



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

GSA's Public Buildings Service Faces Challenges in Using Funds Received under the Infrastructure Investment and Jobs Act

Memorandum Number A220036-2
August 11, 2022



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TO: NINA ALBERT
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

FROM: R. NICHOLAS GOCO ROLANDO GOCO
ASSISTANT INSPECTOR GENERAL FOR AUDITING (JA)

SUBJECT: GSA's Public Buildings Service Faces Challenges in Using Funds Received
under the Infrastructure Investment and Jobs Act
Memorandum Number A220036-2

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The purpose of this memorandum is to highlight the challenges that GSA's Public Buildings Service (PBS) faces as it begins to use funding received under the Infrastructure Investment and Jobs Act (IIJA).

Background

The IIJA was signed into law on November 15, 2021. This federal law allocated about \$1.2 trillion in federal funding to over 350 distinct programs across more than a dozen federal departments and agencies. Of that, the IIJA authorized \$550 billion in new federal funding to improve America's infrastructure, including transportation, energy, water, broadband internet, and environmental remediation.

Under the IIJA, GSA received \$3.418 billion in no-year funding for the acquisition, construction, and repair and alteration of Land Ports of Entry (LPOEs). GSA owns and operates 102 out of the 167 LPOEs at the U.S. borders. The funding will allow PBS to construct and modernize all ports on the U.S. Customs and Border Protection's 5-year plan, as well as ports that have been prioritized for upgrading by the U.S. Department of Homeland Security. Modernization of LPOEs will help to improve not only border security, but will also improve the efficient flow of travel and trade across the U.S. borders.

In addition to signing the IIJA, the President issued the following two executive orders, which directly affect PBS's use of its IIJA funding:

- Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers*, requires all iron, steel, and manufactured products used in federal projects to be produced in the United States.¹
- Executive Order 14052, *Implementation of the Infrastructure Investment and Jobs Act*, says that agencies should prioritize: (1) investing public dollars efficiently, (2) working to avoid waste, and (3) focusing on measurable outcomes for the American people.²

On April 29, 2022, the Office of Management and Budget (OMB) issued Memorandum M-22-12, *Advancing Effective Stewardship of Taxpayer Resources and Outcomes in the Implementation of the Infrastructure Investment and Jobs Act* (OMB Memorandum M-22-12) to assist agencies in efficiently and effectively implementing the IIJA. According to the memorandum, the IIJA implementation “needs to be efficient and effective to deliver the best results, protect taxpayer dollars, and ensure public trust.” The memo further provides that “to support agency implementation, this initial guidance emphasizes the importance of accountability and transparency of Federal Government spending and sets forth initial steps agencies must take to ensure effective stewardship of these funds.”

Challenges PBS Faces When Using IIJA Funds

According to GSA’s IIJA spending plan, which was submitted to Congress on February 14, 2022, PBS plans to use IIJA funding for major construction and modernization projects at 26 LPOEs. PBS will also use IIJA funding for, among other things, paving projects, lease purchases, and program contingency and operational support costs.

PBS faces multiple challenges as it executes these projects. These challenges include:

- Ensuring the effective stewardship of taxpayer funds;
- Addressing the need for qualified project managers and contracting officers;
- Providing effective oversight of construction management contractors;
- Managing potential project delays and cost overruns;
- Preparing and maintaining complete and accurate documentation;
- Awarding effective construction contracts; and
- Safeguarding LPOE access.

We describe these challenges in detail below.

¹ Exec. Order 14005, 86 Fed. Reg. 7475 (January 28, 2021).

² Exec. Order 14052, 86 Fed. Reg. 64335 (November 18, 2021).

Ensuring the effective stewardship of taxpayer funds. OMB Memorandum M-22-12 establishes that:

Effective stewardship of taxpayer funds is a critical responsibility of the Federal Government. It is important for agencies to make payments correctly and take appropriate actions at the front end to prevent improper payments from being made.

To meet OMB's call for effective stewardship of IJIA funds, PBS must provide effective oversight of its contract awards and payments by implementing controls designed to proactively prevent, detect, and eliminate fraud. In doing so, PBS must assess the unique fraud risks associated with construction contracts, including the potential for fraud related to small business set-aside contracts and overbillings described below.

- **Small Business Set-Aside Contracting Fraud** – Construction contracts set aside for award to small businesses are frequent targets for fraudulent activity. The GSA Office of Inspector General's Office of Investigations has participated in numerous cases that have uncovered schemes to divert set-aside contracts away from the small businesses they are designed to support. Most recently, in May 2022, a large construction company agreed to pay over \$2.8 million to resolve allegations that it improperly manipulated a subcontract designated for a Service-Disabled Veteran-Owned Small Business (SDVOSB) in connection with a GSA construction project.³

Although the company attested that it would subcontract work to an SDVOSB, the company instead negotiated the entire subcontract with another large firm. Subsequently, the company entered into a subcontract with an SDVOSB, using the same terms as agreed upon with the other large firm, but included an additional 1.5 percent fee for the SDVOSB. The SDVOSB's role was limited to serving as a "pass-through" by providing its SDVOSB status to make it appear as though an SDVOSB was performing the work, when the large company actually completed all of the work on the subcontract.

- **Overbilling Schemes** – Overbilling schemes may arise when controls are not effective to verify the accuracy of payments. For example, in April 2012, a large construction company entered into a deferred prosecution agreement under which it admitted to fraudulently overbilling clients for over 10 years.⁴ Under the overbilling scheme, the

³ U.S. Department of Justice, U.S. Attorney's Office for the Northern District of New York, "Construction Company Agrees to Pay \$2.8 Million to Resolve Allegations of Small Business Subcontracting Fraud," May 12, 2022, <https://www.justice.gov/usao-ndny/pr/construction-company-agrees-pay-28-million-resolve-allegations-small-business>.

⁴ U.S. Department of Justice, U.S. Attorney's Office for the Eastern District of New York, "Construction Giant Lend Lease (F/K/A Bovis) Charged with Defrauding Clients in Three Separate Schemes – Will Pay over \$50 Million and Institute Comprehensive Reforms, April 18, 2012, <https://www.justice.gov/archive/usao/nye/pr/2012/2012apr24.html>.

company systematically added 1 to 2 hours of unworked overtime per day to timesheets for labor foremen. The company also systematically completed and submitted timesheets falsely by listing unworked hours as worked when labor foremen were absent. The company submitted fraudulent bills and certified payrolls reflecting the unworked time.

These fraud risks can be mitigated through effective controls. For example, small business fraud risk can be mitigated through verification of small business status and confirmation that employees of small businesses are actually performing set-aside work. Overbilling schemes can be detected through the careful review of billings and payrolls to verify the accuracy of hours billed. Accordingly, PBS should design and implement comprehensive controls to address fraud risks and meet its funds' stewardship responsibilities.

Addressing the need for qualified project managers and contracting officers. According to OMB Memorandum M-22-12, agencies should engage in large hiring processes to hire qualified staff to meet the IIJA's goals and lower risks. Agencies should also develop short- and long-term, deliberate plans that include recruiting, hiring, onboarding, and workforce engagement and retention for potential employees.

Accordingly, one of the most immediate challenges PBS will face in undertaking IIJA projects is addressing the need for qualified project managers and contracting officers. Project managers and contracting officers play critical roles in the delivery of construction projects like those PBS plans to fund through the IIJA. In addition to keeping projects on schedule and budget, project managers must comply with hundreds of laws, rules, regulations, and policies, and be able to meet the customer agency's goals and requirements. Likewise, contracting officers must ensure contracts are awarded at fair and reasonable prices in accordance with acquisition laws, the Federal Acquisition Regulation, and GSA- and PBS-specific acquisition policies and procedures.

However, PBS continues to see losses in its existing project management staff. For example, as of May 2022, PBS employed approximately 560 project management staff, a decrease of about 12.5 percent since September 2021. PBS also faces gaps in guidance, training, and experience levels for its project management staff that have contributed to past audit findings. For example, project managers prepare independent government estimates (IGEs) for construction services or review IGEs prepared by construction management contractors. However, in September 2020, PBS officials told us that PBS does not have guidance on developing cost estimates and that PBS project managers do not have the experience necessary to develop cost estimates.⁵ Additionally, we have found that PBS has improperly designated project managers

⁵ *Audit of the GSA Public Buildings Service's Use of Construction Management Services* (Report Number A150028/P/4/R20009, September 4, 2020).

to serve as contracting officers' representatives even though the project managers were not certified to do so.⁶

Our past audit work has also shown that PBS faces challenges in ensuring that its contracting officers have the training and experience necessary to award and manage contracts. For example, our recent audits of PBS basic repair and alteration projects have shown that contracting officers do not understand their responsibilities when awarding and administering contracts in accordance with applicable requirements.⁷ Additionally, during our oversight of PBS's use of funding provided under the American Recovery and Reinvestment Act, we routinely found that contracting officers violated federal competition requirements and failed to adequately establish price reasonableness for major construction and modernization projects—many of which exceeded \$100 million.⁸ These contracts were awarded using the Construction Manager as Constructor (CMc) project delivery method, which PBS intends to use for some of its IIJA-funded projects.

PBS is taking steps to bolster project delivery teams for its IIJA workload to address this challenge. As it does so, PBS must focus on hiring, training, and retaining qualified staff, including project managers and contracting officers, to achieve the IIJA's goals and mitigate risk.

Providing Effective Oversight of Construction Management Contractors. As it works to address the losses in its project management staff, PBS has been forced to increasingly rely on construction management contractors (construction managers) to support its construction and repair and alteration projects. In doing so, PBS is challenged with addressing gaps in its oversight of these contractor employees.

For example, in September 2020, we reported that PBS allowed construction managers to perform inherently governmental functions that are reserved for federal employees, including developing IGEs, assessing contractor proposals, negotiating contracts, and accepting project deliverables.⁹ PBS also allowed construction managers to access sensitive information, including competitors' proprietary information and government data, without mitigating conflicts of

⁶ *Audit of the Sidney R. Yates Federal Building Exterior Restoration Project* (Report Number A180110/P/R/R21001, February 4, 2021).

⁷ *Audit of PBS Basic Repairs and Alterations Project: Federal Bureau of Prisons Headquarters* (Report Number A200976/P/R/R21002, April 21, 2021); and *Audit of PBS Basic Repairs and Alterations Project: United States Court of International Trade Building* (Report Number A200976/P/2/R21004, June 17, 2021).

⁸ See, for example, *Recovery Act Report: Edith Green/Wendell Wyatt Modernization Project, Review of PBS's Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009* (Audit Number A090172/P/R/R11005, January 21, 2011); and *Recovery Act Report – Peace Arch U.S. Port of Entry Redevelopment: Construction Contract, Review of PBS's Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009* (Audit Number A090172/P/R/R11007, March 4, 2011).

⁹ *Audit of the GSA Public Buildings Service's Use of Construction Management Services* (Report Number A150028/P/4/R20009, September 4, 2020).

interest or ensuring data security. In light of these challenges, PBS should assess whether its controls are effective to ensure that construction managers do not perform inherently governmental services and sensitive information is properly safeguarded.

Managing potential project delays and cost overruns. PBS will face challenges in managing potential project delays and cost overruns driven by supply chain disruptions, inflationary pressures, and site acquisition.

- **Supply chain disruptions** – The construction industry has been heavily affected by supply chain disruptions, which have caused materials shortages and long lead times. These disruptions can result in significant project delays and cost increases. As it contends with these supply shortages, PBS may see its available sources of materials further restricted by the IIJA’s Build America, Buy America provisions. These provisions require that IIJA projects use iron, steel, and construction materials that are produced in the United States. To manage these challenges, PBS will need to ensure that it accounts for supply chain disruptions in its project plans and proactively monitors supply chain trends to stay ahead of potential problems.
- **Inflationary pressures** – The IIJA-funded projects include wide-ranging scopes of work, such as paving, repair and alteration, and new construction. Each of these projects requires materials and labor to complete—inputs that have recently seen dramatic cost increases due to inflation. According to data from the U.S. Bureau of Labor Statistics, prices for construction inputs rose by more than 45 percent between April 2020 and April 2022. With inflationary pressures expected to continue, PBS is challenged to manage project costs and avoid any resulting cost overruns that could undermine the successful delivery of IIJA-funded projects.
- **Site acquisition** – According to PBS’s IIJA Project Delivery Commissioner, PBS will need to acquire property for 22 of the 26 LPOE projects (84.6 percent) funded through the IIJA. The length of time to acquire property may delay construction plans and site development. PBS’s IIJA Program Executive told us that it can take between 12 months to 2 years to acquire land. These lead times pose challenges to the successful delivery of these projects, requiring careful planning and execution to avoid excessive delays.

Preparing and maintaining complete and accurate documentation. To ensure effective stewardship of IIJA funds, PBS must prepare and maintain complete and accurate documentation. Scopes of work, IGEs, and other contract documents must be prepared and retained to support the work being performed and the cost of that work. Similarly, contractor invoices, inspection reports, and other records should be retained to support contractor payments. All of this documentation may also be needed to ascertain the validity of future requests for equitable adjustments and claims.

As reflected in our past audit work, inadequate documentation has been a long-standing problem for PBS. Accordingly, PBS faces challenges in preparing and maintaining complete and

accurate documentation for IIJA-funded projects and acquisitions. For example, accurate and reliable IGEs are critically important to ensuring that contracts are awarded at fair and reasonable pricing. However, past audits have demonstrated deficiencies in the IGEs prepared by PBS. Most recently, in December 2021, we reported that PBS awarded contracts for operations and maintenance services with pricing based on flawed IGEs.¹⁰ As a result, PBS awarded contracts at prices that were unsustainable.

Our audits have routinely found that PBS does not maintain adequate documentation for its contracts. For example, in June 2021, we reported that PBS did not have key contract documentation for a repair and alteration project, including documentation related to contractor security clearances and certified payrolls for subcontractor employees.¹¹ We have also found that PBS has improperly disposed of contract files.¹²

Additionally, large projects, like those funded under the IIJA, can take several years to complete, during which time project team members may change. Accordingly, it is imperative that new project team members have complete and accurate documentation to ensure successful completion of IIJA-funded projects.

To address this challenge, PBS must ensure that it prepares and maintains complete and accurate contract and project documentation. PBS must document all significant project actions, any issues that arise, and how the contractor's performance was monitored. If the documentation is vague or incomplete and a dispute arises, the government's position could be weakened when the dispute is being resolved.

Awarding effective construction contracts. PBS has identified the following three project delivery methods for use in awarded contracts for IIJA-funded projects: CMc, Design-Build, and Design-Bid-Build. Each region will be able to propose and determine which construction method it will use based on the scope, size, and need of each LPOE project.

As described below, each project delivery method can pose significant challenges that PBS will need to mitigate.

- **Construction Manager as Constructor** – This project delivery method is normally used on high-risk projects that are large and complex in nature. Using the CMc delivery method, PBS awards a contract to an architect/engineer to design the project and

¹⁰ *Audit of a Hotline Complaint: PBS Greater Southwest Region's Operation and Maintenance Contracts* (Report Number A190054/P/4/R22001, December 16, 2021).

¹¹ *Audit of PBS Basic Repairs and Alterations Project: United States Court of International Trade Building* (Report Number A200976/P/2/R21004, June 17, 2021).

¹² *Audit PBS's National Capital Region is Failing to Adequately Manage and Oversee the Building Services Contracts at the FDA's White Oak Campus* (Report Number A190021/P/5/R21003, May 17, 2021).

prepare the construction documents. Before design completion, PBS hires a CMc contractor to perform certain preconstruction services, such as performing constructability reviews, to reduce the risk of design errors and omissions. The CMc is also able to obtain market pricing during design to ensure that the design stays within budget. The CMc contract includes an option for construction phase services at a guaranteed maximum price.

If properly awarded and administered, CMc contracts reduce the likelihood of costly change, thus increasing the likelihood that a project will be completed on time.¹³ However, CMc contracts are vulnerable to cost increases driven by design delays that affect both the CMc and its subcontractors. These contracts also require extensive project progress and cost tracking.

Further, although PBS has used CMc contracts on many projects, it has been challenged in awarding and administering these contracts effectively. For example, when awarding CMc contracts using American Recovery and Reinvestment Act funds, PBS consistently failed to meet competition requirements and, as a result, failed to ensure projects were priced properly.¹⁴

- **Design-Build** – Under this method, PBS develops a program of requirements as part of its solicitation. This method is typically used for “standard and predictable building types,” since it offers PBS the least amount of control over design and construction. The majority of the design is developed by an architect under contract with the general contractor. With this method, the design-build contractor retains liability for the design documents, as well as budget, schedule, and quality.

However, PBS faces challenges in using this project delivery method. For example, design-build contracts are generally executed under a compressed schedule and do not provide PBS with an extensive amount of time for design reviews. This is especially a concern when the contractor submits a design change with a request for more funding through a request for equitable adjustment. Under a Design-Build contract, the contractor is responsible for the design and generally, if the project’s scope of work has not changed, the contractor is responsible for the cost.

- **Design-Bid-Build** – Using this method (also known as traditional construction), GSA awards two contracts—one contract for the project design and a follow-on contract for

¹³ We have issued a number of reports identifying deficiencies in PBS’s use of CMc contracts. See, for example, *Assessment of GSA’s Management and Performance Challenges for Fiscal Year 2022*, October 15, 2021.

¹⁴ See, for example, *Recovery Act Report – Austin Courthouse Project Audit of PBS’s Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009* (Report Number A090172/P/R/R10001, March 12, 2010); and *Recovery Act Report – Thurgood Marshall U.S. Courthouse Project Audit of PBS’s Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009* (Report Number A090172/P/R/R11012, August 19, 2011).

construction of that design. Because the contracts are awarded sequentially, the project costs can increase due to the time between the awards for the two contracts. Additionally, due to the separate contracts, GSA becomes liable to the construction contractor for flaws in the design as well as any subsequent changes. These design changes and contract modifications can lead to significant delays and cost increases on the projects.

Safeguarding LPOE access. PBS will face challenges ensuring that the influx of contractors performing IIJA-funded projects meet applicable security requirements. We have previously identified deficiencies in GSA’s security protocols that could compromise the safety and security of IIJA-funded projects. For example:

- In March 2016, we reported that a PBS contracting officer’s representative did not enforce contract requirements for contractor security clearances and allowed contractor employees who did not receive security clearances to work on the construction project.¹⁵
- Also in March 2016, the GSA Office of Inspector General’s Office of Inspections reported that GSA did not consistently collect and destroy inactive GSA contract employees’ Personal Identity Verification (PIV) cards and comply with PIV card issuance requirements. Additionally, the Office of Inspections reported that contract employees used expired PIV cards to access GSA-managed facilities.¹⁶
- In November 2020, we reported that GSA mismanaged contractor employee access cards. Among other things, we reported that GSA did not collect PIV cards from contract employees who failed their background checks.¹⁷

GSA should sharpen its focus on correcting and preventing the multiple deficiencies identified in our previous reports and ensure that contractors performing IIJA projects meet applicable security requirements.

Conclusion

The IIJA provided PBS with \$3.418 billion, which it will primarily use for 26 major construction and modernization projects at LPOEs. As shown above, PBS faces numerous challenges as it spends IIJA funding—ranging from proper funds stewardship to security. Accordingly, PBS should take appropriate measures to address the challenges identified in this memorandum. In

¹⁵ *PBS is not Enforcing Contract Security Clearance Requirements on a Project at the Keating Federal Building* (Report Number A150120/P/2/R16002, March 17, 2016).

¹⁶ *GSA Facilities at Risk: Security Vulnerabilities Found in GSA’s Management of Contractor HSPD-12 PIV Cards* (Report Number JE16-002, March 30, 2016).

¹⁷ *GSA’s Mismanagement of Contract Employee Access Cards Places GSA Personnel, Federal Property, and Data at Risk* (Report Number A190085/A/6/F21001, November 4, 2020).

doing so, PBS should strive to meet OMB Memorandum M-22-12's call to ensure its implementation of IJA-funded projects is "efficient and effective to deliver the best results, protect taxpayer dollars, and ensure public trust."

Compliance Statement

This memorandum complies with the Council of Inspectors General on Integrity and Efficiency's Quality Standards for Federal Offices of Inspector General.

GSA Comments

In her written response to our draft memorandum, the PBS Commissioner stated that PBS established a Program Management Office that will guide and oversee the agency execution of the \$3.418 billion in IJA funds, proactively mitigate risks, and develop a program mitigation plan.

The PBS Commissioner's response can be found in its entirety on page 11.



Public Buildings Service

July 22, 2022

MEMORANDUM FOR: R. NICHOLAS GOCO
Assistant Inspector General for Auditing (JA)

FROM: NINA M. ALBERT
Commissioner
Public Buildings Service (P)

SUBJECT: Response to the Office of Inspector General Draft
Memorandum, *GSA's Public Buildings Service Faces
Challenges in Using Funds Received under the
Infrastructure Investment and Jobs Act (A220036-2)*

Thank you for the opportunity to review and comment on the U.S. General Services Administration (GSA) Office of Inspector General's (OIG) draft memorandum, entitled *GSA's Public Buildings Service Faces Challenges in Using Funds Received under the Infrastructure Investment and Jobs Act*, Memorandum Number A220036-2 (July 8, 2022).

The Public Buildings Service (PBS) appreciates OIG sharing this draft version of the memorandum and providing PBS the opportunity for feedback. PBS established a Program Management Office (PMO) shortly after the passage of the Infrastructure Investment and Jobs Act (IIJA) that will help guide and oversee the agency's execution of the \$3.418 billion it has received under the law. One of the core missions of the PMO is to identify, coordinate and proactively mitigate risks to the program to ensure IIJA funding is spent efficiently and effectively.

The PMO is currently engaged in developing a formal program mitigation plan in collaboration with other program stakeholders. PBS intends to share this plan with your office for review and comment.

If you have any questions, please contact Darin Frost, Program Executive, LPOE Program Management Office at (253)347-8021 or at darin.frost@gsa.gov.

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