



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

Alert Memorandum: Immediate Management Action Needed to Resolve Significant Concerns over Asbestos Testing at the Jacob K. Javits Federal Building in New York, New York

Memorandum Number A240083-1
September 30, 2024



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TO: ELLIOT DOOMES
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

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

SUBJECT: Alert Memorandum: Immediate Management Action Needed to Resolve
Significant Concerns over Asbestos Testing at the Jacob K. Javits Federal
Building in New York, New York
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The purpose of this memorandum is to notify you of significant concerns over the testing performed to assess the effectiveness of an asbestos abatement project in the Jacob K. Javits Federal Building in New York, New York. Because construction work has commenced in the affected space, immediate management attention is required to address these concerns and to protect building occupants and contractors working in the space from possible health and safety risks arising from asbestos-containing materials (ACMs).

Background

Federal laws, regulations, and GSA policies require the Public Buildings Service (PBS) to provide a safe and healthful work environment for federal employees and the visiting public.¹ This includes, among other things, responsibilities concerning the assessment and management of asbestos.

Currently, PBS's Northeast and Caribbean Region (PBS Region 2) is managing a construction project for the U.S. Department of Education on the 33rd floor of the Jacob K. Javits Federal Building. Prior to the onset of the construction work, the general contractor for the project was required to abate existing ACMs in the space. PBS Region 2 hired a third-party monitoring contractor to observe the asbestos abatement project and perform visual and air quality tests.

¹ 40 U.S.C. 582, *Management of buildings by Administrator of General Services*; and 41 C.F.R. 102-80.10; *What are the basic safety and environmental management policies for real property?*

The third-party monitoring contractor was also required to ensure that the general contractor performed the work according to federal, state, and local regulations.

On August 13, 2024, we received a hotline complaint from a representative of the third-party monitoring contractor alleging that PBS removed them from the project because the space could not pass its final air quality testing. The complainant further alleged that PBS instead hired a new monitoring contractor that would purposefully “pass” the asbestos detection test and allow the project to move forward.

During our assessment of the complaint, we found that the initial asbestos abatement work took place between October 11, 2023, and January 31, 2024. In February 2024, the original third-party monitoring contractor performed two visual inspections of the space. According to the U.S. Environmental Protection Agency, visual inspections are used to determine if the abatement work has been performed properly and to check for ACM debris and other obvious signs of poor cleaning. The space failed both visual inspections. As a result, additional asbestos abatement work was performed through March 18, 2024. On March 25, 2024, the space again failed a visual inspection performed by the third-party monitoring contractor. PBS Region 2 subsequently took steps to determine the cause of the repeated failures and initiated additional abatement work. Additionally, the general contractor brought in new asbestos abatement staff to mitigate what had become an increasingly contentious relationship between the general contractor and third-party monitoring contractor.

In July 2024, after completion of the additional abatement work, the space passed visual inspection by the third-party monitoring contractor. Subsequently, the third-party monitoring contractor performed aggressive air sampling. According to the U.S. Environmental Protection Agency, aggressive air sampling is a test used at the completion of an asbestos abatement project by using a leaf blower or fans to deliberately disturb or agitate the air.² The first test was conducted on July 24, 2024, and failed. The general contractor performed additional abatement work; however, a second aggressive air sampling test conducted on July 29, 2024, also failed.

With project delays mounting, PBS Region 2 removed the third-party monitoring contractor and brought in two separate contractors to perform asbestos testing in August 2024. Based on our assessment of the hotline complaint, we identified concerns with the independence of the follow-on contractors and PBS’s oversight of their testing that could call the results into question. Due to the resultant health and safety risks, we are notifying management of these concerns through this alert memorandum.

Results

Significant concerns exist over the testing performed by the follow-on contractors to assess the effectiveness of the asbestos abatement project at the Jacob K. Javits Federal Building.

² Appendix A to Subpart E of 40 C.F.R. 763 III (b)(7)(d)(i), *Abatement area sampling*.

Specifically, the follow-on contractors had potential conflicts of interest, leading to concerns over independence. Additionally, PBS Region 2 did not provide effective oversight to ensure that the follow-on tests were performed in the same manner as the original tests. Taken together, these concerns cast reasonable doubts about the test results that PBS relied upon to determine that ACM levels were safe enough to allow the project to continue. Because contractors are now actively working on the project, immediate steps are needed to ensure that the contractors and other building occupants are not at risk of exposure to asbestos.

Subcontractors That Performed Follow-On Asbestos Testing Had Potential Conflicts of Interest

Independent monitoring is critical to ensure that asbestos abatement projects are properly completed. Accordingly, the *Public Buildings Service Desk Guide for GSA Order PBS 1000.1A Asbestos Management* establishes that:

Project monitoring for asbestos is the use of an environmental or industrial hygiene consultant, unaffiliated with the asbestos removal contractor and independently hired by GSA to oversee the asbestos work on a construction project.³

However, as described below, the follow-on testing was conducted by two subcontractors that had potential conflicts of interest, which raises concerns over independence of the asbestos testing results.

- **Air Testing After the Original Testing Contractor Was Removed** – After PBS Region 2 removed the original third-party monitoring contractor, asbestos testing was performed by a consultant for the project’s architect-engineering contractor. The first test was conducted on August 2, 2024, using aggressive air sampling. The sample taken failed and showed high amounts of ACMs. Although no cleaning or other abatement work took place after the failed test, another test using aggressive air sampling was conducted on August 4, 2024. The testing contractor specifically requested that no other parties be present for this test. The second test passed with no detectable levels of ACMs. Notwithstanding these results, the testing contractor recommended one more round of cleaning.

However, this testing contractor has a potential conflict of interest because of its previous involvement on the project as a consultant for the architect-engineering contractor. The testing contractor had been hired as a subcontractor by the architect-engineering contractor to design the ACM abatement project. In this capacity, the testing contractor had completed design plans and drawings for the abatement project, including technical specifications for ACM-removal activities. Because it was responsible

³ *Public Buildings Service Desk Guide for GSA Order PBS 1000.1A Asbestos Management*, April 11, 2022.

for designing the abatement project, this testing contractor had a potential conflict of interest due to its prior work on the abatement project.

- **Air Testing After Cleaning** – After the additional cleaning and abatement work was completed, additional air testing was performed on August 16, 2024. This air testing was performed by a current subcontractor of the construction management contractor that had performed air monitoring work for the construction management contractor on other government projects. According to the subcontractor, the air testing was conducted using aggressive air sampling. The final air samples passed, showing that ACMs were below detectable levels.

However, the testing contractor has a potential conflict of interest because it was hired by the construction management contractor for the project. Construction managers are private firms that act as advisors or consultants to PBS during the execution of construction projects. Because of this, construction management contractors are contractually obligated to help PBS ensure that projects are performed on time and on budget. Because the construction management contractor has a vested interest in completing the project in a timely manner, its subcontractor that performed the testing has a potential conflict of interest.

Taken together, these matters give the appearance that the testing contractors have a conflict of interest, which raises concerns over independence of the asbestos testing results.

PBS Region 2 Did Not Provide Effective Oversight of the Follow-On Asbestos Testing

PBS Region 2 did not provide effective oversight of the follow-on asbestos testing. Specifically, we found that PBS Region 2 project personnel did not: (1) observe the asbestos testing performed by the follow-on contractors and (2) ensure that the tests were performed in the same manner as the initial failed tests performed by the third-party monitoring contractor.

According to the project manager, no one from PBS entered the work area to observe the air testing. Instead, PBS relied on the asbestos testing results provided by the contractors, even though both contractors had the potential conflicts of interest previously described. For example, PBS accepted the testing results for the air testing on August 16, 2024, although the contractor did not provide a detailed report outlining the aggressive air sampling techniques it used. Without direct observation of the contractors' asbestos testing methods, PBS does not have assurance that the follow-on contractors used the same testing methods that led to the initial failed samples performed by the third-party monitoring contractor.

Multiple contractor personnel confirmed that no PBS personnel were present during any phase of the asbestos abatement project. When we asked PBS officials about the lack of oversight, they told us that the responsible PBS personnel were not adequately trained to enter the work area.

Federal regulations require employers to train employees working with or likely to contact asbestos.⁴ GSA policy also requires employees who perform duties as project managers to complete asbestos awareness training.⁵ However, according to the project manager, no one from the project team was trained to enter the work area. Regardless, PBS's policy on project management states that it is the project manager's responsibility to plan, coordinate, and manage all primary and supporting activities upon which the successful completion of the project depends.⁶ This includes safety management, which requires the project manager to work with the project's contractors to ensure that any potential safety hazards to tenants, citizens, and workers are addressed and mitigated. Providing proper training for the project manager, or any appropriate member of a project team, would facilitate needed oversight and help ensure safety objectives are met.

Conclusion

In sum, we identified significant concerns with the follow-on asbestos testing results for the asbestos abatement project in the Jacob K. Javits Federal Building. As a result, PBS does not have assurance that asbestos is within safe levels in the project space. Therefore, PBS must take immediate action to confirm that asbestos is within safe levels for the health and safety of the contractors actively working on the project and other building occupants. Because of the concerns raised in this memorandum, PBS should ensure that it provides direct oversight of any actions undertaken.

Compliance Statement

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

Audit Team

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

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⁴ 29 C.F.R. 1910.1001, *Asbestos*. Occupational Safety and Health Administration.

⁵ *Public Buildings Service Desk Guide for GSA Order PBS 1000.1A Asbestos Management*.

⁶ GSA Order PBS 3425.12B, *Project Management in the Public Buildings Service*, April 20, 2016.

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