



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

# Ineffective Oversight of a Contract for Basic Repairs and Alterations to the William Augustus Bootle Federal Building and U.S. Courthouse Increased the Risk of 8(a) Program Small Business Fraud and Abuse

Memorandum Number A210076-2  
August 6, 2024



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

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TO: JEFFREY SMITH  
REGIONAL COMMISSIONER  
PUBLIC BUILDINGS SERVICE (4P)

FROM: NICHOLAS PAINTER  
REGIONAL INSPECTOR GENERAL FOR AUDITING  
SOUTHEAST SUNBELT REGION AUDIT OFFICE (JA-4)

SUBJECT: Ineffective Oversight of a Contract for Basic Repairs and Alterations to the William Augustus Bootle Federal Building and U.S. Courthouse Increased the Risk of 8(a) Program Small Business Fraud and Abuse  
Memorandum Number A210076-2

The purpose of this memorandum is to notify you of deficiencies in GSA's Public Buildings Service Southeast Sunbelt Region's (PBS Region 4's) oversight of an 8(a) small business contractor for a basic repairs and alterations project at the William Augustus Bootle Federal Building and U.S. Courthouse in Macon, Georgia (Bootle Building). PBS Region 4's lack of effective oversight increased the risk of 8(a) small business program fraud and abuse.

### Background

We performed an audit of PBS Region 4's \$3.345 million sole-source basic repairs and alterations contract to modernize the heating, ventilation, and air conditioning (HVAC) system at the Bootle Building. The objective of our audit was to determine whether PBS Region 4 planned, awarded, administered, and closed out the Bootle Building HVAC modernization contract in accordance with the Federal Acquisition Regulation (FAR), General Services Administration Acquisition Manual, and other applicable policies.

During the course of our audit, we identified deficiencies in PBS Region 4's oversight of the 8(a) small business contractor. We did not address these deficiencies in our audit report dated September 29, 2023, due to a then-ongoing investigation into a possible "pass-through" fraud scheme.

We describe “pass-through” fraud schemes and the rationale behind our decision to exclude our finding related to PBS Region 4’s ineffective contract oversight from our September 2023 audit report below.

### **U.S. Small Business Administration’s 8(a) Business Development Program**

PBS awarded the Bootle Building HVAC modernization contract using sole-source procedures to a participant in the U.S. Small Business Administration’s (SBA’s) 8(a) Business Development program (8(a) program). The SBA established the 8(a) program to help small business firms owned and controlled by socially and economically disadvantaged individuals.<sup>1</sup> Once certified, 8(a) program participants are eligible to receive federal contracting preferences. FAR 6.3, *Other Than Full and Open Competition*, allows federal agencies to award sole-source contracts to eligible 8(a) program participants.<sup>2</sup>

### **8(a) Business Development Program Requirements**

The FAR requires that an 8(a) program small business contractor perform at least 15 percent of the cost of the contract for general construction with its own employees or 25 percent for construction contracts involving specialized construction trades as defined by the U.S. Department of Labor.<sup>3</sup> Similarly, the SBA requires that the 8(a) program small business contractor perform at least 15 percent of the cost of the contract for general construction or at least 25 percent of the cost of the contract for specialized construction trades, excluding the cost of materials.

### **Small Business “Pass-Through” Schemes**

Contracts awarded through the SBA’s 8(a) program are intended to maximize contracting opportunities for these small businesses. However, without effective oversight throughout the contract award and administration process, these contracts are vulnerable to fraud and abuse. A common type of fraud associated with contracts awarded through the 8(a) program occurs through “pass-through” schemes. Under these schemes, a participating business uses its 8(a) status to obtain a contract and bills the government for the work performed. However, the 8(a) program participant pays a subcontractor that is not eligible for the 8(a) program to perform most of the work under the contract. In exchange for the “pass-through” use of the 8(a) program certification by the ineligible subcontractor, the 8(a) program participant typically retains a portion of the contract value without performing, or only minimally performing, any work.

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<sup>1</sup> 15 U.S.C. 636(j)(10) and 15 U.S.C. 637(a).

<sup>2</sup> FAR 6.302-5, *Authorized or required by statute*.

<sup>3</sup> FAR 52.219-14, *Limitations on Subcontracting*.

## **September 2023 Audit Report on the HVAC Modernization Project at the Bootle Building and Investigation into Possible “Pass-Through” Fraud**

On September 29, 2023, we issued an audit report, *Audit of PBS Basic Repairs and Alterations Project: William Augustus Bootle Federal Building and U.S. Courthouse*.<sup>4</sup> We reported that PBS Region 4 did not award and administer the \$3.345 million sole-source contract to modernize the HVAC system at the Bootle Building in accordance with applicable regulations and GSA policies. As a result, PBS Region 4 overpaid the contractor, providing it with excessive profits; circumvented congressional oversight; failed to enforce building security requirements; and enabled subcontractors to underpay employees.

During the audit, we identified evidence of a potential “pass through” fraud scheme and referred the matter to the GSA-Office of Inspector General’s Office of Investigations. In accordance with generally accepted government auditing standards, we did not address this matter in our September 2023 audit report to avoid interfering with the ongoing investigation. Subsequent to the release of our report, the Office of Investigations referred the case to the U.S. Attorney’s Office for the Middle District of Georgia. Although the case was declined, this memorandum details our finding related to PBS’s ineffective oversight of the 8(a) small business contractor that created an environment conducive to fraud and abuse through a “pass-through” scheme.

### **Finding – PBS’s ineffective contract oversight increased the risk of fraud and abuse of the 8(a) program through a “pass-through” scheme.**

Effective oversight of 8(a) program small business contractors is critical to protect against fraud and abuse and to meet the 8(a) program’s intent to help firms owned and controlled by socially and economically disadvantaged individuals. However, PBS Region 4 did not provide effective oversight of the 8(a) program small business contractor (i.e., prime contractor) for the Bootle Building HVAC modernization project. PBS Region 4’s lack of effective oversight increased the risk of 8(a) small business program fraud and abuse by creating an environment in which the contractor may have acted as a “pass-through.”

Our finding is based on the following 8(a) program small business fraud risk indicators that were met during the award and administration of the Bootle Building HVAC modernization contract:

- Subcontractor work on the contract exceeded FAR limitations;
- The prime contractor retained a significant portion of the contract value for minimal work; and
- Subcontractor employees were represented to the government as prime contractor employees.

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<sup>4</sup> Report Number A210076/P/4/R23009.

We describe how each of these fraud risk indicators were met on the Bootle Building HVAC modernization contract below.

### **Subcontractor Work on the Contract Exceeded FAR Limitations**

FAR 52.219-14, *Limitations on subcontracting*, limits the amount of work that an 8(a) program participant can subcontract to another company. Under this requirement, the program participant must perform at least 15 percent of the work for general construction contracts with its own employees or 25 percent for construction contracts involving specialized construction trades as defined by the U.S. Department of Labor. This FAR requirement is designed to prevent 8(a) program participants from becoming “pass-through” vehicles for large or ineligible businesses.

Because the contract called for HVAC work, which the U.S. Department of Labor defines as a specialized construction trade, the prime contractor should have performed at least 25 percent of the work under the contract.<sup>5</sup> However, according to certified payroll records for the project, the prime contractor did not perform any of the direct HVAC work for the project. Instead, this work was performed by subcontractors.

Without monitoring contractor performance, PBS cannot effectively prevent “pass-through” schemes from occurring on PBS projects. For example, contracting officers may, at their discretion, require the prime contractor to demonstrate compliance with FAR limitations on subcontracting. One way to monitor compliance is to review contractor-provided and subcontractor-provided certified payroll records.<sup>6</sup> However, PBS did not obtain or review certified payroll records from the Bootle Building HVAC modernization project prime contractor or its subcontractors until we asked the project team about the payroll records during our site visit—5 months after project completion.

### **The Prime Contractor Retained a Significant Portion of the Contract Value for Minimal Work**

Under 8(a) program small business “pass-through” fraud schemes, the prime contractor typically retains a portion of the contract value for minimal or no work. We found that the prime contractor’s actions for the Bootle Building HVAC modernization contract were consistent with this fraud risk indicator. While the prime contractor’s records show that it

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<sup>5</sup> The PBS contracting officer inappropriately awarded the HVAC modernization contract for commercial and institutional building construction services, requiring the prime contractor to perform at least 15 percent of the contract work. However, because the U.S. Department of Labor defines HVAC work as a specialized construction trade, PBS should have awarded the contract as a specialized construction contract and required the prime contractor to perform at least 25 percent of the work.

<sup>6</sup> FAR 22.4, *Labor Standards for Contracts Involving Construction*, states that Construction Wage Rate Requirements, formerly known as the Davis-Bacon Act, apply to federally funded contracts in excess of \$2,000 for construction, alterations, or repairs of public buildings and requires weekly submission of statements of compliance and inspection of weekly payroll records.

retained approximately \$645,000—more than 19 percent of the \$3.345 million total contract value—for its work on the contract, we found limited evidence that it was actively involved with the project.

When we asked the prime contractor what work it performed on the project, its vice president provided a list of activities that seemingly indicate active involvement, such as coring and drilling for routing duct and chilled water piping and installing and removing temporary power supplies for lighting. However, as discussed above, certified payroll records for the project show that no prime contractor employees performed direct labor, such as HVAC or electrical work, and many of the activities that the prime contractor’s vice president claimed to have self-performed were performed by subcontractors. In fact, the prime contractor had only four employees with approved security clearances for the project—the president and three superintendents.<sup>7</sup> According to one PBS project team employee, only one superintendent from the prime contractor was actively involved with the project.

We also noted that the prime contractor paid a subcontractor \$491,265 for “administration assistance and contract closeout documentation.” However, we were unable to confirm that the prime contractor performed more than minimal administrative functions. PBS Region 4 project team employees also asserted that the prime contractor performed only minimal work. One PBS project team employee told us that “invoices came in from [the prime contractor] yet [the subcontractor] was handling the negotiations.” Another PBS project team employee told us that the prime contractor participated in the project “on paper” only.

### **Subcontractor Employees Were Represented to the Government as Prime Contractor Employees**

Another indicator of “pass-through” fraud schemes arises when employees from the ineligible subcontractor represent themselves as employees of the 8(a) program participant when communicating with the government. This gives the misleading impression that the employees work for the 8(a) program participant, which may prevent the government from identifying the “pass-through” scheme and taking appropriate action.

Consistent with this fraud risk indicator, we identified several instances where subcontractor employees were represented to PBS officials as prime contractor employees. Specifically, we found that:

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<sup>7</sup> The Bootle Building HVAC modernization contract requires that contractor and subcontractor employees performing work on the project obtain appropriate security clearances before being granted access to the site. According to the contract: (1) personnel requiring daily/weekly access to occupied building areas housing federal operations over a period of 180 days or more must undergo background investigations and receive clearance in accordance with Homeland Security Presidential Directive 12: *Policy for a Common Identification Standard for Federal Employees and Contractors*; or (2) personnel requiring access for a period exceeding 10 days, but less than 180 days, must receive a favorable law enforcement check.

- Project meeting minutes often identified subcontractor employees as prime contractor employees. In one example, two subcontractor employees signed in as prime contractor employees at a project meeting and listed the prime contractor’s email as their own.
- Three vendor proposals were addressed to the prime contractor with attention to a subcontractor employee. Prime contractor documentation indicates that the subcontractor employee accepted one of the proposals on behalf of the prime contractor.

Overall, we found that PBS’s ineffective oversight of the 8(a) program small business contractor on the Bootle Building HVAC modernization contract created an environment in which the prime contractor may have acted as an 8(a) program small business “pass-through.” The contracting officer told us that the contracting officer’s representative was responsible for monitoring compliance with FAR limitations on subcontracting; however, this responsibility was not included in the memorandum to designate a contracting officer’s representative. The former PBS Region 4 Acquisition Division director told us that “there is not proper oversight” of contracts awarded to 8(a) program participants in the region. Without performing effective oversight, PBS risks contractor fraud or abuse of the 8(a) program.

## Conclusion

Oversight of 8(a) program small business contractors is critical to protect against fraud and abuse and to ensure that the contracts meet the 8(a) program’s intent to help firms owned and controlled by socially and economically disadvantaged individuals. Accordingly, PBS should review its current 8(a) program contracts and strengthen its oversight to ensure that contractors comply with FAR limitations on subcontracting.

## GSA Comments

In written comments to our draft memorandum, the PBS Regional Commissioner wrote that PBS Region 4 takes our finding “very seriously.” He also outlined a series of corrective actions that PBS Region 4 is undertaking as part of “an aggressive corrective action plan” to address our finding. PBS’s written comments are included in their entirety as **Attachment 1**.

## Compliance Statement

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

## **Audit Team**

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

Nicholas Painter	Regional Inspector General for Auditing
Valerie Smith	Audit Manager
Renee Davis	Auditor-In-Charge



## Attachment 1 – GSA Comments

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Public Buildings Service

July 9, 2024

MEMORANDUM FOR: NICHOLAS V. PAINTER  
REGIONAL INSPECTOR GENERAL FOR AUDITING  
SOUTHEAST SUNBELT REGION AUDIT OFFICE (JA-4)

FROM: JEFF SMITH *Jeff Smith*  
REGIONAL COMMISSIONER  
PUBLIC BUILDINGS SERVICE (4P)

SUBJECT: Response to the GSA Office of Inspector General's Draft  
Memorandum, "Ineffective Oversight of a Contract for Basic  
Repairs and Alterations to the William Augustus Bootle  
Federal Building and U.S. Courthouse Increased the Risk of  
8(a) Program Small Business Fraud and Abuse",  
Memorandum Number A210076-2

The Public Buildings Service Region 4 (R4) has received your draft memorandum "Ineffective Oversight of a Contract for Basic Repairs and Alterations to the William Augustus Bootle Federal Building and U.S. Courthouse Increased the Risk of 8(a) Program Small Business Fraud and Abuse Memorandum," Number A210076-2 dated June 25, 2024.

R4 takes very seriously the significance of these findings. For this reason, the region is undertaking an aggressive corrective action plan that will include:

1. A region-wide mandatory stand-down meeting. At this meeting, we will brief the entire region on the scope of this audit, the seriousness of the findings, and the disciplinary consequences for failure to correct the behavior moving forward.
2. Appointing a regional contracting officer's representative (COR) Accountability Team that will develop and implement:
  - a. a vigorous re-training plan for regional CORs, and
  - b. an elevated, comprehensive internal review process to ensure immediate compliance with COR duties and policies.
3. Performing additional internal audits to determine if the findings in the referenced audit are pervasive throughout our contract portfolio and developing corrective action plans commensurate with findings.

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4. Conducting mandatory training for all 1102 contracting series employees to re-emphasize and reinforce procurement procedures, policies and regulatory guidance.
5. Issuing revised regional policies regarding COR oversight.

Thank you for the opportunity to review the draft memorandum. If you have any questions, please contact Kendra Turner, Director of the R4 Office of Strategy and Engagement.

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## ***Memorandum Distribution***

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GSA Deputy Administrator (AD)

Commissioner (P)

Acting Deputy Commissioner (P1)

Deputy Commissioner of Enterprise Strategy (P2)

Acting Chief of Staff (PB)

Acting Deputy Chief of Staff (PB)

Regional Commissioner (4P)

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