



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

INTERIM REPORT
**Old Post Office Building Ground Lease:
GSA Should Terminate Notification
Obligation to Former Contractor**

JE18-001
October 19, 2017

SUMMARY

During our review of the General Services Administration's (GSA) management and administration of the Old Post Office Building ground lease (lease agreement), the Office of Inspector General, Office of Inspections (OIG) identified an issue that warrants management action. According to clause 19.1 of the lease agreement between GSA and the Trump Old Post Office LLC (Tenant), GSA and Tenant are required to provide written notices and delivery of confidential documents to a private law firm hired by GSA to review the lease in 2012. The private law firm has continued to receive notices and communications regarding the lease agreement, including confidential business information about Tenant, despite the termination of the law firm's representation of GSA.

The purpose of this interim report is to bring this matter to management's attention to ensure appropriate action is taken as we continue our evaluation. Our interim report makes two recommendations to address the notification obligation to a former contractor. In response to our report, GSA management agreed with our recommendations. Management's comments can be found in their entirety in the Appendix.

FINDINGS

On September 24, 2012, GSA awarded a contract to Reno & Cavanaugh, PLLC to provide professional legal services to assist GSA in drafting and negotiating the lease agreement for the Old Post Office Building with Tenant. GSA entered into the lease agreement with Tenant on August 5, 2013.

According to various sections of the lease agreement, both Tenant and GSA have reporting obligations during the operation of the lease. Tenant is required to furnish documents including annual statements, monthly statements, annual budgets, notice of liens filed against Tenant, and a security deposit letter. GSA must deliver documents that include confirmations or acknowledgements required by financing parties or lessors, and notices of alleged operational defects.¹

Clause 19.1 of the lease agreement between GSA and Tenant sets forth the document delivery process:

...all notices, payments, objectives, consents, approvals, demands, submissions, deliverables, requests, and other communications pursuant to or in connection with this Lease shall be in writing and shall be deemed given upon delivery with a written receipt ... at the appropriate address indicated below....

¹ The documents the Tenant is required to furnish include detailed information such as statements of members' equity, income and expense and cash flow, and a balance sheet (clause 5.3(b)); monthly and year-to-date statements of income and expense, a comparison of budgeted income and expense and actual income and expense, and an occupancy report (clause 5.3(c)); an annual budget (clause 5.3(e)); notice of liens (clause 10.3), and; a letter of credit (clause 34.1). GSA's documentation requirements include information regarding claims, title or interest, and notices of default that might give rise to termination of the lease (clause 9.2).

The individuals listed to receive the documents are GSA's contracting officer, GSA's regional counsel, five individuals from the Trump Organization, and Reno & Cavanaugh.

When GSA entered into the lease agreement with Tenant in August 2013, Reno & Cavanaugh was providing services under its contract with GSA. The contract file reflects that the law firm continued to perform services for GSA until March 21, 2014. On May 29, 2014, Reno & Cavanaugh submitted to GSA a Release of Claims for services in connection with the contract, and at that point GSA's contractual relationship with Reno & Cavanaugh was concluded. GSA's Office of General Counsel attorney for the project confirmed to us that Reno & Cavanaugh is no longer under contract with GSA.

Despite the conclusion of Reno & Cavanaugh's contractual relationship with GSA, the law firm continues to receive documents pursuant to the lease agreement. An attorney with the firm confirmed that she is still receiving hand-delivered hard copies of documents required under the lease agreement and is saving them to a file in her office. The attorney informed us that she anticipates continuing to receive documentation for the 60-year duration of the lease.

Examples of documents Reno & Cavanaugh received after May 29, 2014, include Tenant's restaurant sublease at the Old Post Office Building and Tenant's financial statements with detailed general ledger information. GSA later posted the financial statements online in their publicly available Electronic Reading Room with all transactional details redacted.² The redactions show that GSA considers this financial information to be confidential and proprietary.

Clause 37.1 of the lease agreement requires GSA to maintain the confidentiality of Tenant's commercial and financial information. Pursuant to that clause, GSA may, with Tenant's consent, disclose confidential information to GSA's counsel and other professional advisors who are not employees of GSA "but who need to know such information in the performance of their work on behalf of the United States." The clause also states that "...Tenant considers any statements and reports prepared by Tenant of a financial or commercial nature (including all Annual Statements, monthly statements, statements in connection with a Sale or Financing and Annual Budgets...) to be considered confidential and proprietary information under the Freedom of Information Act."

GSA's Office of General Counsel attorney stated that there is no reason for Reno & Cavanaugh to remain included in the notification requirements of clause 19.1. The information GSA and Tenant have continued to provide to Reno & Cavanaugh after the firm's contractual relationship with GSA ended is Tenant's confidential and proprietary information. Reno & Cavanaugh ceased representing GSA in May 2014 and GSA has not entered into a new contract with Reno & Cavanaugh. As such, Reno & Cavanaugh is not a party to the lease agreement nor a current contractor with GSA having a need to know such information.

² Found at: <https://www.gsa.gov/reference/freedom-of-information-act-foia/electronic-reading-room>.

CONCLUSION

GSA and Tenant are providing confidential information to Reno & Cavanaugh despite the conclusion of the contractual relationship between the law firm and GSA. GSA should notify Tenant about this issue and take appropriate action to resolve it.

RECOMMENDATIONS

1. GSA should notify Tenant of the date upon which GSA's contractual agreement with Reno & Cavanaugh ended.
2. GSA should seek an amendment to terminate the obligation to deliver documentation to Reno & Cavanaugh under clause 19.1 of the lease agreement.

APPENDIX: Management Comments

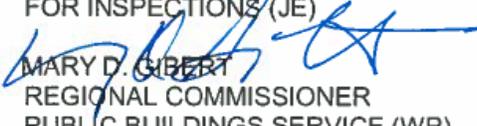


Public Buildings Service

October 18, 2017

MEMORANDUM FOR PATRICIA SHEEHAN
ASSISTANT INSPECTOR GENERAL
FOR INSPECTIONS (JE)

FROM:


MARY D. GILBERT
REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (WP)

SUBJECT:

Draft Interim Report: *Old Post Office Ground Lease: GSA
Should Terminate Notification Obligation to Former Contractor*
(JEF 17-014-001)

This memorandum is in response to the above referenced OIG Draft Interim Report, dated October 5, 2017. PBS does not have any comments and accepts your recommendations.

PBS has already taken action to satisfy your first recommendation by notifying the tenant that GSA's contractual agreement with Reno and Cavanaugh ended on March 29, 2014. Regarding the second recommendation, GSA is taking action to amend the Ground Lease to remove reference to Reno & Cavanaugh PLLC under Section 19.1.

If you have any questions or need additional information, please contact me at (202) 708-5891.

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