



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS: REAL PROPERTY LEASES



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JAN 30 2014

Memorandum

To: Thomas Thompson
Deputy Assistant Secretary of Management, Indian Affairs

From: *fn* Hannibal M. Ware *Chen M. Hsieh*
Eastern Region Manager

Subject: Inspection Report – Bureau of Indian Affairs Real Property Leases
Report No. ER-IS-BIA-0011-2013

The Office of Inspector General (OIG) conducted an inspection of 14 Bureau of Indian Affairs (BIA) real property leases to determine whether BIA followed applicable policies and guidelines (see Attachment 1). This inspection resulted from a referral to us from the U.S. General Services Administration's (GSA) Public Buildings Service (PBS). PBS found that BIA leased property without approval and exceeded approved square footage limits. GSA informed BIA that it could not exercise its delegation of authority until the Bureau submitted a corrective action plan approved by GSA.

Our inspection confirmed GSA's findings. We also determined that BIA approved \$32.7 million in lease agreements that exceeded GSA square footage and purchase approval limits. We found that BIA has submitted a corrective action plan for GSA approval to which GSA has not responded. No further action has been taken by BIA to regain its leasing authority. We provide three recommendations to help BIA resolve this issue by complying with GSA guidance, updating its own policies, and developing appropriate training.

Background

In 1996, GSA announced its "Can't Beat GSA Leasing"¹ program, which allowed Federal agencies to choose whether to lease property on their own using delegated authority from GSA² or to continue to use GSA to help them with their property needs. Published guidance for leasing without using GSA assistance includes—

¹ The Can't Beat GSA Leasing program was established to offer general-purpose delegation to agencies to streamline GSA's leasing operations. Under this program, GSA provided each agency a simple choice: either engage GSA to provide the most cost-effective and fastest service available or use the leasing authority to acquire space on its own.

² GSA's delegation of leasing authority lets an agency act "for" and "on behalf of" GSA to procure a lease. Oversight of these delegated agency activities remains with GSA to ensure the agency receiving the delegated authority procures a lease according to all laws, regulations, and executive orders governing lease procurement activities. When an agency seeks delegation of leasing authority, it must have the organizational structure to support a lease acquisition, as well as demonstrate ability to perform lease acquisitions under the terms and conditions set out in Federal Management Regulation Bulletin 2008-B1.

- Federal Management Regulation (FMR) Bulletin 2008-B1, published November 19, 2007, identifying square footage requirements for delegated leasing authority;
- Executive Order 13327, signed February 4, 2004, identifying the duties and responsibilities of senior real property officers; and
- BIA Manual Chapter 114H-3, providing BIA-specific guidance for implementing, supplementing, and deviating from GSA guidance when requesting authorization to use delegated authority.

Since October 2009, GSA has required agencies to use Del-eGate, GSA's online database that organizes all agency requests for preapproval to lease office space between 2,500 and 19,999 square feet, as established by FMR 2008-B1.

PBS' Office of Leasing reviewed BIA's compliance with the leasing program and provided us with its report, "Audit of Post Award Lease Files," dated August 2012. GSA's report identified many examples of BIA's lack of authority to lease, as well as leases exceeding the square footage limits authorized to agencies by GSA. As a result of its findings, GSA determined in August 2012 that no new BIA delegations of authority would be approved, thereby indicating that BIA would have to make significant improvements to regain its leasing authority.

Findings

We reviewed 14 BIA leases and found issues with all of them. These issues resulted from noncompliance with GSA guidelines, as well as insufficient BIA guidance and inadequate training.

Noncompliance With GSA Guidelines

During our inspection, we found that BIA did not comply either with the requirements set forth in FMR Bulletin 2008-B1 or with using the Del-eGate online database system. FMR Bulletin 2008-B1 states that—

- no agency can lease any property greater than 19,999 square feet;
- agencies must provide information supporting a request as well as an explanation of how the agency will lease either at or below GSA costs; and
- agency leasing personnel must use a warranted realty contracting officer.

GSA's delegation of authority grants Federal agencies permission to lease real property only after GSA has approved written requests that include the square footage to be leased. Violations of FMR Bulletin 2008-B1 and the online Del-eGate database occurred in six leases that we reviewed³ with an incurred cost of \$10,985,073 for 174,613 square feet. BIA did not comply with GSA guidelines for square footage, nor did it use the Del-eGate system as required to apply for approval of these leases.

³Leases involved were NBC-BIA-00-01, K00230DL12220, BIA-M25R14-DLk-0001, 2012-01, 2003k007, and one unnumbered lease.

We further determined that a BIA superintendent in Montana signed two lease agreements without having warranted contract authority, BIA Central Office approval, or GSA approval. BIA Central Office staff knew nothing about these leases, which therefore were not included in BIA's annual report of owned and leased property. Both leases were for a 5 year period and were governed by GSA guidance.

Other leases entered into by BIA were extended without GSA approval. Specifically, one lease, which expired in 2012, was extended twice without GSA approval and, at the time of this review, was being paid on a monthly basis as a "holdover" (defined as occupancy of a building without GSA approval but for which month-to-month lease payments still are being made).

We also reviewed eight leases that did not meet square footage guidance. Five of these were leased for areas greater than the square footage amounts approved at the time they were leased.⁴ The combined square footage for these five leases exceeded the GSA-approved amount by 96,049 square feet, resulting in the approximate expenditure of \$13.1 million more than BIA should have paid. The other three lease agreements disregarded the square foot maximum limit per building created in 2007 with the guidance established by FMR Bulletin 2008-B1 and, therefore, leased areas exceeding the 19,999-square-foot limit.⁵

For three leases BIA claimed that they had GSA approval to enter into the lease. BIA, however, could not locate documentation to show that GSA had approved the three leases⁶ in Anadarko, OK, which totaled 48,642 square feet and had a value of \$5.7 million. GSA had no record showing it had approved these leases either.

BIA attributed such violations of lease approval policies to misinterpretation of GSA's delegation of leasing authority guidance, which allowed an agency with GSA approval to lease a property for a 20-year term. As a result, BIA believed that it could make any number of leases from 1996 to 2016 without GSA approving each lease. We reviewed GSA's guidance and concluded that the guidance clearly showed that each lease required a GSA delegation of authority.

BIA also did not conform to GSA's annual prospectus threshold requirement.⁷ The 1996 GSA delegation of authority included a requirement that high-dollar-value leases be submitted to and approved by congressional appropriation committees. The 1997 threshold began at \$1.74 million and is annually indexed for inflation. BIA violated this requirement by leasing three properties above its identified thresholds in fiscal years 2004 (threshold: \$2.29 million), 2006 (threshold: \$2.41 million), and 2011 (threshold: \$2.79 million). The three leases⁸ combined exceeded the prospective threshold by approximately \$2.94 million (see Figure 1).

⁴ Leases involved were AGL 2003k001, 2003k004, CMB0000057, LES2009k003, and 2001k003.

⁵ Leases involved were NBC-BIA-00-01, K00230DL12220, and BIA-M25R14-DL0001.

⁶ Leases involved were KCA2004k003, CMB0000046, and CMB0000057.

⁷ The United States Code, specifically 40 U.S.C. § 3307(a)(1)(a)(2), (h), imposes a limit on Congress' ability to appropriate funds for GSA to lease space or to alter leased space, if the expenditure exceeds threshold dollar amounts as adjusted annually. The statute provides that appropriations may only be made if the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives adopt resolutions approving the amount and purpose of the appropriation. The dollar amount of the limitation is commonly referred to as the prospectus threshold.

⁸ The leases involved were AGL2004k001, AGL2003k001, and NBC BIA0001.

Lease Number	Lease Date	Prospectus Year	Prospectus Threshold Limit (in millions)	Lease Cost in Excess of Prospectus Limit
AGL2003k001	Mar 2004	2004	\$2.29	\$1,474,340
AGL2004k001	Dec 2005	2006	\$2.41	\$567,333
NBC-BIA-00-01	Dec 2011	2011	\$2.79	\$900,000
Total				\$2,941,673

Figure 1. Leases with prospectus threshold limits.

Insufficient BIA Guidance and Inadequate Training

Inability to provide current guidance and an up-to-date policy, as well as disseminate this information to employees through adequate training, further compromised BIA's adherence to GSA's leasing requirements. We noted that BIA Manual Chapter 114H-3.304 inaccurately describes how to report BIA's real property inventory to GSA. Since the current GSA procedure is Web based, all references in the chapter are inaccurate, referring to GSA forms that no longer exist.

Contracting officers also did not follow the guidelines in BIA Manual Chapter 114H-3 that pertained to uploading leased property into GSA's Nationwide Federal Real Property Profile database. This database is a comprehensive inventory system containing data on all Federal real property assets within and outside the United States, including improvements on Federal land. BIA's failure to upload data into GSA's inventory system indicates a need for greater oversight of the leasing process to ensure compliance with GSA requirements.

BIA's inability to accurately report all lease data back to GSA made it impossible for GSA to analyze post-lease performance data for all BIA leases we reviewed. One GSA official remarked that BIA leases were difficult to evaluate since BIA did not provide entire lease file packages, making it challenging to determine whether leases actually fell within identified fair market value range.

Our conversations with BIA management indicated that their leasing issues resulted from misinterpretation of policy by BIA personnel, especially misinterpretation of GSA's 1996 delegation of authority, which required furnishing post-lease information to GSA for performance analysis. We reviewed GSA guidance, and found that it clearly required post-lease information for each lease to be provided to GSA for review.

The absence of adequate training and guidance contributed to lease approvals that violated previously stated GSA requirements. BIA has demonstrated its inability to enforce GSA's FMR Bulletin 2008-B1, specifically its failure to report all its leases annually to GSA, and its noncompliance with GSA's post-lease reporting requirements and annual prospectus thresholds.

Recommendation

We recommend that BIA:

1. Develop and implement policies and procedures that ensure compliance with GSA guidance.
2. Develop a database accurately reflecting the status of leases in BIAs inventory and,
3. Ensure BIA contracting officers receive appropriate training in lease administration and management.

Scope and Methodology

We conducted our inspection in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspections between May and August 2013.

We obtained and reviewed all the leases and supplemental lease agreements awarded by BIA since the September 1996 Delegation of Authority by GSA. We also reviewed financial data related to leases. We interviewed GSA leasing officials and BIA contracting officials in Washington, DC, and Reston, VA, respectively. We reviewed applicable Federal management regulations, executive orders, BIA Manual chapters, and GSA regulations. We also contacted BIA officials at the Fort Belknap Agency in Harlem, MT.

We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

The legislation creating OIG requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

Please provide us with your written response to this report within 30 days. The response should provide information on actions taken or planned to address the recommendations, as well as target dates and title(s) of the official(s) responsible for implementation. Please address your response to:

Mr. Hannibal M. Ware
Eastern Region Manager
U.S. Department of the Interior
Office of Inspector General
381 Elden Street, Suite 1100
Herndon, VA 2017

If you have any questions regarding this report, please do not hesitate to contact me at 703-487-8058.

Leases Reviewed					
	Lease Number	Location	Lease Cost Incurred	Square Footage	Finding*
1	NBC-BIA-00-01†	Reston, VA	\$8,329,200	64,253	a, d
2	K00230DLI2220	Reston, VA	\$1,843,964	68,600	a
3	BIA-M25R14-DLk0001	San Juan Pueblo, NM	\$550,485	21,000	a
4	No lease number	Fort Belknap, MT	\$348,964	5,120	a
5	2012-01	Fort Belknap, MT	\$159,942	5,120	a
6	2003k007	Winnebago, NE	\$652,519	10,470	a
7	KCA2004k003	Anadarko, OK	\$1,952,357	17,034	b
8	CMB0000057‡	Anadarko, OK	\$1,727,454	5,704	b, c
9	CMB0000046	Anadarko, OK	\$2,793,148	24,715	b
10	AGL2003k001‡‡	Albuquerque, NM	\$8,490,827	140,000	c, d
11	AGL2004k001	Albuquerque, NM	\$567,333	140,000	d
12	2003k004	Albuquerque, NM	\$516,780	7,020	c
13	LES2009k003	Lower Brule, SD	\$3,375,452	43,925	c
14	2001k003	Muskogee, OK	\$1,354,391	40,000	c
Total			\$32,662,816	616,938	

*Key:

- a. GSA FMR 2008-B1 and online Del-eGate database violations.
- b. Issued without proof of GSA approval.
- c. Exceeded square footage approval.
- d. Exceeded prospectus threshold.

† Includes \$7,429,200 in costs exceeding the 19,999-square-foot limit, plus \$900,000 in costs exceeding the prospectus limit.

‡ Includes \$917,727 in costs associated with no lease approval, plus \$809,727 in costs resulting from exceeding the 19,999 -square-foot limit.

‡‡ Includes \$7,016,487 in costs associated with the 19,999 -square-foot limit, plus \$1,474,340 in costs exceeding the prospectus limit.

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