



Office of Audits
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U.S. General Services Administration

Oversight of PBS's Projects Funded by the Infrastructure Investment and Jobs Act: Audit of Paving Project at New York State's Northern Border

Report Number A220036/P/2/R24008
September 24, 2024

Executive Summary

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Why We Performed This Audit

We performed this audit as part of the GSA Office of Inspector General's ongoing oversight of projects funded by the Infrastructure Investment and Jobs Act (IIJA). Our audit objective was to determine whether the GSA Public Buildings Service Northeast and Caribbean Region (PBS Region 2) planned, awarded, administered, and closed out an IIJA paving project task order for six land ports of entry (LPOEs) at New York State's northern border in accordance with the Federal Acquisition Regulation (FAR), the General Services Administration Acquisition Manual (GSAM), and other applicable policies.

What We Found

PBS Region 2 did not comply with applicable laws, regulations, and policies when awarding and administering the \$5.6 million IIJA-funded project to repave six LPOEs at New York State's northern border. We found deficiencies in PBS's task order award and administration that led to, among other things, violations of federal competition requirements, poor pricing and overpayments, security vulnerabilities, and a small business "pass-through" environment.

Specifically, we found that PBS Region 2:

1. Violated competition requirements by improperly awarding the paving project using a task order placed against an operations and maintenance services blanket purchase agreement;
2. Awarded the paving project task order using an unsupported independent government estimate and an invalid price reasonableness determination;
3. Did not perform required procurement steps because it improperly awarded the paving project using a task order placed against an operations and maintenance services blanket purchase agreement;
4. Did not ensure full compliance with GSA's environmentally preferable asphalt standard and provided inaccurate information to the public by claiming that all six LPOEs met this standard;
5. Did not comply with or enforce security requirements governing the use of drones, resulting in potential safety and security risks;
6. Created a small business "pass-through" environment and did not ensure compliance with small business subcontracting limitations;
7. Did not adequately enforce security requirements for construction personnel;

8. Did not ensure contractor compliance with labor standards;
9. Overpaid the Construction Manager as Advisor contractor and paid for services that were not performed; and
10. Violated the FAR, GSAM, and GSA policy while administering the paving project task order.

PBS Region 2's performance on this project demonstrates the risks arising from rushed attempts to obligate IIJA funding. Accordingly, PBS leadership must strengthen oversight over IIJA-funded projects to ensure they are executed properly.

What We Recommend

We made 1 recommendation to the PBS Commissioner and 10 recommendations to the PBS Region 2 Regional Commissioner. Our recommendations focused on the need for PBS to ensure that it complies with laws, regulations, and policies governing, among other things, contract competition, contract award and administration, drone use, and project security. We also recommended improvements to the oversight of small business set-aside contracts. A complete listing of our recommendations is included in the **Conclusion** section of this report.

PBS provided a written response and technical comments to our report. In its written response, PBS wrote that it partially agreed with our findings. However, in its technical comments, PBS wrote that it either completely or partially disagreed with 9 of our 10 findings. PBS's technical comments did not affect our findings and conclusions.

Although PBS largely disagreed with our findings, it wrote that it agreed with all of our recommendations, which are designed to address our findings.

PBS's response is included in its entirety in **Appendix D**.

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Introduction

We performed an audit of the GSA Public Buildings Service Northeast and Caribbean Region's (PBS Region 2's) procurement and administration of a paving project for six land ports of entry (LPOEs) at New York State's northern border funded by the Infrastructure Investment and Jobs Act (IIJA).¹

Purpose

We performed this audit as part of the GSA Office of Inspector General's (OIG's) ongoing oversight of projects funded by the IIJA.

Objective

Our audit objective was to determine whether PBS Region 2 planned, awarded, administered, and closed out an IIJA paving project task order for six LPOEs at New York State's northern border in accordance with the Federal Acquisition Regulation (FAR), the General Services Administration Acquisition Manual (GSAM), and other applicable policies.

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

Background

The IIJA, which was signed into federal law on November 15, 2021, 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 appropriations for the acquisition, construction, and repair and alteration of LPOEs.² An LPOE, commonly known as a border station, provides controlled entry to or departure from the United States for persons or materials. LPOEs house U.S. Customs and Border Protection (CBP) and other federal inspection agencies that are responsible for the enforcement of federal laws at the U.S. borders. LPOEs provide a mix of safety and security for travelers and trade. Accordingly, the LPOEs are considered to be sensitive facilities.

¹ PBS Region 2 covers the states of New Jersey and New York, the commonwealth of Puerto Rico, and the U.S. Virgin Islands.

² "No-year appropriations" are available for obligation for an indefinite period of time without fiscal year limitation.

There are 167 LPOEs at America's borders, and GSA owns and operates 122 of them. The IJIA funds the construction and modernization of all LPOEs on the CBP's 5-year plan. It also funds LPOEs that have been prioritized for upgrading by the U.S. Department of Homeland Security. Collectively, these projects are intended to improve border security and the efficient flow of travel and trade across the U.S. borders.

On April 14, 2022, PBS awarded a paving project task order for just over \$5.3 million using IJIA funding.³ The task order was awarded for professional construction services for the repair of pavement at the following six LPOEs in New York State: Champlain, Chateaugay, Fort Covington, Massena, Mooers, and Overton Corners. The estimated paving area at these six LPOEs was 973,350 square feet.

On June 13, 2022, PBS issued a \$110,000 modification to address unstable soils discovered at the Overton Corners LPOE upon the initial milling of the existing asphalt surface. On July 19, 2022, PBS issued another modification to add \$78,750 to the task order for the addition of speed bumps. The two modifications changed the award amount from \$5,322,620.32 to \$5,511,370.32. In addition, PBS acquired Construction Manager as Advisor services for \$122,278.⁴ This project was completed in August 2022, at a total cost of just over \$5.6 million.

³ Task Order Number 47PC0822F0003.

⁴ Task Order Number 47PC0522F0295. The initial award amount was for \$124,290. The final cost for Construction Manager as Advisor services was \$122,278.13, after PBS de-obligated \$2,011.87 for unused travel funds.

Results

PBS Region 2 did not comply with applicable laws, regulations, and policies when awarding and administering the \$5.6 million IJA-funded project to repave six LPOEs at New York State's northern border. We found deficiencies in PBS's task order award and administration that led to, among other things, violations of federal competition requirements, poor pricing and overpayments, security vulnerabilities, and a small business "pass-through" environment.

Specifically, we found that PBS Region 2:

1. Violated competition requirements by improperly awarding the paving project using a task order placed against an operations and maintenance services blanket purchase agreement;
2. Awarded the paving project task order using an unsupported independent government estimate and an invalid price reasonableness determination;
3. Did not perform required procurement steps because it improperly awarded the paving project using a task order placed against an operations and maintenance services blanket purchase agreement;
4. Did not ensure full compliance with GSA's environmentally preferable asphalt standard and provided inaccurate information to the public by claiming that all six LPOEs met this standard;
5. Did not comply with or enforce security requirements governing the use of drones, resulting in potential safety and security risks;
6. Created a small business "pass-through" environment and did not ensure compliance with small business subcontracting limitations;
7. Did not adequately enforce security requirements for construction personnel;
8. Did not ensure contractor compliance with labor standards;
9. Overpaid the Construction Manager as Advisor contractor and paid for services that were not performed; and
10. Violated the FAR, GSAM, and GSA policy while administering the paving project task order.

PBS Region 2's performance on this project demonstrates the risks arising from rushed attempts to obligate IJA funding. Accordingly, PBS leadership must strengthen oversight over IJA-funded projects to ensure they are executed properly.

Finding 1 – PBS Region 2 violated competition requirements by improperly awarding the paving project using a task order placed against an operations and maintenance services blanket purchase agreement.

PBS Region 2 violated competition requirements by improperly awarding the paving project using a task order placed against an operations and maintenance services blanket purchase

agreement (O&M BPA) that was established under a Multiple Award Schedule (MAS) contract.⁵ This action created a sole-source procurement that denied other contractors the opportunity to compete for this contract and eliminated price competition.

Competition in contracting is critical to ensuring the federal government awards contracts at fair and reasonable prices. The Competition in Contracting Act of 1984 requires that federal agencies enter into contracts using “full and open competition through the use of competitive procedures” unless certain circumstances exist, such as an unusual or compelling urgency or national security need, that would permit agencies to use noncompetitive procedures.⁶ In addition, FAR 6.101, *Policy*, requires that, with certain limited exceptions, contracting officers shall promote and provide for full and open competition in soliciting offers and awarding government contracts.

However, PBS Region 2 placed a task order against an existing O&M BPA rather than compete the procurement for the paving project. PBS Region 2 had established the O&M BPA under an MAS contract in April 2021, prior to enactment of the IIJA. The BPA was for O&M and related services for the northern border area, which includes eight LPOEs consisting of 23 buildings in Clinton and Franklin Counties in New York State. The O&M BPA has an estimated value of \$8.7 million.

In April 2022, PBS Region 2 placed a task order for the paving project at six New York State LPOEs against the O&M BPA using IIJA funds. Federal acquisition regulations, GSA policies, and the underlying contract allow for limited construction services under an MAS contract. However, the scope of the construction services provided under the IIJA-funded paving project at the six LPOEs far exceeded these limitations.

Limitations on Construction Services

The paving project exceeded the scope of the contractor’s facilities maintenance and management MAS contract and did not meet FAR Part 12, *Acquisition of Commercial Products and Commercial Services*, and GSAM 512.203, *Procedures for solicitation, evaluation, and award*, requirements for construction acquisition under an MAS contract.

MAS Contracts. The FAR and GSAM provide clear limitations on the types of construction services that can be provided under an MAS contract. The underlying MAS contract also incorporates these limitations.

MAS contracts are commercial contracts in accordance with FAR Part 12. According to GSAM 512.203(c)(1), *Contracting for Construction*, “FAR 12, as currently promulgated, should rarely be used for new construction acquisitions or non-routine alteration and repair services.”

⁵ BPA Number 47PC0821A0001; MAS Contract Number 47QSHA19D004F.

⁶ 41 U.S.C. 253, *Competition requirements*.

The Office of Federal Procurement Policy reinforces this in its July 3, 2003, memorandum, *Applicability of FAR Part 12 to Construction Activities*. The memorandum states that:

Construction contracting was not generally contemplated when [FAR] Part 12 was promulgated.⁷ New construction projects and complex alteration and repair, in particular, involve a high degree of variability, including innumerable combinations of site requirements, weather and physical conditions, labor availability, and schedules. The current coverage in [FAR] Part 12 fails to allocate risk in a manner that takes into account the nature of these activities.

Accordingly, GSAM 512.203(c)(2), *Contracting for Construction*, limits the types of construction services that may be appropriately acquired through MAS contracts to:

Routine projects such as painting or carpeting, simple hanging of drywall, everyday electrical or plumbing work, and similar noncomplex services, as well as for purchases of commercial construction material and associated ancillary services.

O&M BPA. The O&M BPA solicitation specifically established that only ancillary repair-and-alterations-type construction services were permitted to be acquired under the contractor's facilities maintenance and management MAS contract.

According to Section C.5.13.8, *Construction Services*, in the O&M BPA:

Ancillary Repair and Alterations projects are those (1) solely associated with the repair, alteration, delivery or installation of products or services also purchased under this Schedule, and which are (2) routine and non-complex in nature, such as routine painting or carpeting, simple hanging of drywall, basic electrical or plumbing work, landscaping, and similar noncomplex services. This [Special Item Number] EXCLUDES: (1) major or new construction of buildings, roads, parking lots and other facilities; (2) complex [repair and alteration] of entire facilities or significant portions of facilities; and (3) Architect-Engineering Services subject to Public Law 92-582 (Brooks Act).

Construction Services That Exceeded Limitations

The IIJA-funded paving project for the six LPOEs involved major construction of roads and parking lots, which is detailed on the next page. These construction services exceeded the "routine and non-complex" types of construction services appropriate for MAS contracts.

⁷ See GSAM 512.203(c)(1).

For example:

- The statement of work for the paving project task order identified the need for “professional construction services”;
- PBS Region 2 procured the services of a Construction Manager as Advisor (CMa) to manage the project. The CMa services included an assistant controls project manager and one on-site inspector to oversee the construction work being conducted at the six LPOEs;
- The paving project required milling of 10,000 tons of asphalt, deep excavation in some areas, management of unstable soils, underdrain pipe installations at two LPOEs, and the addition of four speed bumps;
- The contractor had to establish a construction staging area and execute a multi-day project mobilization plan to perform this major construction work;
- At least seven subcontractors were involved and performed construction work with crews that included a field engineer, paving superintendent, and paving foreman;
- The paving project required heavy construction equipment, including excavators;
- The contractor was required to re-route and maintain traffic flow, coordinate lane closures, and control traffic speed;
- The paving project workers were compensated based on “Heavy and Highway Construction Projects” wage determinations; and
- The statement of work for the paving project established a construction control representative for the assistance of all required lane closures and work affecting any vehicle or pedestrian traffic throughout the project.

See **Appendix B** for a complete listing of construction services provided during the paving project for the six LPOEs.

Further, the photographs of the paving project provided in *Figure 1* on the next page clearly demonstrate non-routine construction work in progress.

Figure 1. Photographs of Paving Project Construction Work in Progress⁸



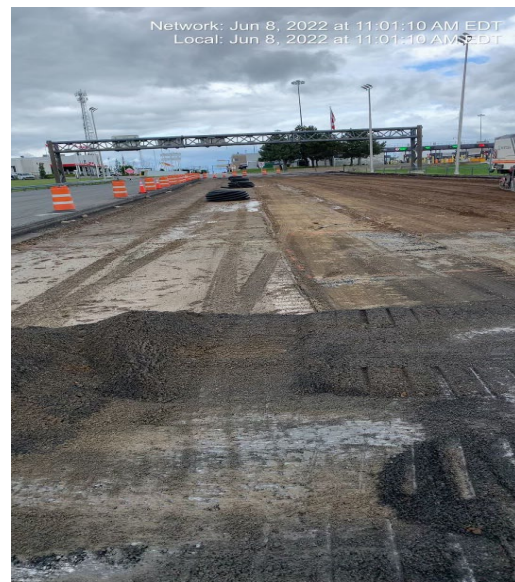
Overton Area 3A Installing Underdrain 06/06/2022.



Overton Area 3A Excavated Pavement and Subbase Material 06/07/2022.



Champlain Area 1B Milled Area 06/08/2022.



Champlain Area 1B Milled Surface and Underdrain Pipe to be Installed 06/08/2022.

See **Appendix C** for additional photographs that demonstrate the level of construction services provided during the paving project at the six LPOEs.

As demonstrated above, the paving project involved extensive construction services, including milling, paving, resurfacing, and striping roadways and parking lots at the six LPOEs.

⁸ Photographs taken by the CMa during the period of June 6–8, 2022.

These types of construction services were not “routine and non-complex in nature” and clearly fell outside the scope of the contractor’s MAS contract. Therefore, PBS Region 2 improperly acquired these construction services using a task order awarded against an O&M BPA that was established under an MAS contract. PBS Region 2’s actions resulted in a sole-source procurement that violated federal competition requirements.

PBS Region 2 officials stated that they used the O&M BPA for the paving project because it was quicker. They also told us that they were trying to perform the work as quickly as possible considering the weather on the U.S.-Canada border in New York State and the visible appearance of roads entering the United States. However, these are not valid reasons for improperly procuring construction services and excluding competition. Without competing the award, PBS Region 2 did not ensure competitive prices and did not give other contractors the opportunity to compete for this contract, resulting in a violation of the Competition in Contracting Act. PBS Region 2 should ensure its contracting staff use proper contract vehicles to procure construction services so that they do not violate the Competition in Contracting Act.

Finding 2 – PBS Region 2 awarded the paving project task order using an unsupported independent government estimate and an invalid price reasonableness determination.

The independent government estimate (IGE) that PBS Region 2 used to justify pricing was unsupported. PBS Region 2’s price reasonableness determination for the paving project task order award was not valid.

PBS Region 2’s IGE Was Unsupported

To establish price reasonableness for the paving project task order, PBS Region 2 compared the proposed price to an IGE. An IGE is an estimate of the expected cost of a contract or task order that is developed by knowledgeable government personnel before soliciting contractor proposals or making contract awards. FAR 36.203, *Government estimate of construction costs*, requires IGEs of construction costs for all contracts and modifications anticipated to exceed the simplified acquisition threshold.⁹

The IGE for the paving project task order estimated that the project would cost \$5,060,101. However, PBS Region 2 lacks the supporting information to show how the IGE was developed and how it ensured the IGE’s accuracy and reliability, as discussed below:

- The contract file did not include documentation to support the IGE;
- The IGE did not provide detailed breakdowns of estimates for labor, equipment, and material;
- The IGE did not include labor categories and associated hours at each level to perform the task identified in the statement of work;

⁹ FAR 2.1, *Definitions*, defines the simplified acquisition threshold during the paving project as \$250,000.

- The IGE did not identify information sources, such as historical prices, market research, and similar project costs; and
- The IGE was developed under the assumption that the period of performance for this task order would be from May 5, 2022, to October 31, 2023. However, the actual period of performance was from April 29 to August 17, 2022. This expedited time frame could have affected project costs.

The PBS Region 2 contracting officer awarded the task order for \$5,322,620, which exceeded the IGE by \$262,519 (5 percent). However, the IGE was unsupported, and its reliability cannot be assessed.

PBS Region 2 provided documentation purporting to show that the IGE was supported. This documentation included:

- A cost estimating workbook and a third-party estimate, both dated March 2, 2022, for a design-build paving project, showing estimated costs of \$9.8 and \$9.7 million, respectively;¹⁰
- A February 2021 cost proposal for paving “Area 1-6” of the Champlain LPOE of \$1.7 million;
- A February 2021 cost proposal for paving the Massena LPOE of \$1.1 million; and
- An unsigned IGE dated October 1, 2020. The IGE identified the project as “Champlain Asphalt” and provided an estimated cost of \$3.6 million.

However, we found no evidence to confirm that the PBS Region 2 project manager relied on these documents in preparing the IGE. Further, the cost proposals for paving work at the Champlain and Massena LPOEs were prepared by the construction subcontractor that ultimately performed all the IJA-funded paving work at the six LPOEs. Therefore, even if the PBS Region 2 project manager considered these cost proposals, their estimate would have been unreliable because it would have been influenced by a potential contractor’s marketing efforts or input.

PBS Region 2’s Price Reasonableness Determination Was Invalid

FAR 13.106-3, *Award and documentation*, establishes that before making an award, the contracting officer must determine that the proposed price is fair and reasonable. Further, the FAR states that it is the contracting officer’s responsibility to determine if the offered prices are

¹⁰ The cost estimating workbook and the third-party estimate were prepared by the same cost estimator. The third-party estimate calculated that the construction would take 21 months. The estimate included markups—such as design contingency, construction phasing, annual escalation, and market contingency—that contributed to the high estimated cost.

fair and reasonable. In addition, the FAR requires that the contracting officer documents fair and reasonable pricing.¹¹

However, there is no evidence that the PBS Region 2 contracting officer made a fair and reasonable price determination on this award. We found that the contracting officer did not document and support whether the price for the paving project task order, valued at \$5.3 million, was fair and reasonable. While the contract file included a price reasonableness determination made by the PBS Region 2 project manager, the document was not signed by the contracting officer to show that it had been reviewed and approved. As a result, there is no evidence that the contracting officer determined that the price was fair and reasonable; therefore, the price reasonableness determination is invalid.

In addition, according to the contract file, the PBS Region 2 project manager prepared the IGE, performed the technical evaluation, and developed the fair and reasonable price determination. Because a single individual was responsible for three key functions—preparing the IGE, performing the technical evaluation, and making the fair and reasonable price determination—there is a lack of independence that results in an inadequate segregation of duties. This inadequate segregation of duties raises questions about the objectivity of the price reasonableness determination for this project.

Contract awards made without full and open competition carry an inherent risk of higher pricing. Therefore, it is imperative that PBS Region 2 ensures its IGEs have sufficient detail and supporting documentation to determine the basis for its estimates. In addition, PBS should ensure that contracting officers properly document and segregate duties performed in making fair and reasonable price determinations.

Finding 3 – PBS Region 2 did not perform required procurement steps because it improperly awarded the paving project using a task order placed against an operations and maintenance services blanket purchase agreement.

Because PBS Region 2 improperly used the O&M BPA to award this paving project, it failed to perform multiple procurement requirements and violated the FAR, GSAM, and GSA policy. Specifically, we found that PBS Region 2 did not:

- Create an acquisition plan for the project;
- Evaluate the contractor's prior experience and past performance;
- Obtain a construction warranty or performance and payment bonds; and
- Ensure the accuracy of task order information entered in the Federal Procurement Data System-Next Generation (FPDS-NG).

¹¹ FAR 4.803, *Contents of contract files*; FAR Part 15, *Contracting by Negotiation*; FAR 15.4, *Contract Pricing*; FAR 15.406, *Documentation*; and FAR 15.406-3, *Documenting the negotiation*.

PBS Region 2 Did Not Create an Acquisition Plan

According to FAR 7.102(a)(2), *Policy*, agencies must perform acquisition planning for all acquisitions in order to promote full and open competition. In addition, FAR 7.105, *Contents of written acquisitions plans*, establishes that the plan shall be documented and “must address all technical, business, management, and other significant considerations that will control the acquisition.” However, PBS Region 2 did not create an acquisition plan for the procurement of the paving project at the six LPOEs because it used the O&M BPA for the procurement.

According to GSAM 507.104(c)(2), *Applicability*, an acquisition plan is not required for an order against an existing BPA where an acquisition plan was created for the base contract. However, PBS Region 2 should not have used the O&M BPA to procure the paving project. The paving project was an acquisition for construction services with different requirements and considerations than those established on the O&M BPA acquisition plan. Therefore, PBS Region 2 should have prepared a written acquisition plan for the paving project.

PBS Region 2 should ensure it creates written acquisition plans for all acquisitions.

PBS Region 2 Did Not Evaluate the O&M Contractor’s Prior Experience and Past Performance to Ensure the Contractor Was Qualified to Perform the Paving Project

According to FAR 15.304(c)(3)(i), *Evaluation factors and significant subfactors*, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold.

We found that PBS Region 2 did not evaluate the O&M contractor’s prior experience and past performance to ensure it was qualified for the paving project. This occurred because PBS Region 2 improperly awarded the paving project by placing a task order against the O&M BPA.

When we inquired about the O&M contractor’s past performance and experience on similar construction paving projects, PBS Region 2 told us that it was not applicable because the paving project was awarded using an O&M BPA; therefore, the contractor’s prior experience and past performance had already been evaluated.

However, the prior experience and past performance evaluation factors in the O&M BPA solicitation related to providing mechanical maintenance services, not construction paving work. The contractor’s prior experience and past performance should have been evaluated before PBS awarded the task order for the construction paving work.

By improperly awarding the paving project task order against the O&M BPA, PBS Region 2 circumvented the requirements in FAR 15.304 and did not ensure the O&M contractor was qualified to perform the paving project.

PBS Region 2 Did Not Obtain a Construction Warranty or Performance and Payment Bonds for Construction from the Contractor

PBS Region 2 did not obtain a construction warranty or performance and payment bonds for construction from the contractor for the paving work performed at the six LPOEs.

PBS Region 2 did not obtain a construction warranty. FAR 46.702, *General*, states that the principal purposes of a warranty in a federal contract are to delineate the rights and obligations of the contractor and the government for defective items and services, and to foster quality performance. In addition, GSAM 546.704, *Authority for use of warranties*, states that FAR 52.246-21, *Warranty of Construction*, is approved by the agency for use in solicitations and contracts when a fixed-price construction contract is contemplated. FAR 52.246-21(a) states the following:

In addition to any other warranties in this contract, the Contractor warrants [except for defects in government-furnished material or design unless the defect is caused by the negligence of the contractor or subcontractor] that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

However, we found that PBS Region 2 did not include this clause in the paving project task order. Because this clause was not included in the paving project task order, PBS Region 2 is unable to hold the O&M contractor responsible for any defect in the work performed by the construction subcontractor.

In addition, PBS Region 2 did not obtain a warranty from the O&M contractor until our audit. After our inquiry, the O&M contractor provided a written warranty that it received from the construction subcontractor. The 1-year warranty had a date of August 1, 2022; however, PBS Region 2 did not obtain the warranty until March 2, 2023—7 months after the paving project was completed.

PBS Region 2 did not obtain performance and payment bonds for construction. FAR 28.102-1, *General*, states that, absent exceptions that are inapplicable here, all construction projects over \$150,000 are subject to 40 U.S.C. Chapter 31, Subchapter III, *Bonds*, which requires performance and payment bonds. Performance bonds are a promise of surety to the government that once the contract is awarded, the contractor will perform its obligations under the contract. Payment bonds are a promise of surety of payment to all persons supplying labor or materials in the work provided for in a contract.

In addition, FAR 52.228-15, *Performance and Payment Bonds-Construction*, establishes that Standard Form (SF) 25, *Performance Bond*, and SF 25A, *Payment Bond*, are the authorized forms to be used for government construction contracts. In addition, each form states that any

deviation from the form “will require the written approval of the Administrator of General Services.”

However, PBS Region 2 obtained the incorrect performance and payment bonds for the contract. Instead of SF 25, *Performance Bond*, and SF 25A, *Payment Bond*, PBS Region 2 accepted performance and payment bonds for “other than construction contracts” on SF 1416, *Payment Bond for Other than Construction Contracts*, and SF 1418, *Performance Bond for Other than Construction Contracts*. Neither form listed the task order number corresponding to the award. Instead, the forms only listed the O&M contractor’s MAS contract number. This occurred because the PBS Region 2 contracting officer did not provide the contractor with the proper construction bond forms.

The PBS Region 2 contracting officer acknowledged that it was their responsibility to ensure they obtained the proper bonds.

PBS Region 2 Did Not Ensure the Accuracy of Its Construction Task Order Information in FPDS-NG

FPDS-NG is a government-wide system used to collect, process, and disseminate official data on federal contracting activities. It contains data that the federal government uses to create recurring and special reports to the president, Congress, U.S. Government Accountability Office, federal executive agencies, and the general public.

According to FAR Subpart 4.6, *Contract Reporting*, the contracting officer who awarded the contract action is responsible for the completeness and accuracy of the data reported to FPDS-NG. Further, the Office of Federal Procurement Policy requires that each department and agency annually certify that all data within FPDS-NG is valid and complete.¹²

However, multiple data elements for the award of the paving project were incorrect. The North American Industry Classification System code was incorrect, construction wage rates were inappropriately listed as “Not Applicable,” and the period of performance start date was listed as April 18, 2022, rather than the May 2, 2022, start date noted in the actual award document.

PBS personnel told us that the discrepancies occurred in part because much of the task order information comes from the BPA data stored in FPDS-NG and in PBS’s Enterprise Acquisition Solutions Integrated (EASI) system. As a result, the system auto-filled the paving project award data with incorrect information from the original O&M BPA.

In conclusion, PBS Region 2 did not perform required procurement steps because it improperly used the O&M BPA for the paving project. Therefore, PBS Region 2 should take appropriate action to ensure that contracting staff understand their responsibilities with respect to planning acquisitions, evaluating contractors’ experience and past performance, obtaining warranty and

¹² *FPDS Government User’s Manual*, Version 1.5 (June 2023).

performance and payment bonds for construction contracts, and entering accurate and complete contract information in FPDS-NG.

Finding 4 – PBS Region 2 did not ensure full compliance with GSA’s environmentally preferable asphalt standard and provided inaccurate information to the public by claiming that all six LPOEs met this standard.

PBS Region 2 did not ensure full compliance with GSA’s environmentally preferable asphalt standard and provided inaccurate information to the public by claiming that all six LPOEs met this standard.

PBS Region 2 Did Not Ensure Compliance with GSA’s Environmentally Preferable Asphalt Standard for the Chateaugay and Mooers LPOEs

On March 17, 2022, GSA implemented new national standards for low embodied carbon concrete and environmentally preferable asphalt.¹³ The new standard for low embodied carbon concrete requires construction contractors to provide environmental product declarations (EPDs). An EPD is a standard, third-party-verified summary that lists the primary environmental impacts associated with a product’s extraction, transportation, and manufacture. The standard also asks contractors to provide concrete that meets numeric limits for the amount of greenhouse gas emissions, or “embodied carbon,” associated with its production.

Under the standard, contractors must meet at least two environmentally preferable techniques or practices in the material’s manufacture or installation. The environmentally preferable techniques for asphalt include using:

- At least 21 percent reclaimed asphalt pavement (RAP);¹⁴
- Warm mix asphalt;¹⁵
- Non-pavement recycled content, such as roof shingles, rubber, or plastic;
- Bio-based or other alternative binders;¹⁶

¹³ PBS memorandum, *Issuance of Low Embodied Carbon Concrete and Environmentally Preferable Asphalt Standards* (March 17, 2022).

¹⁴ At the time the paving project task order was awarded, PBS included the Environmentally Preferable Asphalt Standard from March 17, 2022, which did not require the submission of EPDs and listed RAP content “greater than 20%.”

¹⁵ According to the Federal Highway Administration, warm mix asphalt is the generic term for a variety of technologies that allow producers of hot mix asphalt pavement material to lower temperatures at which the material is mixed and placed on the road. This technology can reduce paving costs, extend the paving season, improve asphalt compaction, allow asphalt mix to be hauled longer distances, and improve working conditions by reducing exposure to fuel emissions, fumes, and odors.

¹⁶ The Federal Highway Administration defines asphalt binders as the “glue” that holds the aggregates together to form the pavement.

- Improved energy/carbon efficiency of manufacturing plants or equipment (e.g., using natural gas or electricity to heat materials); or
- Other environmentally preferable features or techniques.

The new concrete and asphalt standards were designed to align with Executive Order 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*, which directs the federal government to use its scale and procurement power to “promote use of construction materials with lower embodied emissions.”

These standards apply to all GSA design and construction contracts that involve at least 10 cubic yards of concrete or asphalt material, including the Agency’s IJA projects. If it is not feasible to meet GSA’s EPD requirement or to implement at least two of the environmentally preferable techniques or practices, GSA requires that the contractor ask the GSA project manager to request a P100 waiver.¹⁷ The contractor shall outline and provide evidence of the specific circumstances that make compliance impossible.

The construction subcontractor originally stated it would comply with GSA’s new environmentally preferable asphalt specification in the manner shown in *Figure 2*.

Figure 2. Construction Subcontractor’s May 5, 2022, Environmentally Preferable Asphalt Compliance Plan

Asphalt Plant	Environmentally Preferable Requirements	
Asphalt Plant A	Plant Run by Natural Gas	Base Layer Material with 30 percent RAP
Asphalt Plant B	Plant Run by Natural Gas	Warm Mix Asphalt

However, in a letter dated May 10, 2022, the construction subcontractor requested a waiver from the GSA RAP and warm mix asphalt requirements. The construction subcontractor wrote that New York State Department of Transportation (NYSDOT) specifications only allowed a maximum top layer RAP of 20 percent. Additionally, the construction subcontractor asserted that the warm mix asphalt would not work for the climate in northern New York State. According to the construction subcontractor, warm mix asphalt would have open-graded, or porous, characteristics that would allow for water infiltration and be susceptible to the cold weather.

The construction subcontractor submitted a letter stating that it could not meet the environmentally preferable asphalt requirements (i.e., a P100 waiver request); however,

¹⁷ GSA’s *Facilities Standards for the Public Buildings Service* (P100) establishes mandatory standards and criteria for PBS. Deviations from P100 require an approved “P100 waiver.” P100 waivers must be requested in writing by the regional commissioners and approved by the PBS Office of Design and Construction.

PBS Region 2 told the O&M contractor and the construction subcontractor that a waiver was unnecessary; therefore, the P100 waiver request was never approved. PBS Region 2 stated that the waiver was unnecessary because the NYSDOT allowed for RAP in excess of 20 percent in the base and sub-base layers of asphalt, so the project would comply.

We reviewed the permits from the New York State Department of Environmental Conservation and confirmed that both asphalt plants use natural gas. We also compared the asphalt delivery tickets to PBS Region 2's ticket summaries. According to the delivery tickets, over 14,000 tons of asphalt were used at the New York State LPOEs.¹⁸ However, as presented in *Figure 3*, we found that only 32 percent of the delivered asphalt used at the LPOEs complied with GSA's new environmentally preferable asphalt standard.

Figure 3. Asphalt Compliance and Noncompliance with GSA's Environmentally Preferable Standard

Asphalt Plant	Environmentally Preferable Requirements	Asphalt Tonnage Used	Asphalt Tonnage in Compliance	Asphalt Tonnage Not in Compliance
Asphalt Plant A	(1) Natural Gas Plant (2) RAP in excess of 20 percent	10,483.27	940.32	9,542.95
Asphalt Plant B	(1) Natural Gas Plant (2) Warm Mix Asphalt	3,589.16	3,589.16	0
Totals		14,072.43	4,529.48	9,542.95

In total, the project used 14,072.43 tons of asphalt. The delivery tickets showed that 10,483.27 tons (74 percent) of the asphalt was from Asphalt Plant A and that only 940.32 tons (9 percent) of that asphalt met the environmentally preferable requirements. The other 9,542.95 tons of asphalt used from Asphalt Plant A was hot mix asphalt with a 20 percent RAP percentage, which did not meet the environmentally preferable requirements, and for which the subcontractor had requested a waiver from PBS.¹⁹

During our audit, the PBS Region 2 project manager said that they initially did not know they could meet the requirement for RAP in excess of 20 percent, but later found out that they could meet it because NYSDOT allows for a higher RAP content for base and sub-base layers.

¹⁸ One delivery ticket was missing.

¹⁹ Warm mix asphalt is different from hot mix asphalt. According to the Federal Highway Administration, high production temperatures are traditionally needed to make the asphalt binder fluid and less sticky during mixing to completely coat the aggregate and also have good workability during hauling, placement, and compaction. Warm mix asphalt technologies use water, water-bearing minerals, chemicals, waxes, and organic additives or a combination of technologies. The technologies are added to either the mixture or the asphalt binder to produce mixtures at lower temperatures. These technologies allow the asphalt binder to remain fluid at lower temperatures during mixing in order to completely coat the aggregates. It is the use of these technologies that allow the construction of asphalt pavements at lower temperatures.

PBS Region 2 provided additional information and documentation purporting to show that the paving projects at five of the six LPOEs met GSA's environmentally preferable asphalt standard.²⁰ We confirmed that Champlain, Massena, and Overton LPOEs met GSA's environmentally preferable asphalt standard. However, we found that Chateaugay and Mooers LPOEs did not meet GSA's environmentally preferable asphalt standard, as described below.

PBS contended that, taken together, the asphalt used at the Champlain, Chateaugay, Mooers, and Overton LPOEs met GSA's environmentally preferable asphalt standard because the contractor used 30 percent RAP in the base layer (940.32 tons) of asphalt and 20 percent RAP in the top layers (9,542.95 tons). We confirmed that a combination of asphalt material with 30 percent RAP in the base layer and 20 percent RAP top layer was used at the Champlain and Overton LPOEs. However, according to the asphalt delivery receipts, the contractor did not use 30 percent RAP in the base layer for the Chateaugay and Mooers LPOEs because the base layer was not replaced. For these two LPOEs, the contractor only replaced the top layer and used hot mix asphalt that did not exceed 20 percent RAP.

Nonetheless, PBS Region 2 contended that the Chateaugay and Mooers LPOEs met GSA's environmentally preferable asphalt standard. Specifically, PBS Region 2 argued that, because the asphalt millings from these LPOEs were recycled for use elsewhere, the projects met the standard's "other environmentally preferable features or techniques" criterion.

PBS Region 2's position is flawed because it is based on a misinterpretation of GSA's environmentally preferable asphalt standard. GSA's standard for environmentally preferable asphalt, issued on March 17, 2022, specifically requires "at least two environmentally preferable techniques to be used during the material's *manufacture or installation*." (emphasis added)

In addition, the statement of work states:

The contractor shall provide **environmentally preferable asphalt**. Environmental preferable asphalt is defined in this context as material manufactured or installed using at least two (2) of the following techniques. (emphasis author)

Here, PBS Region 2 contends that the paving projects at the Chateaugay and Mooers LPOEs met GSA's environmentally preferable asphalt standard simply because the asphalt millings were recycled for use elsewhere. However, because the millings were never used in the manufacture or installation of the asphalt at the Chateaugay and Mooers LPOEs, these projects did not comply with GSA's environmentally preferable asphalt standard.

²⁰ The five paving projects include Champlain, Chateaugay, Massena, Mooers, and Overton LPOEs. The Fort Covington LPOE was not subject to the GSA's environmentally preferable asphalt standard because no asphalt was replaced at this site.

PBS Region 2 Provided Inaccurate Information to the Public

PBS Region 2 provided inaccurate information to the public when it stated that it had completed paving projects at six LPOEs in New York State using GSA's new environmentally preferable asphalt standard.

On August 19, 2022, GSA issued a press release on GSA.gov entitled *GSA Completes Six Sustainable Paving Projects at Land Ports of Entry in New York State Through Bipartisan Infrastructure Law*.²¹ In that press release, GSA announced that it had completed paving projects at six LPOEs in New York State, all using GSA's new environmentally preferable asphalt specification.

However, this was inaccurate. As discussed above, PBS did not ensure that the asphalt used at the Chateaugay and Mooers LPOEs met GSA's new environmentally preferable asphalt standard. Additionally, subsequent to our fieldwork, PBS Region 2 told us that no asphalt was replaced at the Fort Covington LPOE because the project only consisted of "crack and seal repair." We confirmed that no asphalt was used at the Fort Covington LPOE project; therefore, GSA's new environmentally preferable asphalt standard did not apply to this project. Consequently, PBS Region 2 provided inaccurate information to the public by claiming the Fort Covington LPOE used GSA's new environmentally preferable asphalt specification.

In sum, PBS Region 2 did not ensure full compliance with GSA's environmentally preferable asphalt standard and provided inaccurate information to the public by claiming that all six LPOEs met this standard. PBS should establish controls to ensure compliance with GSA environmentally preferable material standards and report accurate information to the taxpayers.

Finding 5 – PBS Region 2 did not comply with or enforce security requirements governing the use of drones, resulting in potential safety and security risks.

PBS Region 2's paving project task order required before and after pictures to demonstrate that the work was completed. To fulfill this requirement, the O&M contractor subcontracted with an operator of unmanned aircraft systems (UASs), which are also known as "drones," to take the pictures.

However, PBS Region 2 did not comply with or enforce security requirements governing the use of drones, resulting in potential safety and security risks. Specifically, we found that:

- PBS Region 2's subcontractor used drones manufactured by a Chinese company that the U.S. Department of Defense identified as a potential national security threat; and

²¹ <https://www.gsa.gov/about-us/newsroom/news-releases/gsa-completes-six-sustainable-paving-projects-at-land-ports-of-entry-in-new-york-state-through-bipartisan-infrastructure-law-08192022>.

- PBS Region 2 did not ensure that the drones were registered with the Federal Aviation Administration (FAA), and that both drone operators had the required FAA certifications.

We describe these deficiencies on the following pages.

PBS Region 2 Inappropriately Allowed the Use of Two Drones Manufactured by a Chinese Company that the U.S. Department of Defense Identified as a Potential National Security Threat

The federal government has documented concerns over potential security threats associated with drones that are manufactured by foreign adversaries or contain software or critical electronic components produced by those adversaries. The National Defense Authorization Act for Fiscal Year 2020, Section 848, prohibits federal departments and agencies from procuring any foreign commercial off-the-shelf drone or covered UAS manufactured or assembled in countries identified as national security threats.²²

In addition, Executive Order 13981, *Protecting the United States From Certain Unmanned Aircraft Systems* (signed on January 18, 2021), states that:

United States Government operations involving UAS require accessing, collecting, and maintaining data, which could reveal sensitive information. The use of UAS and critical components manufactured and developed by foreign adversaries, or by persons under their control, may allow this sensitive information to be accessed by or transferred to foreign adversaries.

Executive Order 13981 also advises all federal agencies against purchasing and using drones that are manufactured by foreign adversaries or have significant components that are manufactured by foreign adversaries.²³

We found that PBS Region 2 allowed the use of Chinese-made drones to perform work under the paving project task order. A subcontractor on the task order was allowed to use two drones manufactured by a Chinese company to obtain pre-construction and post-construction photographs at six LPOE locations on the U.S.-Canada border in New York State. According to the Construction Manager as Advisor reports, the subcontractor took the post-construction photos at the LPOEs on August 4, 2022.

As detailed in the list on the next page, the manufacturer and its drones had been identified as a potential national security threat prior to the task order award.

²² Public Law 116-92 (December 20, 2019).

²³ Executive Order 13981 includes the People's Republic of China in its definition of an "adversary country."

- In 2020, the manufacturer was added to the U.S. Department of Commerce’s Entity List, designating the Chinese company as a national security concern.
- In July 2021, the U.S. Department of Defense stated that drones developed by the manufacturer posed potential threats to national security.

Further, after these drones were used on this contract, they were banned from federal procurement. The ban on these drone products and services was effective on October 5, 2022, when the U.S. Department of Defense released its list of “Chinese military companies.” The drone manufacturer was included in this list and, as a result, its products and services were banned from federal procurement under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019.²⁴

PBS Region 2 did not take any steps to determine if the drones were a security threat. Prior to the use of the drones on the paving project, PBS Region 2 did not inquire about the manufacturer or model number for the drones used by the subcontractor at the six LPOEs. As a result, PBS Region 2 did not know that the drones its subcontractor used to take photos at the six LPOE locations:

- Were manufactured by a Chinese company;
- Posed a national security threat; and
- Were prohibited under Executive Order 13981.

To prevent this in the future, PBS should develop and implement supplemental policies, training, and oversight procedures to ensure drones used by contractors under government contracts comply with federal laws and regulations and do not pose a security threat.

PBS Region 2 Did Not Ensure that Drones and Drone Operators Complied with FAA Regulations

PBS Region 2 did not ensure compliance with federal requirements for the use of drones. Specifically, PBS Region 2 did not ensure that the drones used on the paving project were registered with the FAA and that the drone operators had the required FAA certification.

²⁴ Public Law 115-232, John S. McCain National Defense Authorization Act for Fiscal Year 2019, Section 889, sought to mitigate the national security risks posed by companies that are connected to, owned by, or controlled by the Chinese government. Section 889(a)(1)(A) prohibits agencies from purchasing covered telecommunications equipment, systems, or services. Section 889(a)(1)(B) prohibits agencies from entering into, extending, or renewing a contract with a company that uses covered telecommunications equipment or services. Section 889 applies broadly to prime contractors, subcontractors, and other contractual arrangements connected with a government contract. The prohibitions are implemented in FAR 24.204-24, *Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment*; FAR 24.204-25, *Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment*; and FAR 24.204-26, *Covered Telecommunications Equipment or Services-Representation*.

FAA registration requirements. Federal laws and regulations establish that all drones must be registered with the FAA, except those that weigh 0.55 pounds or less (less than 250 grams) and are flown under the Exception for Limited Recreational Operations.²⁵ Because the drones the subcontractor used on the paving project did not meet this exception, they should have been registered with the FAA.

However, PBS Region 2 did not verify that the drones used for the paving project were registered with the FAA. The subcontractor told us it used two drones at the six LPOEs, and that the drones it used were not registered with the FAA at the time the photos were taken. After our inquiry, the subcontractor registered both drones with the FAA, and it provided proof of those registrations.

Pilot certifications. In accordance with 14 C.F.R. 107, *Small Unmanned Aircraft Systems*, drone pilots operating for work or business (i.e., commercial use) must have a remote pilot certification. The subcontractor stated that two drone operators handled the drone flights on the paving project; however, neither operator had the required Remote Pilot Certificate to conduct commercial drone flights.

PBS Region 2 provided the following two reasons for not verifying the pilot certification:

- The PBS Region 2 project manager stated they did not consider the subcontractor's use of the drones to be commercial drone flights; rather, PBS Region 2 said the drone flights were in support of obtaining validation of completed work. However, the FAA clearly differentiates a commercial drone flight (i.e., flying for business, a commercial enterprise, or non-profit work) from a recreational flight (i.e., flying for recreation/enjoyment or educational and research purposes). Since the subcontractor was compensated for the photos resulting from these drone flights, they were clearly for business or commercial purposes.
- The PBS Region 2 project manager told us that they were unaware of the license requirement for "such use." However, in a meeting held on April 29, 2022, the PBS Region 2 project management team informed the contractor that the drone's operator needed to have an FAA pilot certification, and they requested that the contractor submit this information to them. On May 12, 2022, the contractor submitted information to support one drone operator's experience. However, the information did not address whether the drone operator possessed a remote pilot certification.

Moreover, PBS Region 2's statement of work for the contract did not include a GSAM clause that requires contractors to meet all FAA regulations when providing drones. GSAM 537.7003(b), *GSA-funded acquisitions that use UAS*, requires that GSA-funded acquisitions that use drones must specify in the contract language that the contractor will comply with the requirements of all applicable FAA regulations, including, but not limited to, 14 C.F.R. 107.

²⁵ 49 U.S.C. 44807 and 44809; and 14 C.F.R. 107.13, *Registration*.

It also establishes that drones must be registered and authorized for use through the process detailed in GSA's IT Security Procedural Guide: *Drones/Unmanned Aircraft Systems (UAS) Security* (CIO-IT Security-20-104, Revision 1). However, none of this language was included in the paving project task order.

The PBS Region 2 supervising branch chief stated that this language was not included in the statement of work because the project was not treated as a GSA-funded acquisition. However, the PBS Region 2 supervising branch chief is incorrect. GSA used its IJA funding for the project and was responsible for the project's execution, including compliance with applicable requirements.

In sum, PBS Region 2 did not meet federal requirements for the use of drones on this project. Specifically, PBS Region 2 did not ensure drones used by the contractor complied with federal laws and regulations and did not pose a security threat. In addition, PBS Region 2 did not ensure that the drones were registered with the FAA or that both drone operators had the required FAA certification. As a result, project safety and security may have been compromised. To address these deficiencies, PBS should ensure that its staff are aware of federal and GSA requirements for using drones and develop specific supplemental oversight procedures to ensure that drones and drone operators are compliant with federal regulations and laws.

Finding 6 – PBS Region 2 created a small business “pass-through” environment and did not ensure compliance with small business subcontracting limitations.

Because PBS Region 2 improperly awarded the paving project task order for professional construction services that were outside the scope of the O&M contractor's MAS contract, the O&M contractor had to engage construction contractors to complete nearly all of the work under the task order. In doing so, PBS Region 2 created a small business “pass-through” environment and did not provide adequate oversight to ensure compliance with small business subcontracting limitations.

Small Business “Pass-Through” Environment

According to FAR 52.219-14, *Limitations on subcontracting*, small business prime contractors are subject to specific limitations on the amounts they can pay to subcontractors that are not similarly situated.²⁶ These limitations vary depending on the type of contract, as shown in *Figure 4* on the next page.

²⁶ “Similarly situated” entity means a subcontractor that has the same small business program status as the prime contractor.

Figure 4. FAR Subcontracting Limitations

Type of Contract	Limitations on Subcontracting
Services (excluding construction services)	50 percent
Supplies or Products	50 percent, excluding the cost of materials
General construction	85 percent, excluding the cost of materials
Special Trade construction	75 percent, excluding the cost of materials

Subcontracting limitations are in place to prevent small business prime contractors from becoming “pass-through” vehicles for large or ineligible businesses. A small business “pass-through” typically occurs when the small business program participant retains a portion of the contract value for minimal or no work, while a large or ineligible business gets paid for contract work it would not have ordinarily received.²⁷

The subcontracting limitations are designed to ensure that a significant portion of the contract work is performed by the small business itself, rather than being subcontracted out to larger businesses. We found that PBS Region 2 created a small business “pass-through” environment when it awarded construction work that was outside the scope of the O&M contractor’s MAS contract.

After PBS Region 2 awarded this complex construction task order to its O&M contractor, a women-owned small business prime contractor, it had early indications that the O&M contractor would not perform a significant portion of the contract work.²⁸ When examining the O&M contractor’s proposal, we noted that 88 percent of the actual labor cost was to be subcontracted, while the O&M contractor would only perform 12 percent for project management.²⁹

During our audit, we also found the following:

- According to the project’s daily sign-in sheets, progress reports, and certified payroll records, the O&M contractor did not perform any of the direct construction work for the project. This work was performed entirely by subcontractors.
- The O&M contractor did not warranty any of the work to PBS Region 2. The construction subcontractor issued the construction warranty.

²⁷ The O&M contractor is a certified small business under the U.S. Small Business Administration’s Women-Owned Small Business Federal Contract program.

²⁸ The paving project task order was issued against a small business set-aside O&M BPA under a facilities maintenance and management MAS contract.

²⁹ In 2021, the Federal Acquisition Regulation Council revised FAR 52.219-14. Prior to the revisions, the FAR limitations on subcontracting calculation focused on the cost of performance, instead of the amount paid to the subcontractor(s). However, the labor cost provided in the contractor’s proposal was an indication that the small business prime contractor performance on this contract would be minimal.

The O&M contractor mainly served as an intermediary between PBS Region 2 and the construction subcontractor. For example, the O&M contractor's level of work mainly included administrative functions, such as signing contract modifications, submitting three invoices to PBS Region 2, attending meetings, and uploading contract documents. Additionally, according to the price proposal, the government was only to pay [REDACTED] of the \$5.3 million initial paving project task order value to the O&M contractor.³⁰

- In its proposal, the O&M contractor stated that it would provide project management; however, we found that the O&M contractor may have subcontracted these duties as well. For example, in one of the subcontractor's invoices to the O&M contractor, the subcontractor stated that it had facilitated the completion of the asphalt project from award of the contract to the closeout of the project. It also stated that it coordinated and managed the project for the O&M contractor and provided on-site communication between the main subcontractor, the PBS Region 2 construction manager, and the PBS Region 2 contracting officer.

Inadequate Oversight to Ensure Subcontracting Limitation Compliance

Despite the large amount of subcontracted work, the PBS Region 2 contracting officer did not provide effective oversight to ensure compliance with the subcontracting limitations after the paving project task order was awarded.

The PBS Region 2 contracting officer relied on the O&M contractor's proposal to confirm that the O&M contractor would comply with the subcontracting limitations of the construction award. However, the FAR prescribes that compliance is determined based on the amount the small business prime contractor paid to its subcontractors that are not similarly situated. We found that the contracting officer did not obtain subcontractor payment documentation from the O&M contractor until we inquired about it during our audit.

The contracting officer told us that the subcontracting limitation applicable to the paving project task order was 85 percent for general construction. For this type of contract, material costs are excluded from the amount the small business prime contractor may pay to subcontractors that are not similarly situated. During our audit, the contracting officer provided subcontracting payment documentation for two subcontractors. The documentation shows that at least \$4.9 million (89 percent) of the total paving project task order value (\$5.5 million) was subcontracted.

However, we were unable to determine the O&M contractor's compliance with the prescribed subcontracting limitations because:

³⁰ The [REDACTED] amount included [REDACTED] for "project management," [REDACTED] for "overhead and profit," and [REDACTED] for "bonding and insurance." In accordance with FAR 3.104-4, *Disclosure, protection, and marking of contractor bid or proposal information and source selection information*, all specific contractor proposal information has been redacted.

- The payment documents did not include a breakout of material and other costs, and the PBS Region 2 contracting officer did not obtain additional documentation on those costs;
- The PBS Region 2 contracting officer was unaware of at least six other subcontractors, who hired them, and if they were similarly situated entities; and
- Most certified payroll records were either missing or had incomplete information; therefore, we could not determine the labor costs paid to subcontractors.

In sum, PBS Region 2 created a small business “pass-through” environment when it improperly awarded the paving project task order for professional construction services that were outside the scope of the O&M contractor’s MAS contract. PBS Region 2 also did not provide adequate oversight to ensure compliance with the small business subcontracting limitations.

Finding 7 – PBS Region 2 did not adequately enforce security requirements for construction personnel.

PBS Region 2 did not adequately enforce security requirements for construction personnel who worked on the paving project task order. We found that PBS Region 2 did not ensure that background security checks were completed for construction personnel and a drone operator prior to their work at the six LPOEs. In fact, PBS Region 2 did not try to confirm this information until we inquired about it as part of our audit. In addition, we found that PBS Region 2 was unaware that the O&M contractor did not submit the names of all construction personnel for background security checks.

According to the PBS security requirements in the statement of work, the O&M contractor and subcontractor employees working at the LPOEs were required to undergo background security checks. The O&M contractor was required to submit a list of all personnel who would be working on site and a photocopy of the individuals’ driver’s licenses. This information was to be submitted electronically to PBS and the U.S. Customs and Border Protection (CBP).

The O&M contractor submitted a list of 23 construction personnel to CBP for background security checks. We compared this list to the sign-in sheets at the LPOEs and certified payroll records and identified 23 construction personnel who were not submitted to PBS and CBP for background security checks. We also found that one of the drone operators from *Finding 5* was not included in the list of construction personnel submitted for background security checks. As a result, the drone operator did not receive the required background security check, thereby increasing the risk of a security breach.

In addition, there may have been more than the 23 unchecked construction personnel working at these LPOEs. The sign-in sheets and certified payroll records that PBS Region 2 provided us during our audit were incomplete or missing. For example, daily progress reports indicated that construction personnel worked at the LPOEs until August 2022. However, the project sign-in sheets only covered the period of May 17 through June 1, 2022; and the certified payroll

records only covered the period of June 27 through July 24, 2022. Consequently, the missing documentation potentially prevented us from identifying additional personnel who were not submitted for the required background security checks.

PBS Region 2 officials stated that they had not reviewed the contractor's personnel list until we requested it. Additionally, PBS Region 2 officials were not aware of the discrepancy between the construction personnel list submitted by the O&M contractor and the actual construction personnel who signed in at the LPOEs until our inquiry. PBS also did not follow up with CBP to ensure the construction personnel submitted by the O&M contractor cleared background security checks until we tried to verify it during our audit.

In sum, PBS Region 2's lack of enforcement of security requirements for construction personnel increased the risk of a security breach at these six LPOE locations on the U.S.-Canada border in New York State.

Finding 8 – PBS Region 2 did not ensure contractor compliance with labor standards.

PBS Region 2 did not perform contract labor compliance checks that are required by the FAR. As a result, PBS Region 2 did not ensure subcontractor employees were paid in compliance with federal Construction Wage Rate Requirements.

According to FAR 52.222-6(b)(1), *Construction Wage Rate Requirements*, contractors and subcontractors must pay their employees no less than the local prevailing wages and fringe benefits, as outlined in the applicable U.S. Department of Labor wage determination. Construction Wage Rate Requirements apply to federally funded contracts in excess of \$2,000 for construction, alterations, or repairs of public buildings.³¹

FAR 22.406-6(a), *Submission*, and (c), *Examination*, respectively require contractors to submit weekly payrolls for the contractor and each subcontractor. It also requires the contracting officer to examine certified payrolls for compliance with the contract and any statutory and regulatory requirements. In addition, FAR 22.406-7, *Compliance checking*, requires the contracting officer to regularly interview employees to determine the correctness of classifications, pay rates, fringe benefit payments, and hours worked.

We compared the daily progress reports prepared by the Construction Manager as Advisor contractor to the daily sign-in sheets and certified payrolls and identified the following discrepancies:

- The daily progress reports indicated that at least seven different subcontractors and their employees performed work on the paving project; however, the PBS Region 2 contracting officer only provided us with certified payroll records for one subcontractor. Those records were incomplete.

³¹ FAR Subpart 22.4 - *Labor Standards for Contracts Involving Construction*.

- According to daily sign-in sheets and daily progress reports, the subcontractor performed construction work on site from May 17 through August 4, 2022; however, the certified payroll records only covered the period of June 27 through July 24, 2022.
- PBS Region 2 did not perform labor interviews required by FAR 22.406-7(b)(1), *Regular compliance checks*, to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked.

The PBS Region 2 contracting officer delegated these responsibilities to the contracting officer's representative (COR). According to the COR, they did not request certified payroll records or perform labor interviews because the contract employees were not being paid based on "skill levels." Nonetheless, the PBS Region 2 contracting officer acknowledged that the payroll records were incomplete and requested certified payroll records after we inquired about them during our audit.

PBS Region 2 did not comply with FAR 22.406-7's requirement for contract labor compliance checks. As a result, PBS Region 2 did not ensure subcontractor employees were paid in compliance with federal Construction Wage Rate Requirements.

Finding 9 – PBS Region 2 overpaid the Construction Manager as Advisor contractor and paid for services that were not performed.

On May 16, 2022, PBS Region 2 awarded a firm-fixed price task order to a construction management firm to act as a Construction Manager as Advisor (CMA) for the paving project. The CMA contractor was responsible for providing project management services to ensure the quality of the work during construction and construction closeout stages of the paving project. Some of those services included risk management, project safety and compliance, inspection services, and recordkeeping. However, PBS Region 2 awarded the contract for these services at inflated pricing and paid for CMA work that was not received, as described below.

PBS Region 2 Awarded the Contract for CMA Services at Inflated Pricing

The PBS Region 2 COR appointed to oversee the paving project developed and signed an IGE for CMA services for the paving project task order at an estimated cost of \$130,028 on March 16, 2022. The PBS Region 2 contracting officer awarded the CMA task order for \$124,290 and, according to the technical evaluation, the contracting officer determined that the price was fair and reasonable because the proposed price was [REDACTED] lower than the IGE.

We examined the CMA contractor's May 6, 2022, proposal and compared it to the IGE. The proposal included one on-site inspector working [REDACTED] hours and a "remote" assistant controls project manager working [REDACTED] hours, while PBS's IGE included two full-time on-site inspectors working a total of 1,152 hours.

PBS Region 2 officials told us that initially they thought two inspectors would be required, but then realized that the work would not be done simultaneously at the six LPOE sites. However, PBS Region 2 did not update the IGE to reflect that change.

As a result, the basis for the contracting officer's price reasonableness determination was flawed. The contracting officer determined that the contractor's proposal of [REDACTED] was fair and reasonable based on the IGE of \$130,028. However, the IGE was based on two full-time on-site inspectors working a total of 1,152 hours, while the proposal was based on one on-site inspector and a "remote" assistant controls project manager working a total of [REDACTED] hours.

If PBS Region 2 had revised the IGE to reflect the reduction of on-site inspector hours, we estimate that the IGE would have decreased to approximately \$78,424. Instead, PBS Region 2 awarded the CMA services task order at the inflated price of \$124,290.

PBS Region 2 Paid for CMA Services That Were Not Performed

The CMA contractor's proposal included a schedule with on-site inspector services starting on May 17, 2022, for a total of [REDACTED] hours. However, the inspector was not on site until May 31, 2022. The CMA contractor billed PBS Region 2 \$17,000 for inspection services for the period of May 17 through May 31, 2022. Therefore, PBS Region 2 was billed for inspection services that the CMA contractor did not perform.

PBS personnel confirmed that there was no inspector on site during that time and acknowledged that, ideally, the inspector would have started 2 weeks earlier. PBS Region 2 relied on the daily reports provided by the O&M contractor and did not assign anyone to act on behalf of the government to verify the quality of the work, identify potential project risks, perform daily inspections, and ensure project safety.

To mitigate these issues in the future, PBS should ensure that contracting staff properly evaluate IGEs, and that the government is not overpaying for contractor services. PBS should also ensure those services are actually performed.

Finding 10 – PBS Region 2 violated the FAR, GSAM, and GSA policy while administering the paving project task order.

PBS Region 2 violated the FAR, GSAM, and GSA policy during its administration of the paving project task order. As described below, we found that PBS Region 2 did not:

- Close out the paving project task order within the required time frame;
- Complete the required contractor performance assessment report; and
- Maintain complete and accurate contract file documentation.

PBS Region 2 Did Not Close Out the Paving Project Task Order Within the Required Time Frame

According to FAR 4.804-1(a)(2), *Closeout by the office administering the contract*, “files for firm-fixed price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.” Although the paving project task order was completed on August 17, 2022, PBS Region 2 did not close out its contract file until 9.5 months later on June 1, 2023.

The PBS Region 2 contracting officer told us they kept the contract file open because of our audit; however, records in the contract file show that the COR provided the relevant closeout information and documents to the contracting officer on August 19, 2022. Because this took place approximately 4 months before we began our audit, it is unclear why the PBS Region 2 contracting officer did not close out the contract file at that time. Timely contract closeout is important to ensure the Agency meets its acquisition and fiscal responsibilities.

PBS Region 2 Did Not Complete the Required Contractor Performance Assessment Report

According to FAR 42.1502(a), *General*, agencies are required to submit information on a contractor’s past performance through the Contractor Performance Assessment Reporting System (CPARS). The *Guidance for the Contractor Performance Assessment Reporting System (CPARS)* requires the contracting officer to complete evaluations within 120 days of the end of the period of performance.³²

However, PBS Region 2 did not complete its required contractor performance assessment report within 120 days of the period of performance end date. The task order period of performance ended on August 19, 2022; however, the PBS Region 2 contracting officer did not complete the contractor performance assessment report in CPARS until February 16, 2023, after our audit began. This was 181 days after project completion.

Contractor performance evaluations are important for federal acquisition personnel because they provide relevant information that depicts the contractor’s performance on other federal contracts and orders. In addition, federal acquisition personnel and contractors rely on the contractor performance evaluations for future federal contracting opportunities. However, the effectiveness of these evaluations can be undermined when they are not completed in a timely manner.

PBS Region 2 Did Not Maintain Complete and Accurate Contract File Documentation

Maintaining accurate contract file documentation is critical to administering the contract and ensuring compliance with contract requirements. However, PBS Region 2 did not maintain complete and accurate contract file documentation.

³² *Guidance for the Contractor Performance Assessment Reporting System (CPARS)*, April 2022.

The FAR outlines general requirements for contract file documentation. FAR 4.802(a)(1), *Contract files*, prescribes, in part, that the contract file should document the basis for the acquisition and award, including any subsequent actions taken by the contracting officer. Additionally, FAR 4.803, *Contents of contract files*, provides examples of the records normally contained in contract files.

PBS has also issued guidance outlining the use of electronic contract files and required documentation. PBS Procurement Instructional Bulletin 18-02, *PBS Contract File Content and Organization*, dated April 19, 2018, dictates the mandatory use of EASi for contract file documentation and provides five checklists that identify standardized content for PBS contract files.

We examined contract files for both the paving project task order and the O&M BPA and found the deficiencies described below.

Deficiencies in task order contract file documentation. After our audit began, PBS Region 2 personnel uploaded 111 documents to the task order contract file. Of these 111 documents, 98 were added after the PBS Region 2 supervising branch chief asserted to us that all documentation related to the task order was in EASi.

In reviewing the task order contract file, we found problems with the following documents:

- **Contractor Responsibility Assessment** – FAR Subpart 9.1, *Responsible Prospective Contractors*, prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible entities that can be reasonably expected to perform the work required. However, PBS did not obtain a Contractor Responsibility Assessment before awarding the task order. PBS awarded the task order on April 14, 2022; the Contractor Responsibility Assessment in the contract file was dated January 11, 2023—nearly 9 months after the task order was awarded.
- **Notice of Award Letter** – The notice of award must be established in accordance with FAR 36.213-4, *Notice of award*. The notice of award is a formal notification to the selected contractor of contract award. The contract file contained a notice of award letter dated April 14, 2022. We noted the following discrepancies within the notice of award letter:
 - The notice of award letter did not include the corresponding task order number; it only included the MAS contract and BPA number despite the purpose of the notice of award letter being to notify the O&M contractor of the task order award;
 - The notice of award letter only required the O&M contractor to submit performance bonds of “25% of the delivery amount.” However, FAR 52.228-15, *Performance and Payment Bonds-Construction*, requires that contractors submit performance bonds of 100 percent of the original contract price;

- The award document referenced within the notice of award letter was SF 1449, *Solicitation/Contract/Order for Commercial Products and Commercial Services*; however, the actual award form that PBS Region 2 used for the task order was GSA Form 300, *Order for Supplies and Services*;
 - There is no evidence that PBS Region 2 provided a number of required documents to the O&M contractor with the notice of award letter, such as:
 - SF 1444, *Request for Authorization of Additional Classification and Rate*;
 - U.S. Department of Labor Wage Hour Form 347 (WH-347), *Payroll*;
 - GSA Form 2419, *Certificate of Progress Payments Under Fixed-Price Construction Contracts*; and
 - U.S. Department of Labor poster, WH1090 – *Worker Rights Under Executive Order 13706, Paid Sick Leave for Federal Contractors*; and
 - The PBS Region 2 contracting officer could not locate the email to show they had issued the notice of award letter that was in the contract file to the O&M contractor.
- **Inconsistent Period of Performance** – According to FAR 11.401(a), *General*, “The time of delivery or performance is an essential contract element and shall be clearly stated in solicitations.” However, the following contract documents established different periods of performance for the paving project, leading to inaccurate contract documents and inaccurate contract data reported in FPDS-NG:
 - The statement of work provided 160 days from contract award to contract close out, and 100 calendar days from Notice to Proceed to substantial completion;
 - The award document (GSA Form 300), signed on April 14, 2022, established a period of performance of May 2, 2022, through October 31, 2023;
 - The notice of award letter, also dated April 14, 2022, established a period of performance of April 29, 2022, through October 31, 2022;
 - The contract data in FPDS-NG listed a period of performance of April 18, 2022, through October 31, 2023; and
 - The Notice to Proceed, dated April 29, 2022, states that work shall be completed no later than October 31, 2022.
 - **Subcontractors Statement and Acknowledgement** – FAR 22.406-5, *Subcontracts*, and FAR 52.222-11(d)(1), *Subcontracts (Labor Standards)*, require that all contractors and subcontractors submit an SF 1413, *Statement and Acknowledgement*, within 14 days of the contract award to ensure they understand and acknowledge labor laws with which they must comply. At least seven subcontractors worked on the paving project from May 31 through August 4, 2022; however, the PBS Region 2 contracting officer only obtained one Statement and Acknowledgement form, and it was not signed by the subcontractor.
 - **COR Appointment Letter** – FAR 1.602-2(d), *Responsibilities*, requires the contracting officer to designate and authorize, in writing and in accordance with agency procedures, a COR for all contracts. PBS’s policy requires that both the contracting officer and the

COR sign the COR Appointment Letter. Once the letter is signed, the contracting officer is required to send the COR Appointment Letter to the contractor, COR, COR's supervisor, alternate COR (if applicable), and document it in the contract file.³³

The COR Appointment Letter in the contract file was not signed to indicate that the COR accepted the COR responsibilities. After our inquiry, PBS Region 2 provided two copies of the COR Appointment Letter. One of the copies only had the COR's signature, and the other copy only had the contracting officer's signature. In addition, there was no evidence in the contract file that the contracting officer distributed a signed COR Appointment Letter to the required recipients.

- **Certification of Progress Payments Under Fixed-Price Construction Contracts (GSA Form 2419)** – FAR 52.232-5(c), *Contractor certification*, requires the contractor's payment application to include a certification confirming, in part, that the amount requested is for performance of the contract and that all payments due to subcontractors have been made. However, PBS Region 2 contracting officials could not provide this information because they did not ensure that the contractor submitted the required certification.
- **Construction Progress Report** – GSAM 532.103, *Progress payments under construction contracts*, establishes that the government must document satisfactory progress of work prior to processing each progress payment request the construction contractor submits in accordance with FAR regulations. However, PBS Region 2 did not complete the required construction progress reports.

O&M BPA contract file documentation. In reviewing the O&M BPA contract file, we found problems with the following documents:

- **Acquisition Plan** – FAR 4.803(a)(1), *Contracting office contract file*, specifies that contract files should include acquisition planning information. PBS Region 2 did not have the approved acquisition plan in the contract file. However, they later provided the plan, which was prepared in April 2020 (3 years before our inquiry).
- **Conflict of Interest Acknowledgment and Nondisclosure Agreement Forms** – GSAM 515.305-71(a), *Actions before releasing proposals*, requires the contracting officer to obtain a signed, original Conflict of Interest Acknowledgment and Nondisclosure Agreement form from each member of the Source Selection Evaluation Board (SSEB) before releasing any proposal. PBS Region 2 did not have these documents in the contract file.

³³ PBS Procurement Instructional Bulletin 21-05, *Public Buildings Service (PBS) Contracting Officer's Representative (COR) Policy*, May 12, 2021.

After our inquiry, the PBS Region 2 supervising branch chief provided four Conflict of Interest Acknowledgment and Nondisclosure Agreements. However, we identified flaws with the Conflict of Interest Acknowledgment and Nondisclosure Agreement for one of the SSEB members. While the Conflict of Interest Acknowledgment and Nondisclosure Agreement consists of two pages, we were only provided with a picture of the second page. The second page included the SSEB member's signature but did not include the GSA solicitation number. Therefore, it is unclear if the SSEB member signed the agreements for the O&M BPA solicitation.

- **SSEB Members' Evaluation Sheets** – The Source Selection Plan (SSP) for the O&M BPA required that each SSEB member individually evaluate the proposals based on the evaluation criteria contained in the SSP. The SSEB members were required to document the results of their evaluation on worksheets referenced within the SSP, and the evaluation sheets were to be signed and dated. The SSP also established introductory, intermediate, and concluding SSEB meetings to develop consensus ratings and final evaluation reports. We found that:
 - The evaluation sheets were not included in the contract file;
 - The PBS Region 2 supervising branch chief provided Excel documents for individual evaluations after our inquiry; however, they had no names, dates, or signatures, and they were not completed properly (e.g., blank summary page); and
 - PBS Region 2 could not provide any SSEB meeting records.

The missing and incomplete SSEB member Conflict of Interest Acknowledgement and Nondisclosure Agreement, in conjunction with the incomplete and unsigned SSEB member evaluation sheets and lack of SSEB meeting records, raise serious concerns about the integrity of this procurement process.

- **Other Unsigned O&M BPA Documents** – The COR Appointment Letter, Technical Evaluation Board Appointment Memo, and Notice to Proceed were all unsigned. PBS Region 2 could not provide the signed copies of those documents.

In sum, PBS Region 2 violated the FAR, GSAM, and GSA policy during its administration of the paving project task order and O&M BPA contract. As detailed in this finding, these violations ranged from not closing out the contract in a timely manner to missing, incomplete, and unsigned contract documents.

Our office has previously identified deficiencies in PBS Region 2's contract management and oversight. For example, in June 2021, we reported that PBS Region 2 did not award and administer the contract to upgrade three passenger elevators at the United States Court of International Trade building in New York, New York, in accordance with applicable regulations

and GSA policies.³⁴ Specifically, we found deficiencies in the following areas: Conflict of Interest Acknowledgment and Nondisclosure Agreement, COR delegation of authority, contract file documents, and contract award information in FPDS-NG.

To address the deficiencies identified in this report, PBS Region 2 should ensure that contracting staff understand their responsibilities with respect to closing out contract files within the required time frames, completing the required contractor performance assessment report, and maintaining complete and accurate contract file documentation.

³⁴ *Audit of PBS Basic Repairs and Alterations Project: United States Court of International Trade Building* (Report Number A200976/P/2/R21004, June 17, 2021).

Conclusion

PBS Region 2 did not comply with applicable laws, regulations, and policies when awarding and administering the \$5.6 million IJA-funded project to repave six LPOEs at New York State's northern border. We found deficiencies in PBS's task order award and administration that led to, among other things, violations of federal competition requirements, poor pricing and overpayments, security vulnerabilities, and a small business "pass-through" environment.

Specifically, we found that PBS Region 2:

1. Violated competition requirements by improperly awarding the paving project using a task order placed against an operations and maintenance services blanket purchase agreement;
2. Awarded the paving project task order using an unsupported independent government estimate and an invalid price reasonableness determination;
3. Did not perform required procurement steps because it improperly awarded the paving project using a task order placed against an operations and maintenance services blanket purchase agreement;
4. Did not ensure full compliance with GSA's environmentally preferable asphalt standard and provided inaccurate information to the public by claiming that all six LPOEs met this standard;
5. Did not comply with or enforce security requirements governing the use of drones, resulting in potential safety and security risks;
6. Created a small business "pass-through" environment and did not ensure compliance with small business subcontracting limitations;
7. Did not adequately enforce security requirements for construction personnel;
8. Did not ensure contractor compliance with labor standards;
9. Overpaid the Construction Manager as Advisor contractor and paid for services that were not performed; and
10. Violated the FAR, GSAM, and GSA policy while administering the paving project task order.

PBS Region 2's performance on this project demonstrates the risks arising from rushed attempts to obligate IJA funding. Accordingly, PBS leadership must strengthen oversight over IJA-funded projects to ensure they are executed properly.

Recommendations

We recommend that the PBS Commissioner:

1. Establish supplemental policies, training, and oversight procedures to ensure contractors comply with federal regulations when using drones on federal buildings, grounds, and property, regardless of funding sources.

We also recommend that the PBS Regional Commissioner for the Northeast and Caribbean Region:

2. Implement controls and training to ensure that PBS contracting staff use proper contract vehicles to procure construction contracts so that the Competition in Contracting Act is not violated.
3. Ensure that the PBS contracting staff are trained on their responsibilities with respect to:
 - a. Documenting and supporting independent government estimates and price reasonableness determinations; and
 - b. Segregating duties performed in making price reasonableness determinations.
4. Ensure that the PBS contracting staff responsible for the administration of construction contracts and task orders are trained on their responsibilities with respect to:
 - a. Acquisition planning;
 - b. Evaluating contractor's experience and past performance prior to awarding a contract to ensure the contractor is qualified to perform the work;
 - c. Establishing and obtaining a construction warranty and performance and payment bonds for construction contracts; and
 - d. Entering accurate and complete contract information in FPDS-NG.
5. Establish controls to ensure compliance with GSA environmentally preferable material standards and report accurate information to the taxpayers.
6. Properly train regional PBS contracting staff on the proper management, usage, and oversight of drones and drone operators on PBS projects in accordance with applicable laws, regulations, and GSA policies.
7. Implement controls and training to ensure that PBS contracting staff provide adequate oversight and do not violate small business subcontracting limitations to create "pass-through" environments for large or ineligible businesses.
8. Ensure that PBS contracting staff comply with security clearance requirements and that contractors working on government contracts have the appropriate clearances.
9. Establish controls to ensure that CORs review certified payroll records and perform labor interviews, as appropriate, prior to approval of invoices to verify that contractor and subcontractor employees are paid in accordance with federal Construction Wage Rate Requirements.
10. Establish controls to ensure that PBS contracting staff properly evaluate independent government estimates to ensure the government is not overpaying for contractor services and provide oversight to ensure contractors perform required services.

11. Train PBS contracting staff on their responsibilities with respect to:
 - a. Closing out the contract files in accordance with the FAR;
 - b. Completing contractor performance assessment reports within 120 calendar days, in accordance with the CPARS guide; and
 - c. Preparing and implementing oversight procedures to ensure contract files include complete and accurate contract documentation in accordance with the FAR, GSAM, and other applicable policies.

GSA Comments

PBS provided a written response and technical comments to our report. In its written response, PBS wrote that it partially agreed with our findings. However, in its technical comments, PBS wrote that it either completely or partially disagreed with 9 of our 10 findings.

Although PBS largely disagreed with our findings, it wrote that it agreed with all of our recommendations, which are designed to address our findings.

PBS's response is included in its entirety in **Appendix D**.

OIG Response

PBS's response did not affect our report findings and conclusions. We address PBS's specific disagreements with our audit findings below.

- **Finding 1 – PBS Region 2 violated competition requirements by improperly awarding the paving project using a task order placed against an operations and maintenance services blanket purchase agreement.**

PBS disagreed with *Finding 1*. PBS wrote that it “reasonably determined that the paving project was non-complex in nature and that it properly awarded the paving project.” In making this argument, PBS points to the statement of work from the MAS operations and maintenance blanket purchase agreement (O&M BPA) contract as evidence that major pavement resurfacing services were included under the contract. However, PBS's argument is fundamentally flawed because such services are not allowed under MAS contracts. Therefore, these services should never have been included in the contract.

As noted in our report, the FAR and GSAM provide clear limitations on the types of construction services that can be provided under an MAS contract. The underlying MAS contract also incorporates these limitations. For example, GSAM 512.203 restricts construction services under MAS contracts to “routine projects, including simple hanging of drywall, everyday electrical, and similar noncomplex services, as well as for purchases of construction material and associated ancillary services.”

As we also note in our report, the O&M BPA contract specifically established that only ancillary repair-and-alterations-type construction services were permitted to be acquired under the contractor's MAS contract. The O&M BPA contract provides that these services must be "routine and noncomplex in nature." It also expressly excludes "major or new construction of buildings, roads, parking lots and other facilities."

Notwithstanding these requirements, PBS contends that the paving services were not complex, adding that "the bulleted list of discrete construction activities [included in the report] does not establish complexity." We disagree. The construction services we list in the report and further detail in **Appendix B** clearly establish complexity. As we note in *Finding 1*, these services included milling of 10,000 tons of asphalt, deep excavation in some areas, management of unstable soils, underdrain pipe installations at two LPOEs, and the addition of four speed bumps. These services were complex enough to compel PBS to hire a Construction Manager as Advisor to manage the project. Further evidence of the complexity of the services is provided in the photographs of the paving work in progress included in *Figure 1* on page 7 of the report and in **Appendix C**. Notably, PBS's response makes no mention of these photographs.

For the reasons described above, we reaffirm our finding.

- **Finding 2 – PBS Region 2 awarded the paving project task order using an unsupported independent government estimate and an invalid price reasonableness determination.**

PBS disagreed with *Finding 2*. PBS contends that its independent government estimate (IGE) was supported and the O&M contractor's proposal for the IJJA paving project was determined to be fair and reasonable, because it was issued against an MAS contract, presumably using MAS rates that GSA already determined to be fair and reasonable.

In addressing the IGE for the project, PBS writes that the IGE was "well-documented and supported by analyses, estimates, and validations that ensured its accuracy and reliability." In support of its position, PBS Region 2 notes that it provided our office with the following documents it used to develop the IGE:

- RSMeans construction cost data;
- Third-party estimate prepared by a cost estimator; and
- Market data from recent proposals and cost estimates at land ports of entry. As noted in our report, the proposals were developed by the subcontractor that performed the paving work.

PBS Region 2 management provided these documents after our exit conference. As provided in the report, we could find no evidence that PBS Region 2 used these documents to develop the IGE. We note that during our audit, we interviewed the PBS Region 2 project manager who developed the IGE. We specifically asked the project

manager: (1) to explain how they developed the IGE, and (2) what supporting data was relied upon. The project manager did not provide or otherwise discuss any of the above listed documents.

We also note here that had PBS in fact used the subcontractor's estimate, PBS would have violated its own guidance on the preparation of IGEs. Specifically, PBS P120, *Public Buildings Service Cost and Schedule Management Policy Requirements*, provides that:

An Independent Government Estimate is defined as an unbiased cost estimate based upon the specifications and *without* the influence of a potential contractor's marketing efforts or input. (emphasis added)

With respect to PBS's assertion that pricing was determined to be fair and reasonable because it relied on MAS pricing, we disagree. The construction services that PBS Region 2 acquired under the O&M BPA are not priced under the contractor's facilities maintenance and management MAS contract. Specifically, paving roadways is not a task included in the contractor's MAS contract. Neither are the labor disciplines used to perform this type of work, including field engineer, paving superintendent, and paving foreman. Therefore, the contracting officer should have made a price reasonableness determination for the IJA paving project task order.

As noted in our report, the documentation in the contract file showed that the PBS Region 2 project manager prepared the IGE, performed the technical evaluation, and developed the fair and reasonable price determination. However, we found no evidence that the PBS Region 2 contracting officer documented and supported that the \$5.3 million price for the awarded paving project task order was fair and reasonable.

For the reasons described above, we reaffirm our finding.

- **Finding 3 – PBS Region 2 did not perform required procurement steps because it improperly awarded the paving project using a task order placed against an operations and maintenance services blanket purchase agreement.**

PBS partially disagreed with *Finding 3*. PBS wrote that it "followed the procurement procedures based on the specific type of procurement and contract type" used for the project—namely, a task order placed against an O&M BPA. However, as PBS notes, this finding flows from our finding that PBS improperly awarded the paving project using a task order placed against an O&M BPA. Because of this, PBS did not perform the required procurement steps necessary for this large-scale, complex paving project. Therefore, we reaffirm our finding.

- **Finding 4 – PBS Region 2 did not ensure full compliance with GSA’s environmentally preferable asphalt standard and provided inaccurate information to the public by claiming that all six LPOEs met this standard.**

PBS disagreed with *Finding 4*. PBS contends that the Fort Covington LPOE did not have to comply with the environmentally preferable asphalt standard. We agree. However, PBS’s press release claimed that all six paving projects—including Fort Covington—met GSA’s new environmentally preferable asphalt standard. Fort Covington did not meet the standard because it was exempt. Therefore, PBS provided inaccurate information to the public.

PBS also argues that “all the work performed at the other five LPOEs complied with the environmentally preferable asphalt standards used for this procurement.” However, as shown in *Finding 4*, PBS did not ensure that the paving projects at the Chateaugay and Mooers LPOEs met GSA’s environmentally preferable asphalt standard.

For the reasons described above, we reaffirm our finding.

- **Finding 5 – PBS Region 2 did not comply with or enforce security requirements governing the use of drones, resulting in potential safety and security risks.**

PBS partially disagreed with *Finding 5*. Specifically, PBS disagrees with our finding that it inappropriately allowed the use of two drones manufactured by a Chinese Company that the U.S. Department of Defense identified as a national security threat. PBS contends that the contract incorporated the appropriate FAR clause related to banned telecommunications and video surveillance services or equipment. PBS also contends that the drones were not banned until 2 months after they were used on site.

As described in *Finding 5*, the Chinese Company and its drones had been identified as a national security threat *prior to* the task order award. GSA bears primary responsibility for enforcing restrictions on the procurement and use of foreign-made drones. Nonetheless, PBS did not take any steps to determine if the drones were a security threat. Therefore, we reaffirm our finding.

- **Finding 6 – PBS Region 2 created a small business “pass-through” environment and did not ensure compliance with small business subcontracting limitations.**

PBS partially disagreed with *Finding 6*. Consistent with its previous responses, PBS maintains that the paving project was within the scope of the O&M BPA. We disagree for the reasons previously discussed.

PBS also contends that it determined, based on a review of the contractor’s proposal, that the award “would be in compliance” with FAR limitations on subcontracting. However, the FAR limitation on subcontracting is based on the actual amounts paid by

the small business prime contractor. As shown in our report, the contracting officer did not provide effective oversight of the contract to ensure that payments to the subcontractor complied with the FAR limitations. In fact, the contracting officer did not obtain the subcontractor payment information until we requested it during our audit—after the paving project was completed. Therefore, we reaffirm our finding.

- **Finding 7 – PBS Region 2 did not adequately enforce security requirements for construction personnel.**

PBS partially disagreed with *Finding 7*. In its response, PBS Region 2 stated that “in accordance with policy, security clearances are not required for contract personnel who did not require access to the buildings or the GSA information technology network.” However, according to the PBS security requirements in the statement of work, the O&M contractor and subcontractor employees were required to undergo background security checks. As described in our report, we found that PBS was unaware of the actual construction personnel working at the LPOEs and whether they received a proper background check. Therefore, we reaffirm our finding.

- **Finding 9 – PBS Region 2 overpaid the Construction Manager as Advisor contractor and paid for services that were not performed.**

PBS disagreed with *Finding 9*. Addressing our subfinding that PBS awarded the contract for CMA services at inflated pricing, PBS asserts that it used a reasonable approach, based on past experience with similar contracts, to provide the required services with an appropriate level of staffing. PBS states that it considered the proposed staffing and associated level of effort appropriate to complete the requirements of the contract. PBS also states that when compared to the estimate, the proposal’s price was [REDACTED] lower than the IGE. However, as described in our report, PBS did not update the original IGE to reflect the change in the CMA inspector’s on-site hours. Had PBS done so, we estimate that the IGE would have decreased to approximately \$78,424.

Addressing our subfinding that PBS paid for CMA services that were not received, PBS contends that it “verified that all contractually mandated services at the contractually agreed upon service levels were received.” PBS also states that after the contract was completed, it reconciled travel costs the contractor did not use, resulting in a credit of \$2,546.87 to the government. Notwithstanding this credit, our audit found that the CMA charged PBS \$17,000 for inspection services that were not performed.

For the reasons described above, we reaffirm our finding.

- **Finding 10 – PBS Region 2 violated the FAR, GSAM, and GSA policy while administering the paving project task order.**

PBS partially disagreed with *Finding 10*. Although agreeing that “components of its contract file documentation were deficient,” PBS states that it disagrees with the “overarching [finding] statement made here.” Our finding provides detailed instances of FAR, GSAM, and GSA policy violations. Therefore, we reaffirm our finding.

In sum, we reaffirm our report findings and conclusions.

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
Yajaira Torres	Audit Manager
Michele Goldhirsch	Auditor-In-Charge

Appendix A – Objective, Scope, and Methodology

Objective

We performed this audit as part of the GSA OIG’s ongoing oversight of projects funded by the IIJA. Our audit objective was to determine whether PBS Region 2 planned, awarded, administered, and closed out an IIJA paving project task order for six LPOEs at New York State’s northern border in accordance with the FAR, GSAM, and other applicable policies.

Scope and Methodology

As part of our ongoing monitoring assignment assessing GSA’s use of IIJA funding, we selected Task Order Number 47PC0822F0003 for review. Using IIJA funding, PBS Region 2 awarded the task order on April 14, 2022, for just over \$5.3 million. The task order was awarded for professional construction services for the repair of pavement at six LPOEs at New York State’s northern border. By the time this paving project was complete, the task order was modified two times, and another task order was awarded, for a project total value of \$5.6 million.

To accomplish our objective, we:

- Reviewed the FAR, GSAM, and PBS memorandums and bulletins, including: (1) PBS Procurement Instructional Bulletin 18-02, *PBS Contract File Content and Organization*; (2) PBS Procurement Instructional Bulletin 10-05, Amendment 02, *Public Buildings Service (PBS) Construction Contract Templates*; and (3) PBS Procurement Instructional Bulletin 21-05, *PBS COR’s Policy 21-05*, to gain an understanding of PBS’s responsibilities in following the regulatory criteria;
- Evaluated PBS Region 2’s award and administration of the selected task order;
- Reviewed GSA’s new national standards for low embodied carbon concrete and environmentally preferable asphalt;
- Reviewed NYSDOT’s specifications on RAP;
- Researched background information on the IIJA, also known as the Bipartisan Infrastructure Law;
- Reviewed federal regulations and PBS’s policy relating to drones, including: (1) Executive Order 13981, *Protecting the United States From Certain Unmanned Aircraft Systems*; (2) FAR 52.204-25, *Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment*; (3) GSAM 537.7003(b), *GSA-funded acquisitions that use UAS*; (4) GSA’s IT Security Procedural Guide: *Drones/Unmanned Aircraft Systems (UAS) Security* (CIO-IT Security 20-104, Revision 1); (5) PBS’s memorandum to its Assistant and Regional Commissioners, *Prohibition on Acquisition of Certain Drones and Drone Services* (December 6, 2019); and (6) 14 C.F.R. 107, *Small Unmanned Aircraft Systems*;
- Reviewed the U.S. Government Accountability Office’s *Standards for Internal Control in the Federal Government* (GAO-14-704G);

- Reviewed the GSA *Ordering Guide for Construction-Related Items under the Multiple Award Schedule*;
- Reviewed prior GSA OIG audit reports that were significant to the audit objective;
- Reviewed the EASi contract file for the IJJA paving project task order;
- Reviewed the contract file for the O&M BPA to gain an understanding of the O&M BPA requirements and limitations for construction work;
- Reviewed the solicitation, IGE, and the contractor's proposal for the CMA contractor's services procured for the paving project task order;
- Communicated with the contracting officer, COR, and project manager by email to obtain missing contract documentation;
- Reviewed IJJA paving project task order documents included in the Project Management Information System (Kahua);
- Compared the daily progress reports to the daily sign-in sheets and certified payroll records to determine the completeness of certified payroll records provided;
- Compared the list of construction personnel submitted for background checks to the sign-in sheets and certified payroll records to determine contract compliance with security requirements;
- Reviewed federal regulations relating to competition in contracting, small business subcontracting limitations, labor standards, construction warranties, and construction performance and payment bonds;
- Reviewed the FPDS-NG task order data for accuracy; and
- Interviewed members of the PBS contracting team, including the PBS Region 2 supervising branch chief, contracting officer, COR, and project manager, to understand the contract administration duties performed and identify potential causes of the audit findings.

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 findings include 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 December 2022 and July 2023 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B – Narrative Examples of Major Construction Work

This appendix provides additional information that shows the paving project at the six LPOEs was not “routine and non-complex in nature” and included major construction of roads and parking lots. The paving project exceeded the scope of the contractor’s facilities maintenance and management MAS contract and did not meet the requirements for construction acquisition under an MAS contract specified in FAR Part 12, *Acquisition of Commercial Products and Commercial Services*.

As described below and as presented with photographs in **Appendix C**, the paving project did not meet the definition of “routine and non-complex in nature, such as routine painting or carpeting, simple hanging of drywall, basic electrical or plumbing work, landscaping, and similar non-complex services.”³⁵

- PBS Region 2 had to procure the services of two CMA inspectors to oversee and manage the major construction work at the six LPOEs.
- The paving project required extensive asphalt milling (10,000 tons), deep excavation in some areas, and the addition of four speed bumps.
- The contractor had to establish a construction staging area and execute a multi-day project mobilization plan to perform this major construction work.
- At least seven subcontractors were involved to perform the construction work with crews that included the following disciplines: (1) Field Engineer, (2) Paving Superintendent, (3) Paving Foreman, (4) Paver Operators, (5) Roller Operators, (6) Laborers, (7) Flaggers, and (8) Field Technician to perform daily pavement density testing and temperature checks.
- The paving project required the following heavy construction equipment: (1) excavator, (2) skid steers with milling heads and sweeper attachments, (3) 10-wheel dump truck, (4) small roller, (5) skid steers with broom and bucket, (6) water truck, (7) tack coat truck, (8) milling machine, (9) pickup trucks with sealcoat trailers, (10) sweeper truck, (11) contract haulers (5 large dumps with drivers), (12) excavator with jackhammer, (13) stake rack truck, (14) trailer, (15) box truck, (16) paint buggies, and (17) concrete traffic barriers.
- The paving project required the contractor to submit a construction schedule, weather protection plan, a schedule of values, and provide construction signage for all six LPOEs.

³⁵ O&M BPA contract.

PBS Region 2 required the lettering, graphic style, and format of the construction signs be compatible with the architectural character of the LPOE building.³⁶

- The contractor was required to submit a safety plan and an accident prevention plan to PBS Region 2 and provide personal protective equipment for all employees and site visitors, in accordance with Occupational Safety and Health Administration standards.
- The paving project required the contractor to have extensive knowledge of NYSDOT standard specifications. Materials used on the paving project, such as asphalt (over 14,000 tons), tack coat, pavement marking, and joint sealant were required to be in accordance with NYSDOT standard specifications. In addition, all asphalt testing (compaction, temperature, density, and loose mix samples) was required to comply with NYSDOT standard specifications.
- High-level communication and coordination were required to complete the paving project. The statement of work provided that the contractor coordinate with various entities, including the Canada Border Services Agency and New York State, to minimize any impact to traffic flow. In addition, daily conference calls and weekly meetings were held among the contractors and project management team to discuss the construction project.
- The contractor was required to reroute and maintain traffic flow, coordinate lane closures, control traffic speed, and provide traffic protection during the project. In addition, the construction subcontractor's *Site Specific Safety Package* stated that the work areas are heavily traveled roadways, and all flaggers shall be adequately trained in flagging operations by recognized training programs. All employees were to adhere to Occupational Safety and Health Administration Standard 1926, *Safety and Health Regulations for Construction*.
- The paving project workers were paid based on a Heavy and Highway Construction Projects wage determination.
- The statement of work for the paving project established a Construction Control Representative for the assistance of all required lane closures and work affecting any vehicle or pedestrian traffic throughout the project.

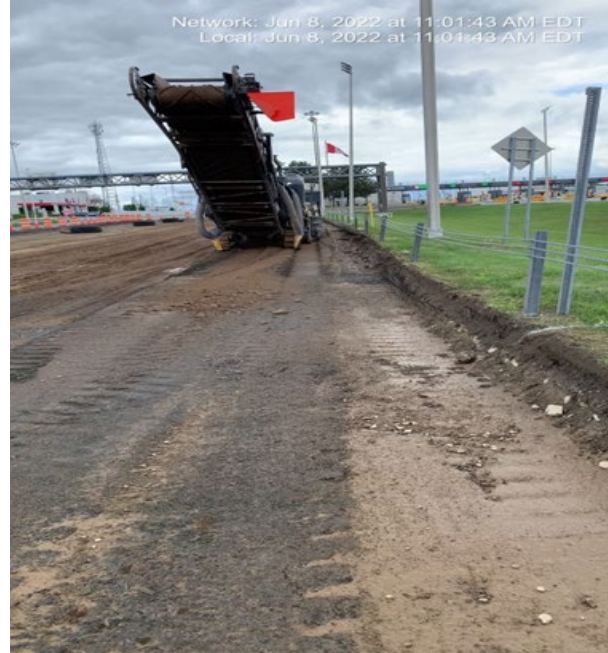
³⁶ The statement of work stated the signage had to be placed on site prior to mobilization and commencement of work. However, the signage was not installed at the six LPOEs until June 20, 2022—over a month after mobilization.

Appendix C – Photographic Examples of Major Construction Work³⁷

The photographs below show the extent of the construction work performed at the six LPOEs.



Overton Area 3A Excavating Wet Subbase 06/06/2022.



Champlain Area 1B Milled Surface Showing Wet Subbase Conditions 06/08/2022.



Overton Area Preparing Connection for Underdrain to Drop Inlet 06/07/2022.



Photo by the CMA contractor uploaded in Kahua. No caption was included.

³⁷ Photographs taken by the CMA during the period of June 1 through July 13, 2022.



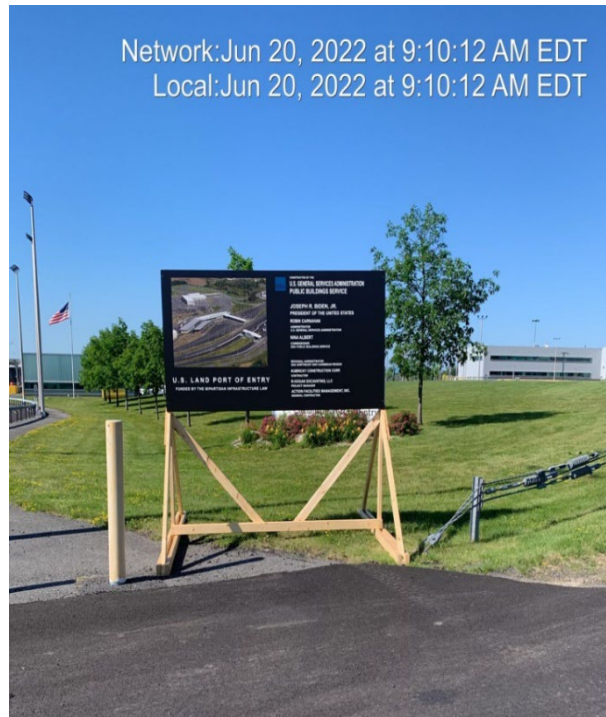
*Photo by the CMA contractor uploaded in Kahua.
No caption was included.*



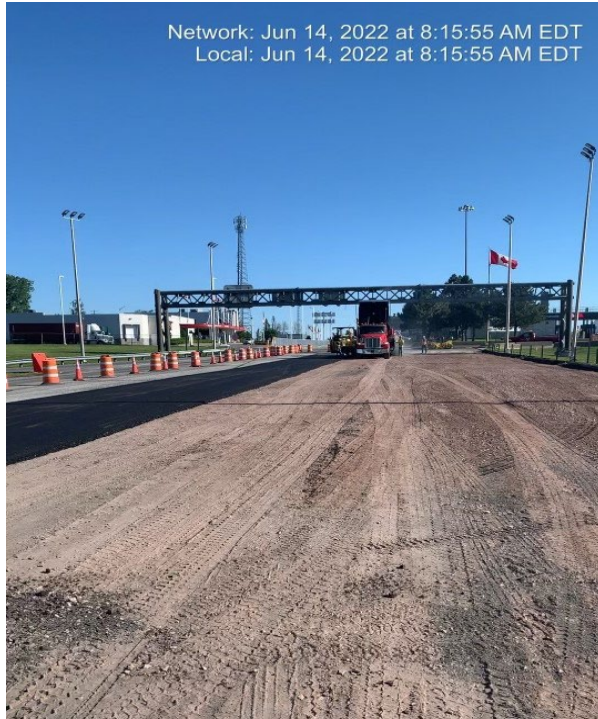
Champlain Area 1B Milling Operation 06/07/2022.



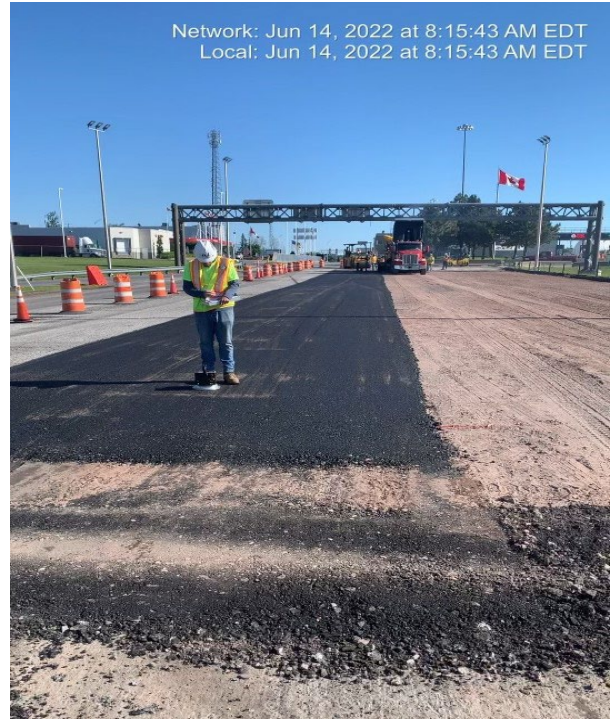
Massena Area 1 Milling Operation 06/17/2022.



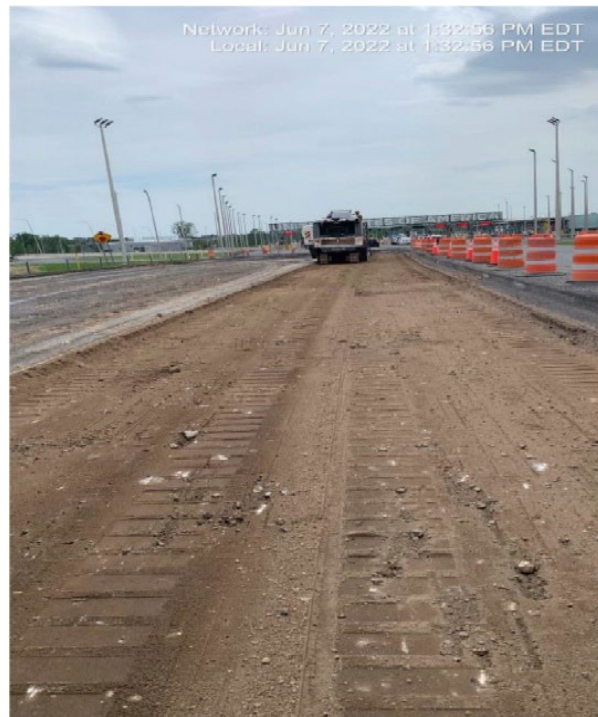
Champlain IJA Sign (southbound) 06/20/2022.



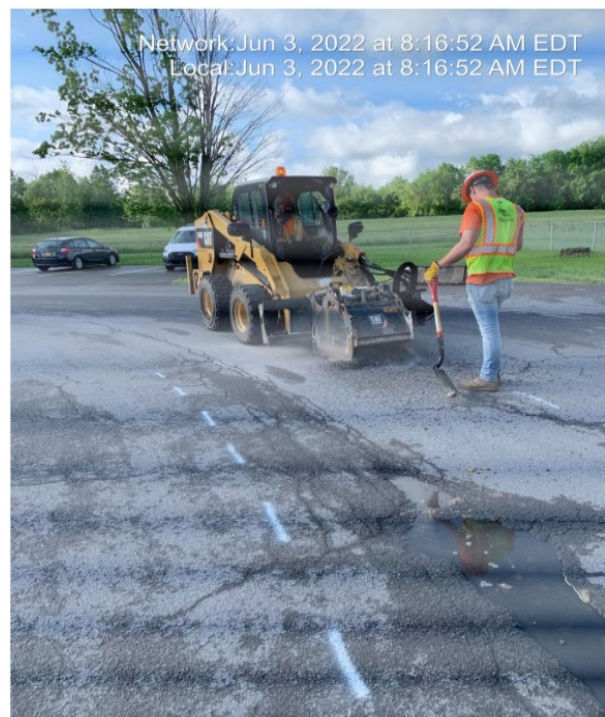
*Champlain Area 1B Base Course Paving Easterly Lanes
06/14/2022.*



*Champlain Area 1B Density Testing Base Course
Easterly Lanes 06/14/2022.*



*Champlain Area 1B Milling Operation
Subbase 06/07/2022.*



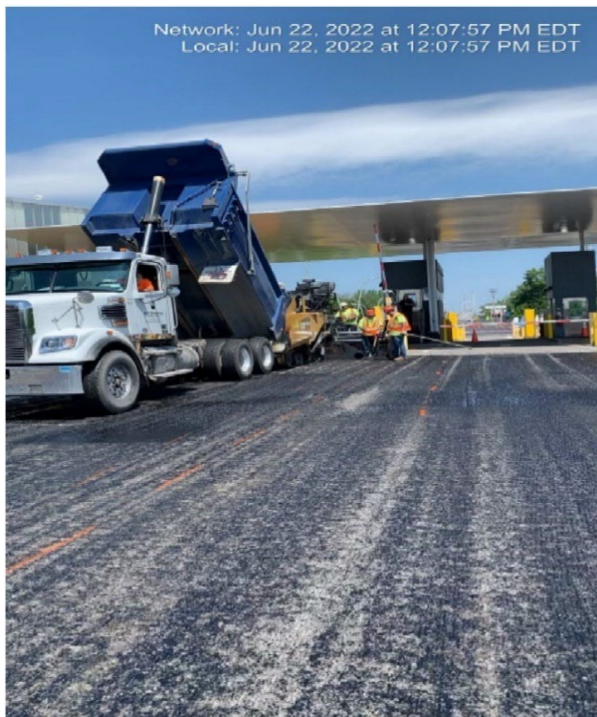
Chateaugay Area 3B Milling Operation 06/03/2022.



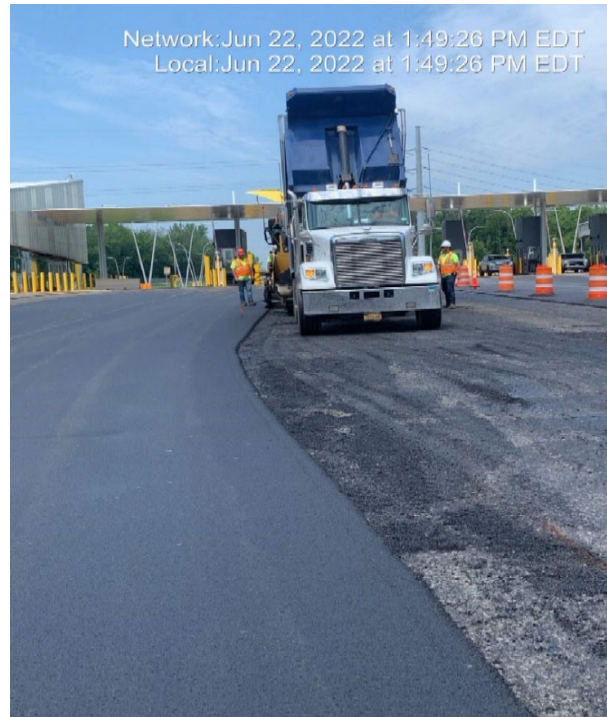
Champlain Area 1B Milling Machine 06/07/2022.



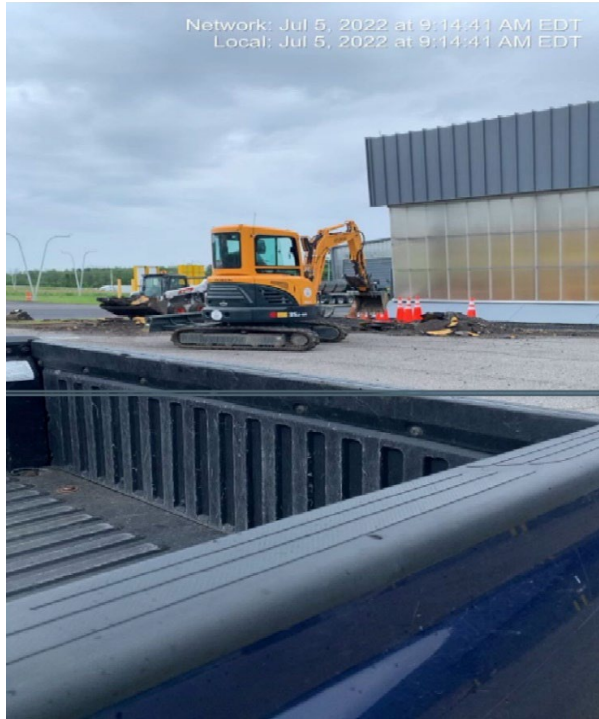
Overton Area 3A Geotextile Fabric and Stone Placement 06/07/2022.



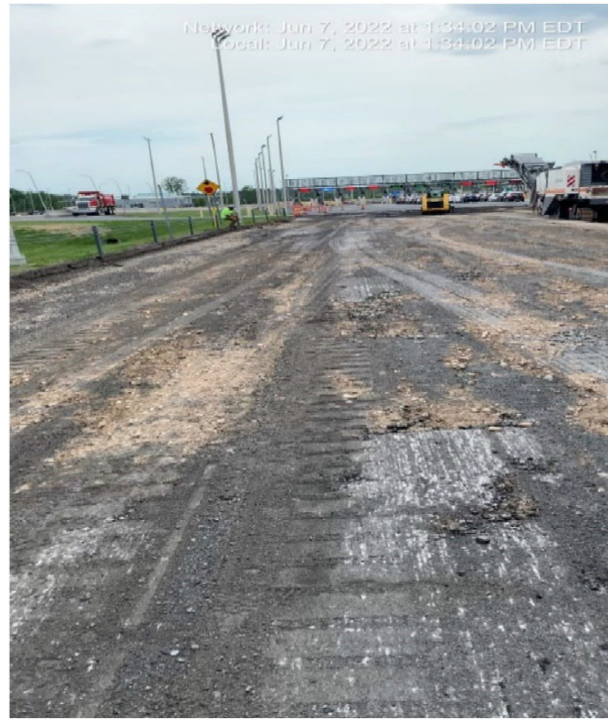
Massena Area 1 Tack Coat 06/22/2022.



Massena Area 1 Paving Operation 06/22/2022.



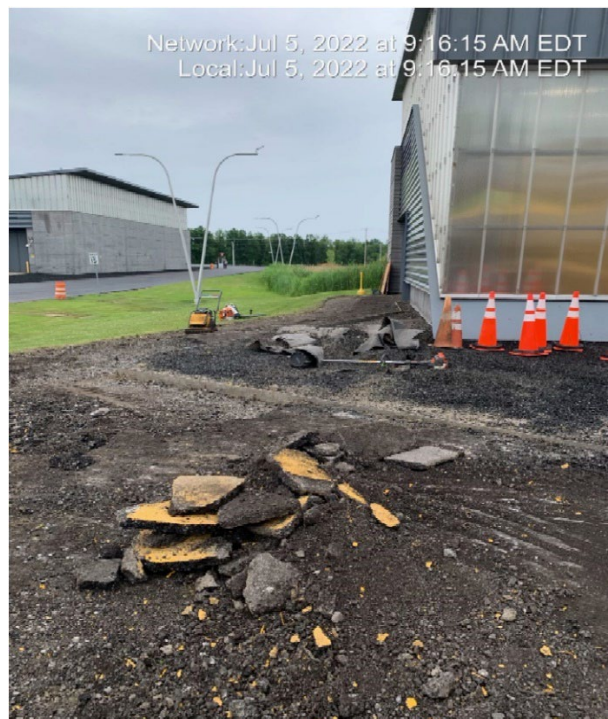
Massena Area 8 Excavation Operation 07/05/2022.



Champlain Area 1B Milling Surface 06/07/2022.



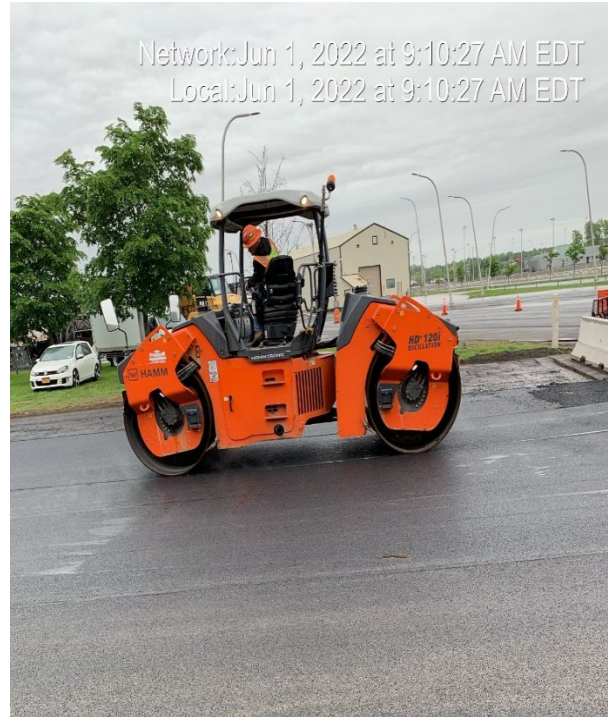
Champlain Area 6 Rolling Operation 06/06/2022.



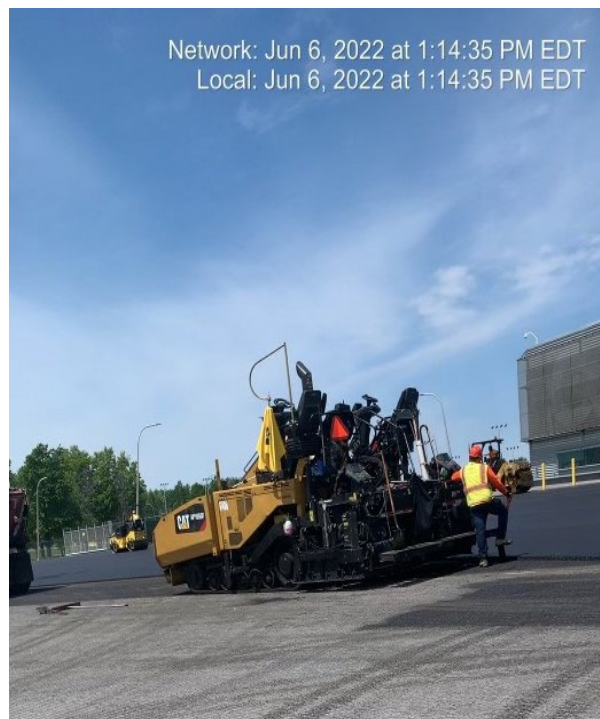
Massena Areas 8 and 13 Excavated for Paving 07/05/2022.



Paving at Champlain 06/01/2022.



Paving at Champlain 06/01/2022.



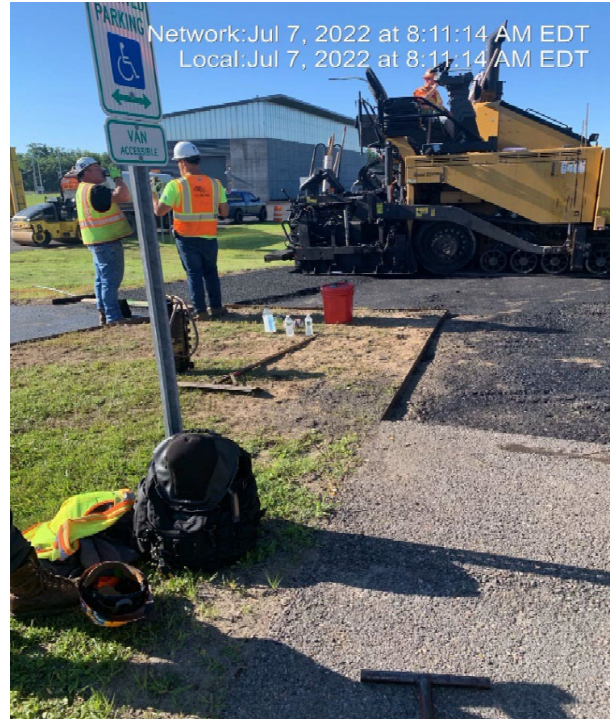
Champlain Area 6 Paving Operation 06/06/2022.



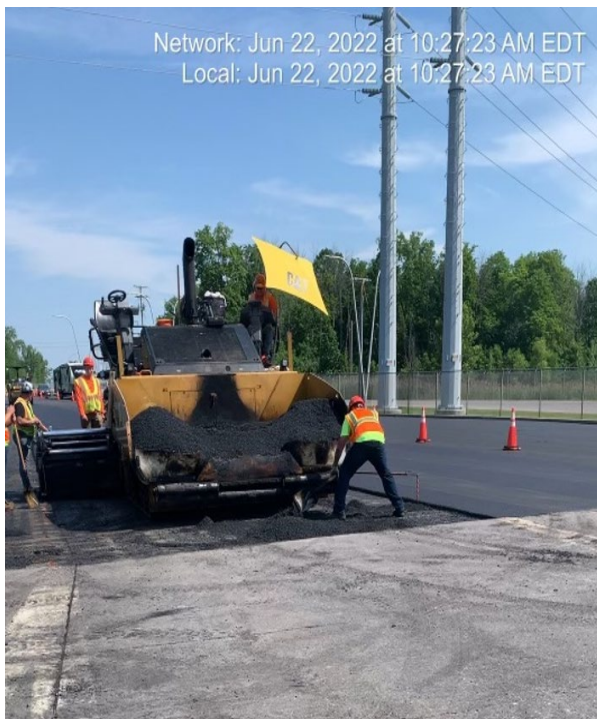
Overton Area 3A Placing Subbase 06/08/2022.



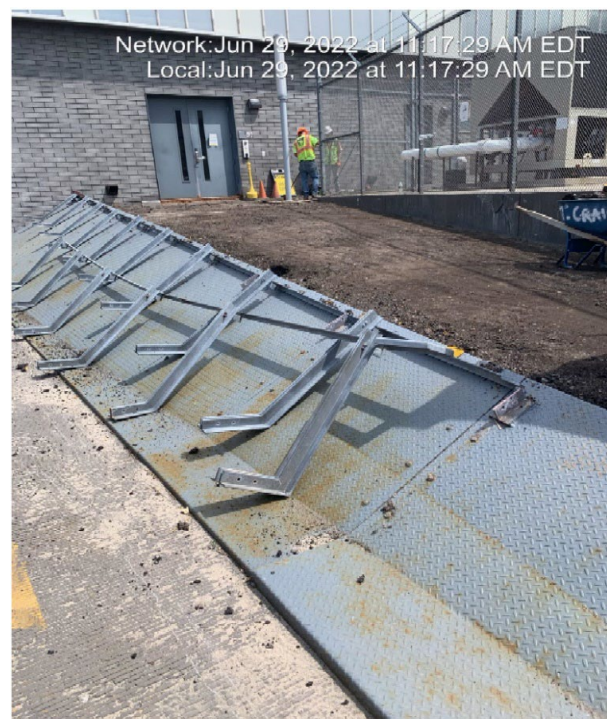
Overton Area 3B Tack Coat 06/08/2022.



Massena Areas 8 and 13 Paving Operation 07/07/2022.



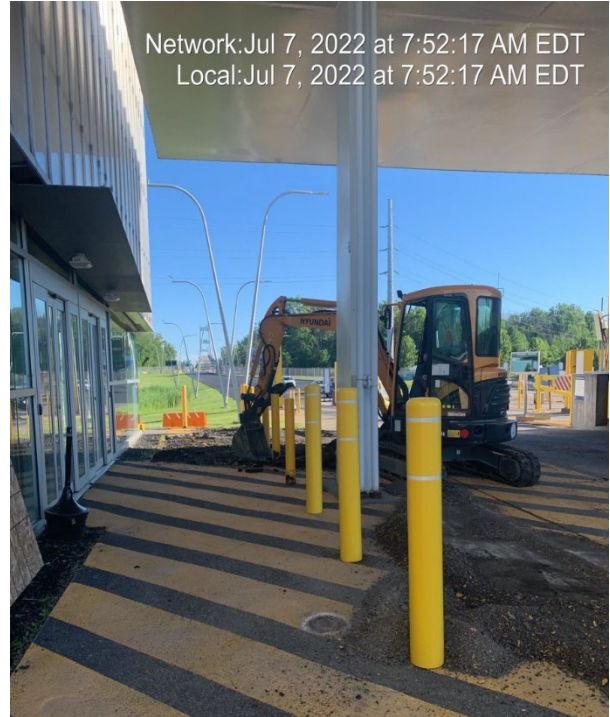
Massena Area 7 Paving Operation 06/22/2022.



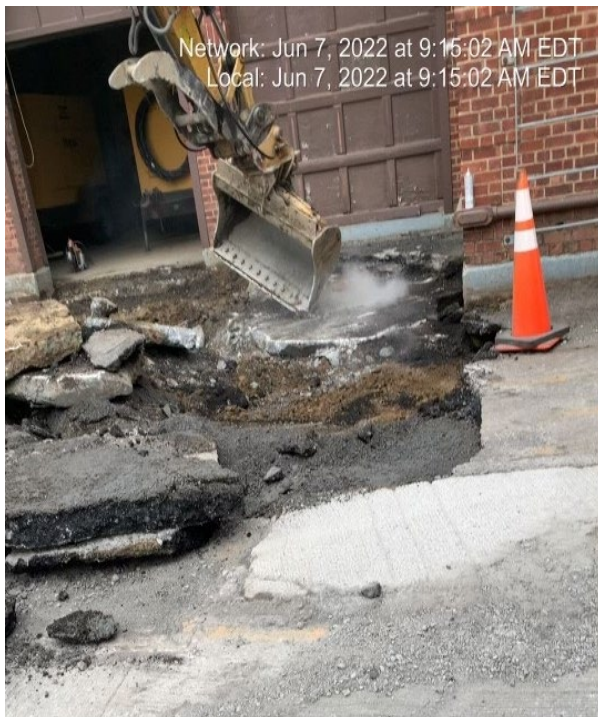
Massena Area 9 Subbase for New Asphalt Walkway South of Main Building 06/29/2022.



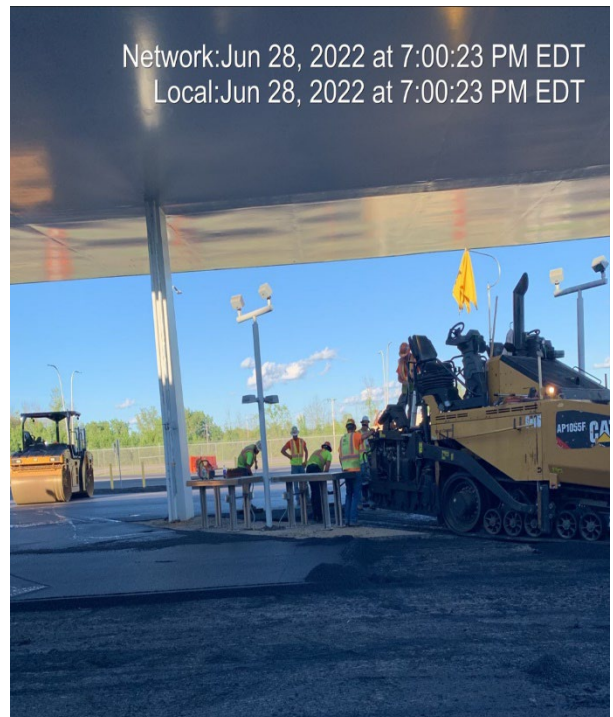
Overton Area 3A Underdrain Connection to Drop Inlet 06/07/2022.



*Photo by the CMA contractor uploaded in Kahua.
No caption was included.*



*Photo by the CMA contractor uploaded in Kahua.
No caption was included.*



Massena Area 1 Paving Operation 06/28/2022.

Appendix D – GSA Comments

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Public Buildings Service

July 19, 2024

MEMORANDUM FOR ARTHUR F. MAISANO
REGIONAL INSPECTOR GENERAL FOR AUDITING
NORTHEAST AND CARIBBEAN REGION
OFFICE OF INSPECTOR GENERAL (JA-2)

THROUGH: ELLIOT DOOMES *Elliot Doomes*
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

FROM: MICHAEL GELBER *Michael Gelber*
REGIONAL COMMISSIONER
NORTHEAST AND CARIBBEAN REGION
PUBLIC BUILDINGS SERVICE (2P)

SUBJECT: Regional Response to the OIG Draft Report,
*Oversight of PBS's Projects Funded by the Infrastructure
Investment and Jobs Act: Audit of Paving Project at
New York State's Northern Border* (Report Number A220036-3)

The PBS Northeast and Caribbean Region thanks the GSA Office of Inspector General for its draft audit report entitled *Oversight of PBS's Projects Funded by the Infrastructure Investment and Jobs Act: Audit of Paving Project at New York State's Northern Border*, dated June 13, 2024, and appreciates the opportunity to comment on this document.

PBS concurs with the eleven recommendations, many of which highlight practices that PBS already performs, and will develop the appropriate training protocols to reinforce these policies with its acquisition and project management personnel.

PBS partially agrees with the Findings, and offers the additional technical comments included on the attachment for your office's consideration.

If you have any questions, please contact me at michael.gelber@gsa.gov.

Attachment

U.S. General Services Administration
1800 F Street NW
Washington, DC 20405
www.gsa.gov

U.S. General Services Administration
Technical Comments on OIG Draft Report
*Oversight of PBS's Projects Funded by the Infrastructure
Investment and Jobs Act: Audit of Paving Project at
New York State's Northern Border (A220036-3)*

Finding 1 – PBS Region 2 violated competition requirements by improperly awarding the paving project using a task order placed against an operations and maintenance services blanket purchase agreement;

Limitations on Construction Services - The paving project exceeded the scope of the contractor's facilities maintenance and management MAS contract and did not meet FAR 12, Acquisition of Commercial Products and Commercial Services, requirements for construction acquisition under an MAS contract.

Construction Services that Exceeded Limitations - The IIJA-funded paving project for the six LPOEs involved major construction of roads and parking lots detailed on the next page. These construction services exceeded the "routine and non-complex" types of construction services appropriate for MAS contracts.

PBS disagrees with this Finding. PBS reasonably determined that the paving project was non-complex in nature and properly awarded the paving project. PBS procured the Single Award Blanket Purchase Agreement (BPA) for operations and maintenance (O&M) services in a competitive acquisition and awarded this contract on January 25, 2021. A BPA Call for pavement resurfacing was placed against the established BPA on April 24, 2022.

PBS typically considers paving, which was included in the Solicitation Statement of Work (SOW) (see C.6.13.9 *Asphalt and Concrete* below), as non-complex in nature. A clear demarcation between simple and complex construction projects does not exist. Therefore, PBS must use its expertise to make that determination on a case by case basis.

A bulleted list of discrete construction activities (OIG Draft Report, p.6) does not establish complexity. The activities listed are proof of sound logistical planning required for any successful project, whether complex or routine. Each activity listed was identified by PBS prior to procurement and incorporated in the paving SOW. The SOW demonstrates that PBS applied its construction expertise and, after thoughtful consideration, reasonably determined that the project was not complex.

PBS included pavement resurfacing in the SOW when the underlying contract was solicited in 2020. This procurement was not a new construction acquisition, nor was the

pavement resurfacing scope considered a non-routine alteration and repair services. PBS anticipated the need for this work prior to enactment of the Infrastructure Investment and Jobs Act in November 2021. The SOW provides:

C.6.13.9 Asphalt and Concrete

The LPOEs are the gateway to the United States of America and the first impression is the drive in. The LPOEs are located off of state and county roads as well as on Interstate Highways. Repairs to asphalt pavement, concrete curbs, and sidewalks are required where a specific location is damaged, including the repair and filling of potholes to eliminate any safety hazards and disruptions to operations. The Contractor shall, within 30 days of the start of this contract, submit a plan to the COR for annual pavement repairs and resurfacing of all asphalt surfaces (parking lots, roadways, etc.) at 20% annually for Overton's Corner, Rouses Point, Mooers, Chateaugay, Trout River, and Fort Covington. At Champlain and Massena the Contractor shall develop an incremental plan to repair and resurface deteriorated or damaged pavement as required annually. Major resurfacing shall be considered a project that is fully reimbursable. Pothole repairs are not reimbursable. Contractor shall also provide asphalt crack sealing (re-sealing of joints and cracks) at all the LPOEs during the first two years of this contract.

Unlike other GSA Northeast and Caribbean Region facilities which tend to be located in or near major metropolitan areas, most of the Region's LPOEs are in remote parts of Upstate New York. The roadways at these LPOEs are integral components of the Federal facility, are not subject to State, county or municipal ownership, and are not included in State, county or municipal road maintenance programs. As such PBS integrated the maintenance of these roadways within the fabric of the PBS O&M contract.

The scope of the O&M contract included all architectural and structural maintenance and repairs or replacements to the building interior and exterior *extending to the property line*. As defined in the solicitation and the contract:

C.2.7 Architectural and Structural

"Architectural and structural" systems include all building structure, envelope, building improvements and finishes, and site improvements (e.g., *paving* [emphasis added], walkways and asphalt) to the property line.

MAS Contracts. The FAR and GSAM provide clear limitations on the types of construction services that can be provided under an MAS contract. The underlying MAS contract also incorporates these limitations.

The underlying Multiple Award Schedule allows for non-complex ancillary repair and alteration services ordered in conjunction with the delivery, or installation of products or services under Miscellaneous - Complementary Special Item Numbers, specifically Ancillary Repair and Alterations.

FAR 12 defines MAS contracts as commercial contracts. According to GSAM 512.203, procedures for solicitation, evaluation, and award, "FAR 12, as currently promulgated, should rarely be used for new construction acquisitions or non-routine alteration and repair services."

O&M BPA. The O&M BPA solicitation specifically established that only ancillary repair and alterations type construction services were permitted to be acquired under the contractor's facilities maintenance and management MAS contract.

The General Services Acquisition Manual (GSAM 512.203) includes items for the Contracting Officer to consider when contracting for construction using the Federal Supply Schedule contracts. In addition to the section that the draft report references, the manual continues to state that:

The Federal Acquisition Regulations (FAR Part 12) and GSAM Part 512 may be used in limited circumstances involving construction contracting, primarily for routine alteration and repair services as well as for the acquisition of commercial construction materials and associated ancillary services. It may be appropriate to use FAR Part 12 and GSAM Part 512 for routine projects such as painting or carpeting, simple hanging of drywall, everyday electrical or plumbing work, and similar non-complex services, as well as for purchases of commercial construction material and associated ancillary services.

PBS considered the paving project set forth in the SOW to be consistent with the full reading of GSAM Part 512.203, as non-complex in nature. The BPA included the paving requirement, identified several years prior to the enactment of the Infrastructure Investment and Jobs Act, as a non-complex task.

Finding 2 – PBS Region 2 awarded the paving project task order using an unsupported independent government estimate and an invalid price reasonableness determination.

The Independent Government Estimate (IGE) that PBS Region 2 used to justify pricing was unsupported. PBS Region 2's price reasonableness determination for the paving project task order award was not valid.

PBS Region 2's IGE Was Unsupported.

PBS disagrees with this Finding. The Independent Government Estimate is well-documented and supported by analyses, estimates and validations, ensuring its accuracy and reliability. However, PBS does agree that all supporting documents were not uploaded to the GSA contracting system of record.

According to PBS P120 guidelines, the focus of the Independent Government Estimate in the planning phase of a project is to establish an estimate appropriate for project approval and budgeting. In compliance with this guidance, PBS developed a well-defined scope and used quantity take-offs, unit costs (inclusive of labor, materials and equipment), knowledge of local market conditions, and applied industry standard markups in development of the estimate.

The following documentation was used to develop the Independent Government Estimate and has been provided to your office previously.

- RS Means Construction Cost Data, the source data for the GSA National Cost Management Tool
- Third Party Estimate developed by O'Connor Construction Management Inc.
- Market data from recent proposals and cost estimates at land ports-of-entry

PBS will take additional steps to ensure that all necessary documentation is properly recorded in GSA systems of record to maintain compliance and facilitate reviews of future contract files. Specific efforts include the development of a Contracting Officer's Representative File Review Team led by the regional Acquisition Management Division and includes representation from the appropriate project management team(s).

PBS Region 2's Price Reasonableness Determination Was Invalid

As stated in section 8.404(d) *Use of Federal Supply Schedules* -

Pricing. Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (e.g., installation, maintenance, and repair). GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under Schedule contracts to be fair and reasonable. *Therefore, ordering activities are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by 8.405-2(d).* [emphasis added] By placing an order against a Schedule contract using the procedures in 8.405, the ordering activity has concluded that the order represents the best value (as defined in FAR Part 2.101) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the government's needs. Although GSA has

already negotiated fair and reasonable pricing, ordering activities may seek additional discounts before placing an order (see 8.405-4).

PBS determined the proposal submitted by the selected contractor to be fair and reasonable based on its inclusion in the Schedule contract. The additional step required by 8.404 is the price evaluation. PBS performed the price evaluation.

Finding 3 – PBS Region 2 did not perform required procurement steps because it improperly awarded the paving project using a task order placed against an operations and maintenance services blanket purchase agreement.

Finding 3 is inextricably linked to Finding 1, PBS's decision to award the paving projects using a Task Order placed against an O&M BPA established under a Multiple Award Schedule contract. Finding 3 lists deficiencies that flow from Finding 1.

As explained more fully in the response to Finding 1, PBS issued Contract 47PC0822F0003 as a BPA Call, from a BPA which was competitively awarded from a Multiple Award Schedule contract. PBS followed the procurement procedures based on that specific type of procurement and contract type. PBS understands its responsibilities for issuing a BPA Call; however, Finding 3 is based on the assumption that PBS should have issued a competitive procurement and compared the contract file to a competitive procurement. PBS agrees that the file contents for a competitive procurement would be significantly different from a file for a BPA Call.

PBS Region 2 Did Not Create an Acquisition Plan

The July 2020 solicitation anticipated the paving work, and when funding was available, PBS awarded this task to the competitively selected contractor. Per GSAM Part 507.104(c)(2) - "The resulting orders should be covered by and reference the same acquisition plan." PBS believes the original acquisition plan is sufficient.

PBS Region 2 Did Not Evaluate the O&M Contractor's Prior Experience and Past Performance to Ensure the Contractor Was Qualified to Perform the Paving Project

FAR Parts 5, 6, 13, 14, 15, 19 and 36 do not apply to schedule orders. PBS believes FAR Part 15.304 referenced in the draft audit report is not applicable.

Per FAR Part 8.405-2 Ordering procedures for services requiring a statement of work, the ordering activity must provide the Request for Quotation, which includes the statement of work and evaluation criteria (e.g., experience and past performance), to schedule contractors that offer services that will meet the agency's needs.

PBS considered the selected contractor's prior experience and past performance when awarding the BPA. PBS evaluated the selected contractor based on the overall total

solution for Facilities Management which includes asphalt and concrete paving. The prior experience of a contractor on a service contract is based on its overall demonstrated capability to perform similar services in comparable facilities. Separate capabilities evaluations for each distinct sub-service is not required, as a successful record of performance with similar facilities and services can provide a reliable indicator of future performance.

PBS Region 2 Did Not Obtain a Construction Warranty or Performance and Payment Bonds for Construction from the Contractor

PBS Region 2 did not obtain a construction warranty.

PBS agrees with this Finding and agrees to reinforce the need to obtain this documentation in the future.

PBS Region 2 did not obtain performance and payment bonds for construction

While PBS's Northeast and Caribbean Region did obtain payment and performance bonds, PBS agrees that these documents were received on the incorrect form and that the Task Order number was not added to the Contract Number box.

PBS Region 2 Did Not Ensure the Accuracy of Its Construction Task Order Information in FPDS-NG

PBS disagrees with this statement. Since PBS awarded this contract as a Multiple Award Schedule contract, the Construction Wage Rate Requirements field in the Federal Procurement Data System (FPDS) is not editable. This limitation is due to the functional capability of the FPDS system itself. PBS is unable to edit this field in FPDS for all BPAs or BPA Calls, even if the contract is 100% construction-related activities. This information is not provided by PBS, rather it is entered by the FAS Multiple Award Schedule Contracting Officer when awarding the initial schedule contract.

The fact that a data field is not editable does not mean that a paving BPA Call cannot be issued from the BPA. The limitation is created by the FPDS system and is not one over which PBS has any control.

Finding 4 – PBS Region 2 did not ensure full compliance with GSA's environmentally preferable asphalt standard and provided inaccurate information to the public by claiming that all six LPOEs met this standard.

PBS Region 2 Did Not Ensure Compliance with GSA's Environmentally Preferable Asphalt Standard for the Chateaugay and Mooers LPOEs.

PBS Region 2 Provided Inaccurate Information to the Public

PBS disagrees with this Finding. The scope of work for the Fort Covington site included sealing cracks in existing asphalt. It did not include the application of new asphalt to the facility's roadway. Therefore the crack sealant appropriate for the existing asphalt did not have to comply with the environmentally preferable asphalt standard. In addition, the work at Fort Covington LPOE accounted for 1.6% (\$86,411.27) of the total contract award cost.

All the work performed at the other five LPOEs complied with the environmentally preferable asphalt standards used for this procurement.

Finding 5 – PBS Region 2 did not comply with or enforce security requirements governing the use of drones, resulting in potential safety and security risks.

PBS Region 2 Inappropriately Allowed the Use of Two Drones Manufactured by a Chinese Company that the U.S. Department of Defense Identified as a Potential National Security Threat

PBS disagrees with this Finding. PBS included the appropriate FAR clause related to implementation of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019: FAR Clause 52.204-25 *Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment*.

At the time of its use, the specific drone was not banned from Federal Procurement under Section 889. PBS issued the BPA Solicitation on July 20, 2020. PBS awarded the BPA Call on April 24, 2022. The drone in question was used by a contractor on August 4, 2022. This specific drone was not banned under Section 889 until October 5, 2022, two months after its usage onsite.

PBS Region 2 Did Not Ensure that Drones and Drone Operators Complied with FAA Regulations

PBS agrees with this Finding.

Finding 6 – PBS Region 2 created a small business "pass-through" environment and did not ensure compliance with small business subcontracting limitations.

Small Business "Pass-Through" Environment.

Finding 6 is inextricably linked to Finding 1, PBS's decision to award the paving projects using a Task Order placed against an O&M BPA established under a Multiple Award Schedule contract. Finding 6 is accurate only to the extent that Finding 1 is correct.

For General Construction, the contractor shall not pay subcontractors more than 85% of the cost for contract performance, excluding the cost of materials, per FAR 52.219-14(e)(3) Limitations on Subcontracting

The following represents the breakdown of the award total excluding the cost of materials:

Base Award - \$5,322,620.32

Material = [REDACTED]

Excluding Material Cost = [REDACTED]

When verifying compliance with the Limitations for Subcontracting prior to award, PBS calculated that the selected contractor would be paid [REDACTED] out of the [REDACTED] (Excluding Material Cost), which amounts to 42.36%.

The subcontracted amount for this work is \$942,222.05, which amounts to 57.64%.

Based on the above, PBS deemed that the award would be in compliance with FAR 52.219-14(e)(3) Limitations on Subcontracting, where no more than 85% of the amount would be subcontracted out.

The Finding references the work performed to calculate the percentage, whereas the FAR clause focuses on the amounts actually paid.

Inadequate Oversight to Ensure Subcontracting Limitation Compliance

PBS agrees that it should have better maintained certified payroll records along with more detailed invoices. PBS agrees to ensure this work is done properly in the future.

In sum, PBS Region 2 created a small business "pass-through" environment when it improperly awarded the paving project task order for professional construction services that were outside the scope of the O&M contractor's MAS contract. PBS Region 2 also did not provide adequate oversight to ensure compliance with the small business subcontracting limitations.

PBS disagrees with this statement. PBS met the Limitations of Subcontracting per FAR Part 52.219-14 based on the calculations presented above. Additionally, PBS included the scope for paving in the SOW (Section C.6.13.9 Asphalt and Concrete).

Finding 7 – PBS Region 2 did not adequately enforce security requirements for construction personnel.

PBS partially agrees with this Finding and partially disagrees. In accordance with policy, security clearances are not required for contract personnel who did not require access to the buildings or the GSA information technology network.

At the request of a Federal agency stationed at the six ports, PBS required the contract personnel working at these sites to provide documentation for background review by that agency.

The contractor maintained a daily sign-in sheet at each project site. This list was not checked on a regular basis.

PBS will improve its process to confirm that only authorized personnel have access to GSA project sites.

Finding 8 – PBS Region 2 did not ensure contractor compliance with labor standards.

PBS agrees with this Finding. The required labor interviews did not occur and not all certified payroll records were reviewed prior to payment. PBS will augment its efforts to ensure contractor compliance with these labor standards in the future.

Finding 9 – PBS Region 2 overpaid the Construction Manager as Advisor contractor and paid for services that were not performed.

PBS Region 2 Awarded the Contract for CMa Services at Inflated Pricing

PBS disagrees with this Finding. PBS developed the cost estimate for the Construction Manager as Advisor services using a reasonable approach, based on past experience with similar contracts, to provide the required services with an appropriate level of staffing.

The selected Advisor utilized a similar staffing approach in developing its proposal; however, the breakdown of hours assigned to each position was different from the Independent Government Estimate.

PBS considered the proposed staffing, and associated level of effort, appropriate to complete the requirements of the contract.

PBS understood the proposal presented a different approach to the work but still considered the presented approach appropriate. When compared to the estimate, the proposal's price was [REDACTED] lower than the Independent Government Estimate.

PBS Region 2 Paid for CMa Services That Were Not Performed

PBS does not agree with this Finding. PBS verified that all contractually mandated services at the contractually agreed upon service levels were received. Upon completion of the contract, PBS reconciled costs for travel that was not undertaken by the contractor resulting in a credit of \$2,546.87 to the Government.

Finding 10 – PBS Region 2 violated the FAR, GSAM, and GSA policy while administering the paving project task order.

PBS disagrees with the overarching statement made here. PBS does agree that components of its contract file documentation were deficient (as noted above) and will augment its contract file documentation procedures accordingly.

Thank you for your consideration of the points raised above.

Please contact me with any questions regarding this response at michael.gelber@gsa.gov. Your staff may contact Lawrence Eng, Branch Chief, Services Branch, Acquisition Management Division, Northeast and Caribbean Region, Public Buildings Service, at lawrence.eng@gsa.gov.

Appendix E – Report Distribution

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