepting and executing RWAs from customer agencies without sufficient consideration of applicable laws, regulations, and GSA policies. We found that the SPD violated federal appropriations law. Specifically, the SPD violated the *bona fide* needs rule by accepting an RWA with poorly defined requirements and adding work locations to another RWA more than 2 years after acceptance. The SPD also violated federal regulations and GSA policy because it did not contractually obligate four RWAs within a reasonable time frame and update milestone schedules for the RWAs in a timely manner. Additionally, the SPD did not close out an RWA in a timely manner and made multiple attempts to use the residual balance for out-of-scope work.

Proper stewardship of customer agency funding obtained through RWAs is critical. Accordingly, PBS should take appropriate measures to ensure that the SPD properly manages customer agency funding and complies with applicable laws, regulations, and GSA policies. Among other things, PBS should train SPD employees on the proper acceptance of RWAs, provide effective oversight of RWA contract administration matters, and direct the SPD to cancel any RWAs that cannot proceed within a reasonable time.

## Recommendations

We recommend that the PBS Commissioner takes action to ensure that the SPD:

1. Properly trains its employees in the acceptance, execution, and closeout of RWAs in accordance with applicable laws, regulations, and GSA policies.
2. Properly oversees project managers and other acquisition personnel regarding any RWA contract administration, including modifications and closeouts.
3. Adequately documents delays, and all efforts to rectify those delays, when contract award cannot be completed within a reasonable time, or when mutually agreed-upon milestone dates cannot be met.
4. Implements controls to meet reasonable time requirements for contractual obligations. As part of these controls, ensure the SPD works with customer agencies to expeditiously cancel RWAs that cannot proceed within a reasonable time.
5. Implements controls to ensure that substantially completed RWAs are identified and closed out according to applicable GSA policies.

## GSA Comments

In its response, PBS agreed with our report recommendations and provided general comments on the *bona fide* needs rule. These comments did not affect our finding and conclusions. GSA's written comments are included in their entirety in **Appendix D**.

## **Audit Team**

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

Arthur Maisano	Regional Inspector General for Auditing
Gregory Ventola	Audit Manager
Zawad Shahadat	Auditor-In-Charge
Luis Garcia Escobar	Auditor

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## Appendix A – Objective, Scope, and Methodology

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### Objective

The objective of this audit was to determine whether PBS's SPD has effective controls over its acceptance, management, administration, and funding of RWAs in accordance with all applicable laws, regulations, and GSA policies.

### Scope and Methodology

We evaluated the SPD's policies, procedures, and internal controls related to its management of its RWA portfolio. Our audit scope included a review of SPD-managed RWAs as of April 20, 2021. We selected a judgmental sample of 10 high-risk RWAs totaling approximately \$36 million (see **Appendix C**). Since the SPD manages and executes nationwide projects, our sample also included some nationwide projects.

To accomplish our objective, we:

- Reviewed prior GSA Office of Inspector General and U.S. Department of Homeland Security Office of Inspector General reports related to RWAs;
- Reviewed the U.S. Government Accountability Office's (GAO's) *Principles of Federal Appropriations Law*, PBS's RWA Policy, and other relevant criteria related to RWAs;
- Reviewed the SPD's organizational structure;
- Obtained and reviewed all essential documents available in RETA for our sampled RWAs to determine the SPD's compliance with relevant criteria;
- Compared estimated milestone schedules to the actual completion dates;
- Requested explanations and supporting documents not available in RETA that might explain any project delays;
- Requested a list of all RWAs in the SPD's portfolio amended for antecedent liability to assess if the SPD complied with applicable appropriations law and PBS policies;
- Interviewed SPD management, project managers, and contracting officer's representatives;
- Assessed the SPD's project manager and contracting officer's representative assignment process, qualifications, and training requirements to determine if they are qualified to manage their assigned RWA projects; and
- Reviewed the RWA program's internal control in the *PBS Financial Accounting Processes and Internal Control Desk Guide* and evaluated its effectiveness through management interviews.

## Data Reliability

We assessed data reliability by reconciling RWA financial information to source documents in RETA and/or provided by the SPD. We determined that these data were sufficiently reliable for the purposes of this audit.

## Sampling

We analyzed SPD's RWA portfolio, which consisted of 228 active RWAs and was valued at over \$528 million as of April 20, 2021, and selected a judgmental sample of 10 high-risk RWAs that the SPD accepted between FYs 2008–2021.

Of the 10 RWAs we sampled, 8 were RWAs funded with annual appropriations, 1 was an RWA funded with multiple-year appropriations, and 1 was an RWA funded with no-year appropriations. The majority of our sample consisted of RWAs that used annual appropriations because the greater restrictions on annual appropriations result in a higher risk of mismanagement. The total value of our sample was approximately \$36 million (almost 7 percent of the SPD's RWA portfolio). The sample design did not include sample sizes that would allow for projection to the population; however, they allowed us to sufficiently address our audit objective.

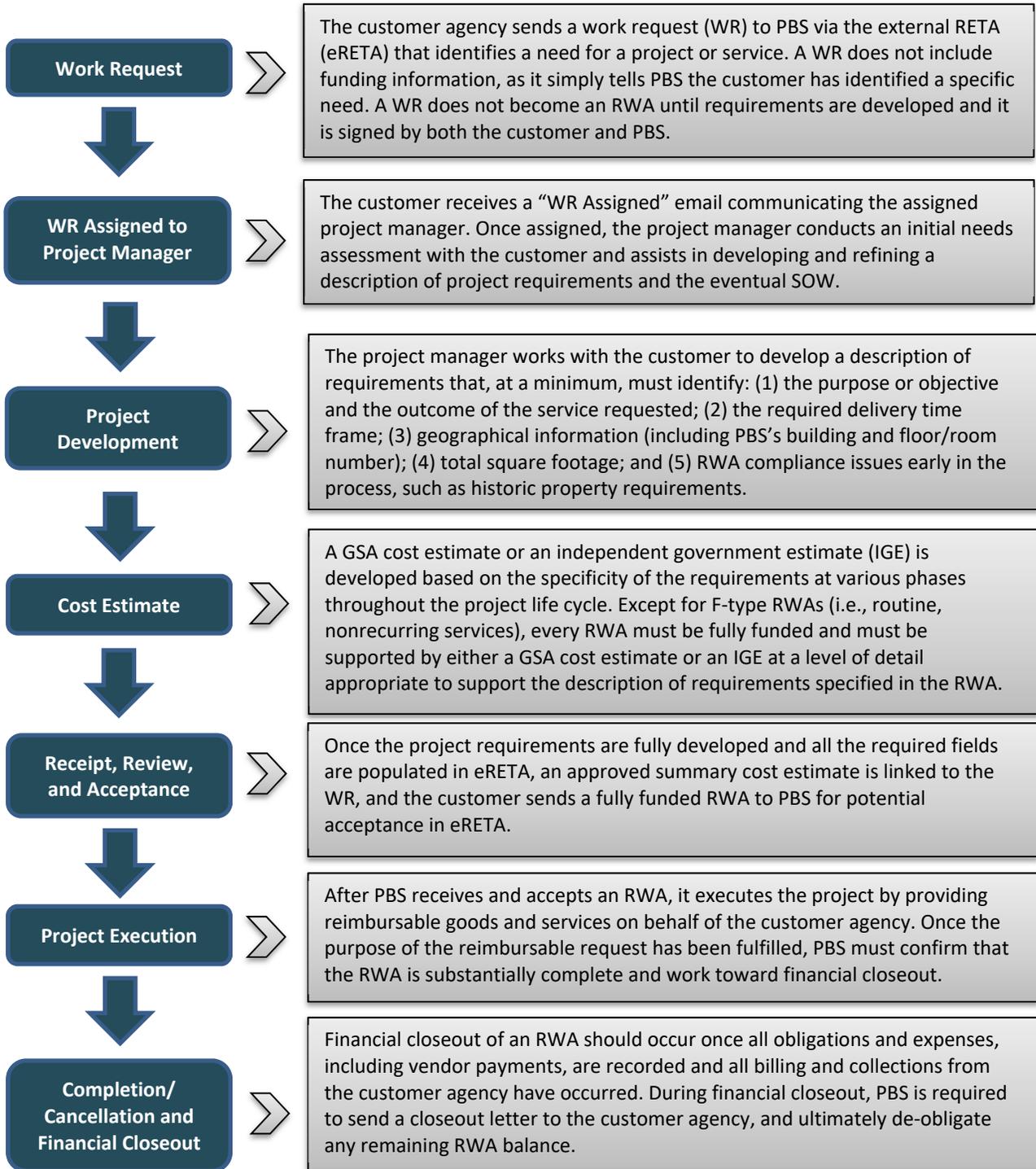
## Internal Controls

We assessed internal controls significant within the context of our audit objective against GAO-14-704G, *Standards for Internal Control in the Federal Government*. The methodology above describes the scope of our assessment and the report finding includes any internal control deficiencies we identified. Our assessment is not intended to provide assurance on GSA's internal control structure as a whole. GSA management is responsible for establishing and maintaining internal controls.

## Compliance Statement

We conducted the audit between August 2021 and February 2022 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 finding and conclusions based on our audit objective.

## Appendix B – RWA Life Cycle



**Note:** RETA and eRETA are technically one application. Customer agencies log in to eRETA externally to submit WRs to PBS. GSA employees log in to RETA internally via the PBS Portal to access RWA documents.

## Appendix C – List of Sampled RWAs

RWA Number	Description	Location(s)	Funding Year	Appropriation Type	Authorized Amount
N0548915	CBP Housing Along Northern Border	Piegan, Montana	2010	No-Year	\$ 25,276,049.98
N1571363	Installation of ePACS Readers at GSA-Leased Locations for Farm Service Agency	Multiple states	2016	Annual	\$ 890,202.00
N1625523	USMS – Wedge Barrier Replacement for Thurgood Marshall U.S. Courthouse	New York, New York	2017	Annual	\$347,269.40
N1637566	Build-out of Executive Office for Immigration Review (EOIR) Space	New Orleans, Louisiana; San Antonio, Texas; Charlotte, North Carolina; and Louisville, Kentucky	2017	Annual	\$ 5,915,517.50
N1786556	Sasabe, Arizona, Port of Entry Booth Replacement	Sasabe, Arizona	2018	Annual	\$ 396,157.86
N1791457	Blue Water Bridge Plaza Hardening	Port Huron, Michigan	2021	Annual	\$ 95,319.22
			2018	Annual	\$ 1,037,112.62
			2018	Multi-Year	\$ 188,183.48
N1834107	Los Angeles Deferred Inspection Office Renovation	Los Angeles, California	2018	Annual	\$ 598,969.00
N2026684	Multi-Port Perimeter Fencing for LPOE Housing	Eastport, Idaho; Piegan, Montana; and Turner, Montana	2020	Annual	\$ 1,027,630.08
N2035921	DHS Mission Support Facility 3D Flyover Video	N/A	2020	Annual	\$ 300,000.00
N2147453	Office of Regulatory Affairs Training Hub Telepresence System	Maitland, Florida; and Nashville, Tennessee	2019	Annual	\$ 223,026.75
				<b>Total:</b>	<b>\$ 36,295,437.89</b>

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## Appendix D – GSA Comments

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Public Buildings Service

NOVEMBER 10, 2022

MEMORANDUM FOR: ARTHUR MAISANO  
REGIONAL INSPECTOR GENERAL FOR AUDITING  
NORTHEAST AND CARIBBEAN REGION AUDIT OFFICE

FROM: NINA M. ALBERT  
COMMISSIONER  
PUBLIC BUILDINGS SERVICE (P)

SUBJECT: Response to the Office of Inspector General Draft Audit Report entitled *The GSA Public Buildings Service's Special Program Division is Not Effectively Managing Reimbursable Work Authorizations*, A210045 (October 18, 2022)

The Public Buildings Service (PBS) appreciates the opportunity to review and comment on the subject audit report from the U.S. General Services Administration's (GSA) Office of Inspector General (OIG). PBS agrees with the five recommendations set forth in the report and has already begun implementing controls, processes, training and tools to address these recommendations.

PBS's Special Programs Division (SPD) agrees that it did not update reimbursable project milestone schedules as quickly as it should have. This inconsistency raised concerns for OIG that SPD may not have always acted within a reasonable time to re-obligate customer agency funds for some of the reimbursable work authorizations (RWAs) reviewed by OIG. As with all PBS RWAs, SPD receives a certification from the customer agency when the RWA is submitted "that the Requesting Agency has a bona fide need in the current fiscal year for the work described in this RWA." See *GSA Form 2957* (revised August 2022), Customer Fund Certification, section (c) and General Terms and Conditions (1). PBS has improved its processes to reconfirm with its customer agencies that the customer agency continues to have a bona fide need for nonseverable reimbursable projects when such projects are reasonably delayed beyond the dates established in the project's milestone schedule.

The U.S. Department of Justice Office of Legal Counsel (DOJ) has explained that "[a] bona fide need, moreover, may arise in one fiscal year for services that by their nature cannot be separated for performance in separate fiscal years." *Whether the General Services Administration May Proceed with an Assisted Acquisition for the Department of Veterans Affairs in Fiscal Year 2012 Using the Department's Fiscal Year 2009/2010 Funds*, 2012 WL 3059227 (March 2, 2012), at page 7. In that opinion, DOJ noted that the Government Accountability Office (GAO) has adopted a requirement "that the servicing agency in an interagency agreement

U.S. General Services Administration  
1800 F Street NW  
Washington DC 20405-0002  
[www.gsa.gov](http://www.gsa.gov)

award a contract to a third-party or otherwise perform within a 'reasonable time.'" *Id.* at page 10. DOJ further explained that, "in answering the question how long a performing agency has to execute a contract with a third party, consistent with the bona fide needs rule, the GAO has explained: "There is no hard and fast rule in this regard. Rather, the GAO uses a 'reasonableness' standard when evaluating the timeliness of a performing agency's actions, examining the circumstances surrounding transactions on a case-by-case basis." *Id.* at page 11. (quoting General Accounting Office, *Interagency Transactions: Roles and Responsibilities—Frequently Asked Questions, #3* (Mar. 13, 2008)).<sup>1</sup>

SPD will continue to act as good stewards of customer agency funds and will make certain to update reimbursable project milestone schedules more quickly.

Thank you for the opportunity to provide a response to the draft report. If you have any questions, please contact Julia De Rosi, Deputy Assistant Commissioner, Office of Project Delivery, at (312) 718-1739.

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<sup>1</sup> *Whether the General Services Administration May Proceed with an Assisted Acquisition for the Department of Veterans Affairs in Fiscal Year 2012 Using the Department's Fiscal Year 2009/2010 Funds*, 2012 WL 3059227 (March 2, 2012), is available at: <https://www.justice.gov/file/18316/download> (last visited November 3, 2022).

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

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GSA Administrator (A)

GSA Deputy Administrator (AD)

Commissioner (P)

Deputy Commissioner (PD)

Chief of Staff (PB)

Deputy Chief of Staff (PB)

Assistant Commissioner for Strategy & Engagement (PS)

Deputy Assistant Commissioner (PCB)

Program Management Officer (PCBA)

Supervisory Program Specialist (PCBAB)

Supervisory Program Analyst (PCBR)

Program Analyst (PCAI)

Chief Financial Officer (B)

Deputy Chief Financial Officer (B)

Office of Audit Management and Accountability (BA)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Acquisition Program Audits (JA)

Deputy Assistant Inspector General for Real Property Audits (JA)

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