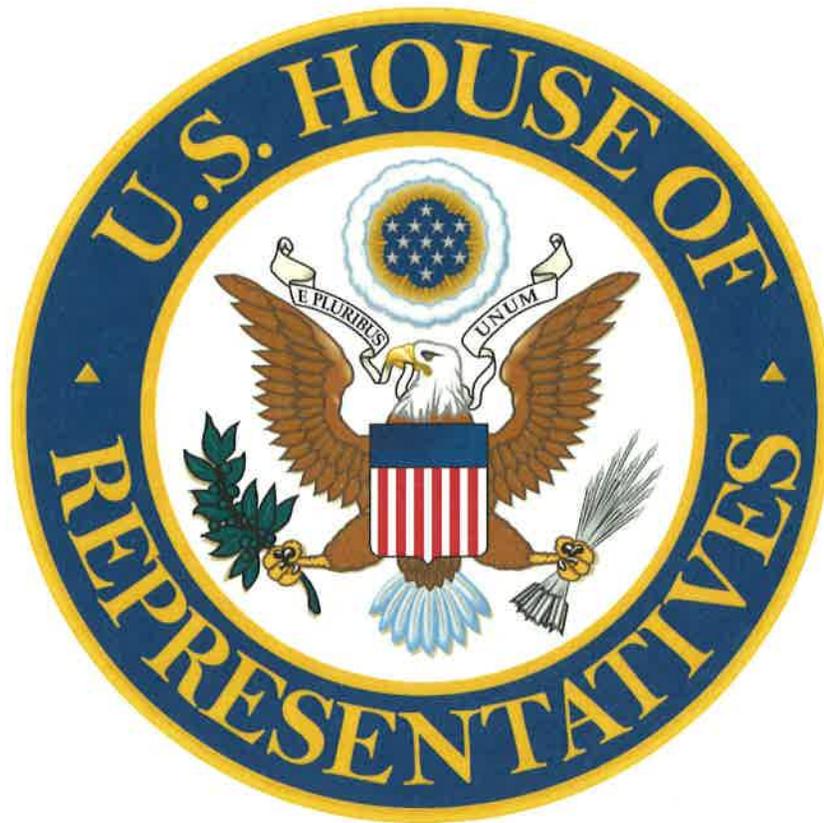


**A HALLMARK IN TAXPAYER WASTE:  
THE U.S. GENERAL SERVICES ADMINISTRATION'S  
MISMANAGEMENT OF TAXPAYER FUNDS AT ROANOKE'S  
POFF FEDERAL BUILDING**



**COMMITTEE ON THE JUDICIARY  
MAJORITY STAFF REPORT  
TO CHAIRMAN BOB GOODLATTE**

**NOVEMBER 24, 2014**

**A HALLMARK IN TAXPAYER WASTE:  
GSA'S MISMANAGEMENT OF TAXPAYER FUNDS AT ROANOKE'S  
POFF FEDERAL BUILDING**

**Contents**

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>1</b>
<b>II.</b>	<b>BACKGROUND</b>	
	<b>A. U.S. General Services Administration.</b> .....	<b>1</b>
	<b>B. United States District Court for the Western District of Virginia</b> .....	<b>2</b>
	<b>C. Department of Veterans Affairs' Roanoke Regional Benefit Office</b> .....	<b>3</b>
<b>III.</b>	<b>THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AND THE GSA'S SPENDING PLAN</b> .....	<b>4</b>
<b>IV.</b>	<b>RED FLAGS ABOUND</b>	
	<b>A. Bipartisan, Public Concerns Are Raised to No Avail</b> .....	<b>5</b>
	<b>B. The Poff Project Becomes the Subject of a Scathing Inspector General Audit</b>	
	1. The GSA's Office of Inspector General Determines that the GSA Violated a Federal Law Designed to Protect Taxpayers .....	<b>8</b>
	2. The GSA's Office of Inspector General Determines that the GSA Proceeded with Building Renovations before It Completed a Cost-Benefit Analysis.. . . .	<b>10</b>
<b>V.</b>	<b>CONGRESSIONAL OVERSIGHT HEARINGS</b>	
	<b>A. Review by the House Committee on Transportation &amp; Infrastructure.</b> .....	<b>11</b>
	<b>B. Review by the House Committee on the Judiciary</b> .....	<b>12</b>
<b>VI.</b>	<b>COMPOUNDING THE FAILURE</b>	
	<b>A. Government Waste, Large and Small.</b> .....	<b>14</b>
	<b>B. Other Necessary Modifications and the GSA's Fiscal Year 2015         Budget Request</b> .....	<b>15</b>
<b>VII.</b>	<b>FINDINGS</b>	
	<b>A. The GSA Failed to Properly Plan and Squandered Millions of         Taxpayer Dollars</b> .....	<b>16</b>
	<b>B. The GSA Violated Federal Contracting Law &amp; Undermined Public         Confidence by Foolishly Offering to Pay a Maximum Sum for the Poff         Project</b> .....	<b>18</b>
	<b>C. The GSA's Misfeasance Prevented the Implementation of Important         Security, Building Code, and Life Safety Improvements.</b> .....	<b>19</b>
	<b>D. The Poff Project Repeatedly Impacted the Ability of the U.S. District         Court for the Western District of Virginia to Administer Justice and         Negatively Impacted the Ability of the Roanoke Veterans Affairs Regional         Office to Serve Veterans.</b> .....	<b>20</b>
	<b>E. The GSA Attempted to Avoid Accountability by Refusing to Fully Address</b>	

Questions from the Roanoke Community, the Press, and Virginia’s Representatives in Washington, D.C. . . . .	.21
<b>VIII. CONCLUSION AND RECOMMENDATIONS</b>	
<b>A. Conclusion . . . . .</b>	22
<b>B. Recommendations. . . . .</b>	23
<b>APPENDIX</b>	
<b>Timeline . . . . .</b>	25

# **A HALLMARK IN TAXPAYER WASTE: THE GSA'S MISMANAGEMENT OF TAXPAYER FUNDS AT ROANOKE'S POFF FEDERAL BUILDING**

*"The Poff Federal Building in Roanoke will be a hallmark in taxpayer savings."*

~Gina Blyther Gilliam, Regional Public Affairs Officer, GSA Mid-Atlantic Region<sup>1</sup>

## **I. INTRODUCTION**

Built in 1975 at a cost of approximately \$14 million, the Richard H. Poff<sup>2</sup> Federal Office and Courthouse Building is a 14-story, modern high-rise structure located in downtown Roanoke, Virginia. The Poff Federal Building houses several critical federal entities, including the United States District Court for the Western District of Virginia, the Department of Veterans Affairs' Roanoke Regional Benefit Office, and the U.S. Marshals Service district headquarters. In 2009, the General Services Administration (GSA) targeted the Poff Federal Building for a major renovation funded by "stimulus" dollars.

The purpose of this report is to document the facts and circumstances surrounding the GSA's misguided and unlawful renovation of the Poff Federal Building. The report includes an examination of the impetus for the project, as well as the GSA's mishandling of the project from its failure to follow fundamental procedures designed to prevent government waste to its failure to properly plan and to anticipate and manage the disruptive nature of the project. In addition, the report will document the GSA's efforts to whitewash key facts associated with the Poff renovation and dodge concerns from the Roanoke community and congressional overseers alike. In total, this report will illustrate the GSA's lack of forethought, precision, and accountability throughout the five-year course of the Poff renovation project.

## **II. BACKGROUND**

### **A. U.S. General Services Administration**

In 1949, Congress enacted the Federal Property and Administrative Services Act, establishing the GSA.<sup>3</sup> Often called the "government's landlord," the GSA is the federal agency responsible for the design and construction of the United States' buildings and courthouses and for repairs and alterations to existing facilities.<sup>4</sup> The GSA has an inherent obligation to "spend the taxpayers' money on sound, well-thought-out projects that make the best use of taxpayer

---

<sup>1</sup> Laurence Hammack, *Goodlatte Targets Poff Renovation*, THE ROANOKE TIMES, June 22, 2010. The article quotes a comment Gilliam made in an email.

<sup>2</sup> The Poff Federal Building was named in honor of former U.S. Representative Richard Harding Poff, who served as the representative from Virginia's Sixth Congressional District from 1953 to 1972.

<sup>3</sup> Pub. L. 81-152, 63 Stat. 377.

<sup>4</sup> Garret Hatch, *Authorization of General Services Administration Real Property Projects: Current Process and Proposed Legislation – R43443*, Congressional Research Service (Mar. 27, 2014).

dollars.”<sup>5</sup> In fact, the GSA itself describes its mission as delivering “the best value in real estate, acquisition, and technology services to government and the American people.”<sup>6</sup>

The GSA employs over 11,000 people<sup>7</sup> and controls more than 8,700 leased and owned buildings.<sup>8</sup> Its portfolio features everything from land ports of entry to federal courthouses.<sup>9</sup> Under the law, the GSA, through its Public Buildings Service, must obtain congressional authorization for constructing, purchasing, leasing, or renovating real property for projects exceeding a certain cost threshold through a prospectus process.<sup>10</sup> This practice consists of the GSA developing a formal, detailed prospectus of each proposed building project and submitting it for approval to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works.<sup>11</sup> The GSA then requests funds (or “obligational authority”<sup>12</sup>) for new construction projects, as well as for purchasing, renovating, and leasing existing properties, through the President's annual budget submission to Congress.<sup>13</sup>

## **B. United States District Court for the Western District of Virginia**

The United States’ federal courts operate both in stand-alone U.S. courthouses and in multi-tenant federal buildings. The GSA owns some of these facilities; others, it leases. The United States District Court for the Western District of Virginia, like all United States district courts, is one of the trial courts of the federal court system. Within limits set by Congress and the Constitution, the district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters.

The Western District is one of two federal judicial districts in the Commonwealth of Virginia. It is comprised of federal courthouses in Abingdon, Big Stone Gap, Charlottesville, Danville, Harrisonburg, Lynchburg, and Roanoke. The Chief Judge and Clerk of Court of the Western District are based in the Roanoke division, located at the Poff Federal Building. The Roanoke division has jurisdiction over all federal civil and criminal cases that arise in Alleghany, Bland, Botetourt, Carroll, Craig, Floyd, Franklin, Giles, Grayson, Montgomery, Pulaski,

---

<sup>5</sup> Richard H. Poff *Federal Building: Is It Costing the Taxpayer Too Much?: Hearing before the Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management*, U.S. House of Representatives, 112<sup>th</sup> Cong. (Apr. 14, 2011) (testimony of the Honorable Brian D. Miller, Inspector General, General Services Administration, at 7).

<sup>6</sup> U.S. General Services Administration, *Mission and Priorities*, available at <http://www.gsa.gov/portal/content/100735> (last visited July 31, 2014).

<sup>7</sup> *Id.*

<sup>8</sup> Hatch, *Authorization*, *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Clay H. Wellborn, *Federal Buildings Funding Limitations and Their Implications – RL33774*, Congressional Research Service (Mar. 21, 2008).

<sup>12</sup> Congress established the Federal Buildings Fund (FBF) within GSA “to finance the operating and capital costs associated with federal facilities.” Deposits to the FBF (such as rent charged to tenants) are the principle source of the funding for the Public Buildings Service. However, through the appropriations process Congress prescribes how GSA may allocate its FBF assets. This authorization, conferred annually, is known as “obligational authority.” See Wellborn, *Federal Buildings*, *supra* note 11.

<sup>13</sup> Hatch, *Authorization*, *supra* note 4.

Roanoke, and Wythe Counties as well as those that arise from the cities of Clifton Forge, Covington, Galax, Radford, Roanoke, and Salem.

Essential to a federal court's ability to perform its constitutionally mandated responsibilities<sup>14</sup> is the ability to operate in safe and sound physical spaces. Building security is a particular concern for federal courts. The Poff Federal Building hosts many high-profile criminal cases, and with certain limited exceptions, each step of the federal judicial process is open to the public. The United States Marshals Service has categorized the Poff Federal Building as a Level IV federal facility. Level IV federal facilities are characterized by their high volume public contact and include federal courthouses with high-risk court chambers, judicial offices, and buildings that house highly sensitive government records.<sup>15</sup>

The right of public access to court proceedings derives partly from the Constitution and partly from court tradition. Conducting judicial work in public view enhances the public's confidence in the courts, and allows citizens to learn first-hand how the United States judicial system works.<sup>16</sup> Hence, neither building security nor day-to-day operations of a building like the Poff Federal Building can afford substantial interruptions.

### **C. Department of Veterans Affairs' Roanoke Regional Benefit Office**

Also located within the Poff Federal Building, the Department of Veterans Affairs' Roanoke Regional Benefit Office (Roanoke VARO) administers a variety of services, including compensation, education, insurance, loan guaranty, pension, and vocational rehabilitation and employment.<sup>17</sup> These services include benefits counseling, outreach to veterans who are homeless or at risk for homelessness, assistance with applying for Specially Adapted Housing grants, and the administration of VA's Home Loan Guaranty program for Virginia, West Virginia, Maryland, Kentucky, and the District of Columbia.<sup>18</sup>

More than 823,000 veterans, service members, their families and survivors in Virginia and the District of Columbia are potential clients of the Roanoke VARO.<sup>19</sup> They are served by the over 400 employees of the Roanoke VARO.<sup>20</sup> In 2009 (the same year the GSA decided to target the Poff Federal Building for a disruptive renovation), an audit of the Roanoke VARO revealed that it faced challenges in providing quality benefits and services, uncovering errors in

---

<sup>14</sup> The Founding Fathers understood the need for an independent judiciary. Section 1 of Article II of the Constitution vests the judicial power of the United States in the federal courts.

<sup>15</sup> Stephanie Smith, *The Interagency Security Committee and Security Standards for Federal Buildings – RS22121*, Congressional Research Service (Nov. 23, 2007).

<sup>16</sup> See United States Courts, *District Courts*, available at <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts.aspx>.

<sup>17</sup> See U.S. Department of Veterans Affairs, *Roanoke Regional Benefit Office*, available at <http://www.benefits.va.gov/roanoke/leadership.asp>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> David Tate, *Building Renovations Could Complicate Things for Veterans*, WSET-TV, Oct. 25, 2010.

25 percent of the claims reviewed.<sup>21</sup> In addition, less than a year later its Veterans Service Center (VSC) claims processing system had a backlog that stood at 34 percent.<sup>22</sup>

### III. THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AND THE GSA'S SPENDING PLAN

*"The stimulus overseers faced a tradeoff: They could try to spend money fast, or they could try to spend it well."*

~Peter Suderman, author of *Down the Drain: How the Federal Government Flushed away the \$833 Billion Stimulus*<sup>23</sup>

On January 26, 2009, six days after President Barack Obama took the oath of office, Rep. David Obey, Chairman of the House Appropriations Committee, introduced the over \$800 billion<sup>24</sup> American Recovery and Reinvestment Act of 2009<sup>25</sup>—ostensibly to save jobs and stimulate the U.S. economy. In defense of its staggering price tag, House Democrats maintained that the Act was comprised of “thoughtful and carefully targeted priority investments with unprecedented accountability measures built in.”<sup>26</sup> Then, despite the fiercely contested economic assumptions on which the “stimulus” was predicated, Democrats fast-tracked it through the House, sidestepping any serious scrutiny, debate or amendments along the way. A mere 22 days later, the bill was ready for President Obama’s signature.

Buried in the hastily written text was \$5.55 billion for the GSA’s Federal Buildings Fund. The authors earmarked nearly half of this unprecedented supplemental appropriation for a quixotic new initiative of the President and the House Democratic leadership with the goal of “greening”<sup>27</sup> government properties. Indeed, the bill contained a full \$4.5 billion dedicated exclusively to efforts to install expensive alternative energy systems at federal buildings and

---

<sup>21</sup> *Inspection of VA Regional Office, Roanoke, VA*, Office of Audits and Evaluations, Office of Inspector General, U.S. Department of Veterans Affairs (Jan. 14, 2010), available at <http://www.va.gov/oig/pubs/VAOIG-09-01995-63.pdf>, at 1.

<sup>22</sup> The Honorable Jim Webb, U.S. Senator, Virginia, and the Honorable Mark Warner, U.S. Senator, Virginia. Letter to the Honorable Eric K. Shinseki, Secretary, Department of Veterans Affairs, and the Honorable Martha N. Johnson, Administrator, U.S. General Services Administration (July 29, 2010) (stating, “we are concerned that these scheduled improvements [at the Poff Federal Building] will inhibit ongoing efforts to reduce the VARO’s growing claims backlog, and will fail to address its long-term capacity issues.” They added, “[g]iven that the Roanoke VARO claims backlog stands at 34 percent, we have serious concerns about the effect this disruption will have on claims processing operations.”).

<sup>23</sup> See Peter Suderman, *Down the Drain: How the Government Flushed Away the \$833 Billion Stimulus*, REASON (May 2013), available at <http://reason.com/archives/2013/04/15/down-the-drain>.

<sup>24</sup> The actual Congressional Budget Office (CBO) score for the bill was \$787 billion upon introduction. The score later swelled to \$833 billion as CBO revised its estimate. See Douglas W. Elmendorf, Director, Congressional Budget Office. Letter to the Honorable Nancy Pelosi, Speaker of the House (Feb. 13, 2009), available at <http://cbo.gov/sites/default/files/cbofiles/ftpdocs/99xx/doc9989/hr1conference.pdf>.

<sup>25</sup> Pub. L. No. 111-5.

<sup>26</sup> See *Summary: American Recovery and Reinvestment Act: Action and Action Now!*, U.S. House of Representatives Committee on Appropriations (Jan. 15, 2009), available at [http://democrats.appropriations.house.gov/images/user\\_images/gt/stories/pdf/PressSummary01-15-09.pdf](http://democrats.appropriations.house.gov/images/user_images/gt/stories/pdf/PressSummary01-15-09.pdf).

<sup>27</sup> Specifically, the funds were directed toward converting GSA facilities to high performance green buildings, as defined in Section 401 of the Energy Independence and Security Act (EISA) of 2007, Pub. L. No. 110-140.

facilities in the GSA's management portfolio. Regrettably, this appropriation bypassed the long-standing prospectus approval process. Instead, the funds were made available with no strings attached, as no express congressional authorizations for constructing, purchasing, leasing, or renovating real property were tied to the windfall sum.<sup>28</sup>

Not surprisingly, what the bill lacked in details and guidance the Executive Branch enthusiastically substituted with its own whims. Moreover, to facilitate the rapid expenditure of funds on so-called "shovel-ready" projects, the GSA expedited its identification of potential real property ventures, dubious or otherwise.<sup>29</sup> Upon revealing its project list (known in government parlance as a "spending plan"), the GSA staff announced the agency felt "great pride" and welcomed the "unprecedented and exciting opportunity to support the President's vision for a clean energy future, contribute to our nation's economic recovery, and reinvest in our public buildings."<sup>30</sup> All told, the GSA's spending plan included hundreds of projects in all 50 states, the District of Columbia, and two U.S. territories. And with that, the Poff Federal Building renovation project was born.

#### IV. RED FLAGS ABOUND

##### A. Bipartisan, Public Concerns Are Raised to No Avail

*"The planned renovations will not only impede claims processing but will fail to address several of Roanoke's critical infrastructure needs."*

~The Honorable Mark Warner (D-VA) and the Honorable Jim Webb (D-VA)<sup>31</sup>

When the GSA unveiled its spending plan, members of the Roanoke community, including public officials, were surprised to learn that the GSA included the Poff Federal Building in its list of Recovery Act projects.<sup>32</sup> The renovation, they learned, was scheduled to involve replacing the glass window walls, upgrading the light fixtures, and replacing the heating and cooling systems. It would also include the installation of a new "green" roof with a photovoltaic system. Yet, prior to the stimulus funding becoming available, no one from the GSA had ever notified the Office of Virginia's Sixth Congressional District that there was any need for such improvements.<sup>33</sup>

<sup>28</sup> Garret Hatch, *Authorization*, *supra* note 4.

<sup>29</sup> Linda C. Chero, Acting Regional Administrator, U.S. General Services Administration. Letter to the Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District (June 9, 2009).

<sup>30</sup> *American Recovery and Reinvestment Act Spending Plan*, U.S. General Services Administration—Public Buildings Service, Federal Buildings Fund (Mar. 31, 2009), available at *available at* <http://www.nema.org/Policy/Economic-Stimulus/Documents/GSA%20Federal%20Buildings%20Plan%20ARRA.pdf>.

<sup>31</sup> The Honorable Jim Webb, U.S. Senator, Virginia, and the Honorable Mark Warner, U.S. Senator, Virginia. Letter to the Honorable Eric K. Shinseki, Secretary, Department of Veterans Affairs, *supra* note 22.

<sup>32</sup> Hammack, *Goodlatte Targets*, *supra* note 1.

<sup>33</sup> The Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District. Letter to the Honorable Martha N. Johnson, Administrator, U.S. General Services Administration (Sept. 13, 2010). Specifically, Rep. Goodlatte wrote: "Throughout the 15 months since I learned second-hand of the plans to use ARRA funds for a project involving the Poff Federal Building, I have been attempting to ascertain how the project came about. At no time during the past 15 months did GSA make me aware of the June 2008 survey of the Poff Federal Building that supposedly laid

The GSA explained the unexpected presence of the Poff Federal Building on its list by stating that the GSA based its selections on two primary criteria: the “ability of the project to put people back to work quickly, and transforming federal buildings into high-performance green buildings.”<sup>34</sup> Criteria that were notably de-emphasized included several of the GSA’s traditional priorities, such as achieving the greatest return on investment for taxpayers and improving asset utilization. Also seemingly not contemplated was an important cost: the potential adverse effects that the renovation could impose on the tenants and patrons of the building and their services. Yet, according to the GSA, its practices and policies have been “developed through many years of experience”<sup>35</sup> and “ensure that the GSA strategically invests limited resources in projects that maximize taxpayer value.”<sup>36</sup>

As more details of the Poff Federal Building renovation became known, members of the Roanoke community increasingly challenged the project. Some critics objected to the \$51 million price tag, which seemed out of step for a building that took only \$14 million to build new just 30 years ago. And, even to many casual observers, the GSA’s plan for the Poff Federal Building appeared not to be well tailored to the needs of the Poff Federal Building’s tenants. The Poff Federal Building was widely acknowledged to be in need of renovation for more important purposes. The GSA’s own previous feasibility study for the renovation of the Poff Federal Building validated concerns that the building’s security was substandard.<sup>37</sup> That the GSA would prioritize solar panels over life safety upgrades seemed incredible to nearly everyone except the GSA administrators.

Further, in 2010, when the Roanoke VARO confirmed that the agency was looking for a place to relocate, and the community learned that the VARO would be moved to four different locations, the chorus of concerns grew louder. Many worried that the renovation effort would greatly inconvenience area veterans and Roanoke VARO staff. Critics predicted that the decentralization would seriously complicate existing problems at the agency – such as missing files and backlogs in claims processing – that an Inspector General’s audit had recently documented.<sup>38</sup> The hastily scheduled renovation would no doubt be difficult for the employees of the Roanoke VARO to endure, and it would almost certainly cause an increase in already lengthy delays in processing veterans’ claims and place an unnecessary burden on area veterans seeking assistance from the Department of Veterans Affairs. Again, the Administration’s priorities

---

out the need for renovations to the structure. Over two years have now passed since GSA received the results of the study. Unlike other major federal projects in the Sixth District that have been fully disclosed to me from the outset...I had no prior knowledge that such a massive improvement project for the Poff Building was even being contemplated prior to the survey.”

<sup>34</sup> *American Recovery and Reinvestment Act Spending Plan*, *supra* note 30.

<sup>35</sup> *Cutting Spending and Consolidating Federal Office Space: GSA’s Capital Investment and Leasing Program: Hearing before the Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management*, U.S. House of Representatives, 112<sup>th</sup> Cong. (Mar. 10, 2011) (Statement of Robert A. Peck, Commissioner, Public Buildings Service, U.S. General Services Administration).

<sup>36</sup> *Id.*

<sup>37</sup> PSA-Dewberry, Inc., Hankins and Anderson, Inc., Froehling & Robertson, Inc., and Alpha Corporation, *Feasibility Study for the Renovation of Building Systems: Poff Federal Building, Roanoke, VA*, [Redacted] Prepared for the U.S. General Services Administration, Mid-Atlantic Region, Philadelphia, Pennsylvania, Final Submission to GSA (June 6, 2008).

<sup>38</sup> *Inspection of VA Regional Office, Roanoke, VA*, *supra* note 21.

seemed to be misplaced. Lighting upgrades would be made while the VA's capacity issues were ignored. Window walls would be replaced while veterans awaited more accessible restrooms.

The impending relocation of the Roanoke VARO also caused unnecessary distress among local veterans. Operation Desert Storm veteran Ronald Brown seemed to speak for many veterans when he predicted, "It's probably going to hurt the process. It takes a long time to process claims as it is now."<sup>39</sup> Still other veterans warned that the breakup would result in the need for veterans to move between VA buildings in downtown Roanoke—a task made difficult by their often limited mobility and the lack of convenient parking.

Meanwhile, officials with the U.S. District Court for the Western District of Virginia grappled with the opposite problem. Because of a lack of rentable courtroom space in the Roanoke area, the Roanoke division faced up to three years of occupying space in a major construction zone. Julia Dudley, Clerk of the U.S. District Court for the Western District, testified with regard to the direct impacts the renovation would have on the functioning of the Court. She explained that the Court would lose courtroom capacity; that security, information technology infrastructure, and even power would be disrupted; and that juror spaces would be negatively affected.<sup>40</sup> The noise, dust, and inconveniences, she portended, would affect the morale and efficiency of a staff already impacted by budget austerity measures.<sup>41</sup>

Nearly universally, observers wondered about a cost-benefit analysis. Congressman Bob Goodlatte repeatedly asked to review one. In return, he was alternately rebuffed, offered excuses, and treated to glib responses and generalities by the GSA.<sup>42</sup> Backing Congressman Goodlatte in his pursuit of answers, the Editorial Board of *The Roanoke Times* demanded transparency.<sup>43</sup> "The top question," they asked, "is whether the cost of the project justifies the gain."<sup>44</sup> "There are good reasons to doubt it does," they concluded.<sup>45</sup>

Questions raised by Virginia's two U.S. Senators strengthened indications that concerns about the GSA's decision-making process were not partisan in nature. They warned, "The planned renovations will not only impede claims processing but will fail to address several of Roanoke's critical infrastructure needs."<sup>46</sup> They also noted that the GSA's plan failed to address the simple fact that the Poff Federal Building lacked adequate restroom facilities for disabled

---

<sup>39</sup> Tate, *Building Renovations*, *supra* note 20.

<sup>40</sup> *Richard H. Poff Federal Building: Is It Costing the Taxpayer Too Much?*, *supra* note 5 at 10.

<sup>41</sup> *Id.*

<sup>42</sup> See, e.g., Linda C. Chero, Acting Regional Administrator, U.S. General Services Administration. Letter to the Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District (Jan. 7, 2010); The Honorable Martha N. Johnson, Administrator, U.S. General Services Administration. Letter to the Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District (Sept. 23, 2010); The Honorable Martha N. Johnson, Administrator, U.S. General Services Administration. Letter to the Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District (Mar. 22, 2011).

<sup>43</sup> Editorial, *Expensive Renovations at the Poff Building: Rep. Bob Goodlatte Deserves Answers to His Questions about Roanoke's Federal Building*, THE ROANOKE TIMES, June 23, 2010.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> The Honorable Jim Webb, U.S. Senator, Virginia, and the Honorable Mark Warner, U.S. Senator, Virginia. Letter to the Honorable Eric K. Shinseki, Secretary, Department of Veterans Affairs, *supra* note 22.

veterans.<sup>47</sup> Together the region's representatives in Washington urged the General Services Administration to look more closely at alternatives.

Ultimately, however, despite the GSA's advance knowledge of identified and unaddressed security needs of the Poff Federal Building and its awareness of how the renovation could complicate court proceedings and disrupt already deficient veterans' services, the GSA was determined to proceed with the major renovations.

## **B. The Poff Project Becomes the Subject of a Scathing Inspector General Audit**

### **1. The GSA's Office of Inspector General Determines that the GSA Violated a Federal Law Designed to Protect Taxpayers**

*"By establishing the Guaranteed Maximum Price in the Request for Proposals, GSA eliminated cost or price as an evaluation factor for substantial portions of the contract. As a result, GSA violated the Competition in Contracting Act (CICA)."*

~R. Nicholas Goco, Deputy Assistant Inspector General, General Services Administration<sup>48</sup>

As part of its oversight of projects funded by the Recovery Act, the GSA's Office of the Inspector General (OIG) conducted audits of real property projects such as the planned Poff renovation and numerous other initiatives that the GSA included in its Recovery Act spending plan. The audit of the Poff Federal Building project occurred prior to the commencement of renovations at the Poff Federal Building, and it exposed the fact that the GSA had awarded construction services for the Poff renovation without adequate price competition—a blunder that proved to be as unfortunate for the Poff Federal Building's tenants as it was an affront to taxpayers.

The OIG's audit report was published on November 17, 2010. In it, Deputy Assistant Inspector General for Real Property Audits, R. Nicholas Goco, explained that although superficially a competitive process was used in awarding the contract to renovate the Poff Federal Building, the GSA violated the Competition in Contracting Act (CICA)<sup>49</sup> by including the Guaranteed Maximum Price (GMP) in its request for proposals.<sup>50</sup> The GSA had published its

---

<sup>47</sup> *Id.*; GSA subsequently committed to renovate public restrooms to meet accessibility standards. See Richard H. Poff Federal Building: *Is It Costing the Taxpayer Too Much?*, *supra* note 5 at 8.

<sup>48</sup> *Recovery Act Report – Richard H. Poff and Huntington Building Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009*, Audit Number A090172/P/R/R11003, Office of Inspector General, General Services Administration (Nov. 17, 2010) at 2.

<sup>49</sup> The CICA was enacted as part of the Deficit Reduction Act of 1984, Pub. L. 98-369, §§2701-2753, 98 Stat. 1175 (1984). It amended the Armed Services Procurement Act of 1947; Federal Property and Administrative Services Act of 1949; Office of Federal Procurement Policy Act of 1974; and Truth in Negotiation Act (TINA) of 1962.

<sup>50</sup> Solicitation Number: GS-03P-09-CD-C-0061, *RECOVERY: Construction Manager as Constructor (CMc) Services for Richard Harding Poff Federal Building Modernization in Roanoke, VA*, U.S. General Services Administration. FEDERAL BUSINESS OPPORTUNITIES (June 18, 2009), available at [https://www.fbo.gov/index?s=opportunity&mode=form&id=40b3d24a938d078da7703e511bd1427a&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=40b3d24a938d078da7703e511bd1427a&tab=core&_cview=1).

original solicitation for “Construction Manager as Constructor (CMc)<sup>51</sup> Services for [the] Poff Federal Building Modernization” on June 15, 2009.<sup>52</sup> Remarkably, the solicitation expressly stated, “The guaranteed maximum price for this project is \$42,000,000<sup>53</sup> based on FY 2010 funding for combined services (Design Phase Services and Construction Phase Work).”<sup>54</sup>

The audit determined that the GSA’s act of disclosing the GMP effectively eliminated price competition for construction services. Each of the ten bids received were identical and—not surprisingly—equal to the maximum amount.<sup>55</sup> Goco further found that the GSA’s pricing had limited support.<sup>56</sup> He determined that in addition to publishing the price, the agency had also neglected to get an independent government estimate for the construction<sup>57</sup> to support its price. This too was *required by law*.<sup>58</sup> Instead, according to Goco, GSA based the GMP for the Poff project on an internal budget estimate using the feasibility study<sup>59</sup> estimate of \$28.9 million.”<sup>60</sup>

In the end, the GSA’s audacity was not only offensive to taxpayers, it was detrimental to the security needs of the U.S. District Court and its visitors. As Goco concluded in his findings, the GSA could not exercise any additional options on the Poff contract without further violating

<sup>51</sup> *Id.* According to GSA, a “Construction Manager as-creator,” known as a “CMc,” provides design phase services and construction phase work.

<sup>52</sup> *Id.*

<sup>53</sup> Originally, the Guaranteed Maximum Price for the Poff Project was \$42,000,000; however, GSA later reduced it to \$39,000,000 via an amendment to the request for proposals.

<sup>54</sup> Solicitation Number: GS-03P-09-CD-C-0061, *supra* note 50.

<sup>55</sup> *Recovery Act Report*, *supra* note 48 at 2.

<sup>56</sup> *Id.*

<sup>57</sup> Construction costs made up the vast majority of the contract. As of April 6, 2011, the contract amounts reported in the Federal Procurement Data System for the Poff project were as follows:

Design:	\$6,510,196
Management & Inspection:	\$3,320,833
Construction:	\$42,476,250
Historic Preservation:	\$18,279
<b>Total</b>	<b>\$52,325,608</b>

*See Richard H. Poff Federal Building: Is It Costing the Taxpayer Too Much ?*, *supra* note 5 (written statement of the Honorable Brian D. Miller, Inspector General, General Services Administration, at 43).

<sup>58</sup> The requirement to get an independent government estimate resides in Section 36.203 of the Federal Acquisition Regulations. Section 36.203 reads as follows:

36.203 Government estimate of construction costs.

(a) An independent Government estimate of construction costs shall be prepared and furnished to the contracting officer at the earliest practicable time for each proposed contract and for each contract modification anticipated to exceed the simplified acquisition threshold. The contracting officer may require an estimate when the cost of required work is not anticipated to exceed the simplified acquisition threshold. The estimate shall be prepared in as much detail as though the Government were competing for award.

(b) When two-step sealed bidding is used, the independent Government estimate shall be prepared when the contract requirements are definitized.

(c) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government’s estimate shall not be disclosed except as permitted by agency regulations.

Available at <https://acquisition.gov/far/loadmainre.html>.

<sup>59</sup> PSA-Dewberry, Inc., et al., *Feasibility Study*, *supra* note 37.

<sup>60</sup> *Recovery Act Report*, *supra* note 48 at 2.

the CICA.<sup>61</sup> Unfortunately, the additional options included a \$7.6 million opportunity for much needed security improvements and a \$4.6 million opportunity for building code and life safety improvements.<sup>62</sup> While the GSA management acknowledged the audit findings, the opportunities to exercise the security, building code, and life safety options remained foreclosed.

## **2. The GSA's Office of Inspector General Determines that the GSA Proceeded with Building Renovations before It Completed a Cost-Benefit Analysis**

*"It's just inexcusable that you wouldn't have done that kind of cost-benefit analysis first. This is an example of what people get so darn frustrated about."*

~The Honorable Mark Warner, Virginia, November 5, 2010<sup>63</sup>

Unfortunately, the GSA's failure to follow laws designed to prevent government waste was exacerbated by the fact that the GSA did not conduct an appropriate cost-benefit analysis. Cost-benefit analyses are a fundamental element of government contracting and a commonsense component of everyday decision-making. The dilemma of whether to renovate an existing asset or build a replacement is no doubt a recurrent theme within the offices of the GSA's Public Buildings Service. Yet, according to former GSA Inspector General Brian Miller, the GSA did not conduct its first<sup>64</sup> cost-benefit analysis with regard to the Poff project until *after* it awarded the contract.<sup>65</sup>

This breakdown can be at least partly attributed to the fact that the project was funded under the Recovery Act. Normally, a cost-benefit analysis is required in order to obtain prospectus approval and subsequent funding from the appropriate congressional Committees. However, supporters of the Recovery Act effectively voted to surrender Congress' ability to judge projects' merits before funding them when they hastily passed the bill. Inspector General Miller merely stated the obvious when he called the GSA's cost-benefit analysis "untimely and ineffective."<sup>66</sup> Nevertheless, it defies logic that an agency that prides itself on delivering value to taxpayers would not have done at least a half-serious cost-benefit analysis before soliciting proposals.

No doubt because the agency had little precise, contemporary, or supportable information to share, the GSA guarded the basis for its estimation of the cost of renovating the Poff Federal Building for months. To this day, the GSA's analysis relies partly on speculation regarding the efficacy and useful life of its costly "green" energy enhancements, some of which were never even implemented.

---

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Laurence Hammack, *Poff Funds Dedicated before Cost Analysis*, THE ROANOKE TIMES, Nov. 6, 2010, available at <http://ww2.roanoke.com/news/roanoke/wb/266501>.

<sup>64</sup> GSA conducted a subsequent cost-benefit analysis on September 7, 2010, according to the Inspector General. See *Richard H. Poff Federal Building: Is It Costing the Taxpayer Too Much?*, *supra* note 5 at 43 (written statement of the Honorable Brian D. Miller, Inspector General, General Services Administration).

<sup>65</sup> See The Honorable Brian D. Miller, Inspector General, U.S. General Services Administration. Letter to the Honorable Bob Goodlatte, U.S. Congressman, Virginia 6th District (Oct. 29, 2010).

<sup>66</sup> *Richard H. Poff Federal Building: Is It Costing the Taxpayer Too Much?*, *supra* note 5 at 3.

## V. CONGRESSIONAL OVERSIGHT HEARINGS

### A. Review by the House Committee on Transportation and Infrastructure

*“I just want to say for the record I found your testimony wholly unresponsive to the subject matter of this hearing.”*

~The Honorable Eleanor Holmes Norton (D-DC) (to David Ehrenwerth, GSA Region III Administrator)<sup>67</sup>

On April 14, 2011, under the leadership of Chairman John Mica and then-Subcommittee Chair Jeff Denham, the U.S. House of Representative’s Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, examined the controversies surrounding the renovation of the Poff Federal Building, particularly as brought to light by the November 2010 Recovery Act audit issued by the GSA Inspector General.<sup>68</sup> The hearing considered whether the GSA’s management and execution of contracts for the renovation of the Poff Federal Building violated federal law and led to taxpayers being charged excessive amounts for the work.

At the hearing—which took place before the GSA had even broken ground—David Ehrenwerth, Regional Administrator of the GSA, described the GSA’s planned renovation of the Poff Federal Building as “absolutely critical.”<sup>69</sup> He contended that the Recovery Act had provided the GSA with “the opportunity to invest the funds necessary to update the building’s systems and features with high-performance ones.”<sup>70</sup> The building, he insisted, would be transformed into a “performing asset with an anticipated strong financial return, while satisfying the long-term customer needs.”<sup>71</sup> He did not, however, attempt to explain how the benefits of the renovation could be expected to outweigh the myriad of costs it would impose on the Poff Federal Building’s tenants and customers.

Further highlighting the fallout from the GSA’s reckless decision to forego a serious cost-benefit analysis were facts that Mr. Ehrenwerth delivered reluctantly in response to questioning by Representative Randy Hultgren. Representative Hultgren’s exchange with Mr. Ehrenwerth established that in addition to the \$51 million renovation cost, the GSA expected to spend an additional \$10 million to lease four temporary facilities to house the Roanoke VARO, and \$4 million more just to move the VARO in and out of those locations.<sup>72</sup> This 27 percent increase in the cost of the Poff project was solely attributable to the GSA’s failure to anticipate the need to move the VARO out of the Poff Federal Building for three years.

---

<sup>67</sup> *Id* at 13.

<sup>68</sup> *Id.*

<sup>69</sup> *Id* at 7.

<sup>70</sup> *Id.*

<sup>71</sup> *Id* at 8.

<sup>72</sup> *Id* at 15-16.

In addition to these disclosures, Mr. Ehrenwerth testified that, like all Recovery Act projects, the goal of the Poff renovation was to move dollars as quickly as possible. That goal, he admitted, “had to be combined with the goal [of not disrupting the VA].”<sup>73</sup> Unfortunately, as long as the GSA insisted on moving forward with the renovation, disruption of the Roanoke VARO would be a certainty. Again, the GSA proved to be undeterred.

In concluding his statement for the record, GSA Inspector General Brian Miller delivered remarks that would foretell the general sentiments of the hearing. “GSA,” he said, “has an obligation to spend the taxpayers’ money on sound, well-thought-out projects that make the best use of taxpayer dollars. Our reviews show that the GSA does not always meet this obligation, and did not do so here at the Poff Federal Building.”<sup>74</sup>

### **B. Review by the House Committee on the Judiciary**

*“[R]egrettably, despite the expenditure of substantial sums, I submit that the security at the Poff Building was not enhanced as a result of the stimulus project and that in one critical respect our security has been diminished.”*

~The Honorable Glen E. Conrad,  
Chief Judge, United States District Court, Western District of Virginia<sup>75</sup>

A subsequent hearing conducted by the House Committee on the Judiciary’s Subcommittee on the Courts, Intellectual Property, and the Internet built upon the April 2011 hearing at the House Committee on Transportation and Infrastructure. In contrast, by the time the second hearing was held, the GSA had declared its work at the Poff Federal Building substantially complete. As a result, the purpose of the House Judiciary hearing was to examine the longstanding issues between the GSA and its federal court tenants, including important issues associated with the GSA’s mismanaged renovation of the Poff Federal Building.

To start, Members were provided an update on the controversial Poff Federal Building project by the Chairman of the House Judiciary Committee, in light of the fact that witness Michael Gelber, Deputy Commissioner of GSA’s Public Buildings Service, declined to mention the project at all in his remarks, despite it being a clear focus of the hearing. As a result, Members learned that the renovation, originally budgeted at approximately \$51 million, had already cost taxpayers in the neighborhood of \$65 million and was on track to cost upwards of \$82 million in total.<sup>76</sup>

Witnesses at the hearing described the GSA as an agency that refused to collaborate in any meaningful way with the primary tenants of the Poff Federal Building, resulting in an expensive, missed opportunity to actually improve the functionality of the Poff Federal Building.

---

<sup>73</sup> *Id* at 7.

<sup>74</sup> *Id* at 7.

<sup>75</sup> *GSA’s Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste: Hearing before the Committee on the Judiciary, Subcommittee on Courts, Intellectual Property and the Internet*, U.S. House of Representatives, 113<sup>th</sup> Cong. (June 19, 2014) at 54.

<sup>76</sup> *Id* at 88.

“[T]he quality of the final product achieved through the expenditure of the Poff stimulus funds was greatly diminished because [Judicial] Branch officials did not have the opportunity to offer input during the project’s design phase and planning stages,” declared the Honorable Glen E. Conrad, Chief Judge of the United States District Court for the Western District of Virginia.<sup>77</sup> He went on to describe how the GSA’s refusal to consult the building’s major tenants resulted in the renovation being unduly disruptive and wasteful.<sup>78</sup>

Jennifer Smith, the Architect and Project Manager for the U.S. District Court for the Western District of Virginia, focused on the GSA’s lack of consideration for safety and security during the Poff renovation. The scenario she described was indefensible: “Fire exits were frequently blocked by scaffolding, debris, and fencing; smoke detectors were left uncovered; flammable material was used as wall and floor protection in exit access corridors; construction doors leading to work areas open to five-story drops were left open, unlocked, and accessible to the public.”<sup>79</sup> Remarkably, although Ms. Smith’s primary job responsibility is representing the courts in their interactions with the GSA, she was left to work with the general contractor to resolve the appalling conditions during the renovation. The GSA simply had no on-site staff during the project to address safety and security issues.<sup>80</sup>

However, when given an opportunity to respond to ongoing concerns about the costs of the renovation versus the benefits, Mr. Gelber evaded the questions and simply repeated tired statements such as “GSA has an obligation to maintain the various assets that we have in our inventory.”<sup>81</sup> He also dodged a question about how many years it would take to recoup any energy savings.<sup>82</sup> Even worse, he used his platform to obfuscate the glaring indictments of the GSA by challenging Congress’s responses to the GSA’s budget requests in recent years.<sup>83</sup> Ironically, he referenced the GSA’s ability to address its backlog of critical capital projects in the face of federal budget constraints in recent years.<sup>84</sup> The rhetoric stood in stark contrast to the issue at hand: namely, that the GSA had squandered a veritable windfall on expensive green energy enhancements when it could have prioritized necessary life safety and security upgrades to the building.

Despite the GSA’s insistence about the need for, and the savings that would be achieved by, the installation of costly “green” energy enhancements, no solar panels or photovoltaic system was ever installed on the Poff Federal Building. However, at the time of the House Judiciary Committee hearing, this fact had not yet been discovered. In retrospect, when the Chairman of the House Judiciary Committee was pressing Mr. Gelber for answers about the GSA’s ability to recoup its investment in the roof and other aspects of the building via energy savings, Mr. Gelber could and should have corrected the Committee’s perception that the GSA

---

<sup>77</sup> *Id.* at 53.

<sup>78</sup> *Id.* at 54.

<sup>79</sup> *Id.* at 66.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 88.

<sup>82</sup> *Id.* at 88-89. Some observers have estimated that it could take 218 years to recoup the so-called “energy savings” in the Poff Building. See Laurence Hammack, *Balancing Poff Federal Building Bills, Benefits*, THE ROANOKE TIMES, Oct. 8, 2010, available at <http://ww2.roanoke.com/263120>.

<sup>83</sup> *GSA’s Failure to Meet the Needs of the Judiciary*, *supra* note 75 at 72.

<sup>84</sup> *Id.*

had installed a new roof with a photovoltaic system on the Poff Federal Building. Yet, he did not. Instead, the House Judiciary Committee learned this information three and a half months later from the Government Accountability Office (GAO), which is in the process of auditing the Recovery Act expenditures like the Poff renovation. The GSA never once offered this information and only confirmed it when confronted by Chairman Goodlatte's staff.

Finally, when asked about accountability, Mr. Gelber stridently disagreed with the assertion that "there was any mismanagement that would require personnel actions [to be] taken."<sup>85</sup> This is despite the fact that he was simultaneously whitewashing the GSA's failure to not just markedly improve the Poff Federal Building, but even to achieve the Administration's goal of converting the Poff Federal Building into a "high performance green energy building." Thus, the hearing confirmed that in the case of the Poff renovation, the GSA, with remarkable consistency, views neither wastefulness, nor violations of federal contracting laws, nor the imposition of life and safety hazards to be grounds for discipline at an agency of its nature.

## VI. COMPOUNDING THE FAILURE

### A. Government Waste, Large and Small

*"Taxpayers paid \$7,246 for an assessment of the sculpture outside the federal building."*

*~The Roanoke Times<sup>86</sup>*

Another aspect of the Poff renovation ignored by the GSA in its rush to spend its stimulus dollars was the need to address a 30-foot sculpture that had stood at the building since 1976. "Force One: Consciousness is Crucial" is the name of two tall, curved steel pieces that resided in the courtyard of the Poff Federal Building.<sup>87</sup> With the GSA officials unable to decide whether to move it, the GSA committed over \$7,000 to the McKay Lodge Fine Arts Conservation Laboratory in Oberlin, Ohio, so that an expert could travel to Roanoke and examine the work.<sup>88</sup> When the Fine Arts Conservation Laboratory determined that the sculpture should be relocated during the renovation, the GSA faced the cost of dismantling, moving, storing<sup>89</sup> and reassembling the steel structure.

The cost of studying, moving, and reassembling the sculpture may seem immaterial compared to the millions of dollars spent on the poorly conceived renovation of the Poff Federal Building as a whole, but it is a classic example of government waste. The need to address the sculpture was foreseeable, but the cost was not included in the GSA's budget. The public is left wondering whether the price was reasonable. It is likely just one of many extra costs—trifling

---

<sup>85</sup> *Id.* at 89.

<sup>86</sup> Laurence Hammack, *Art Study Upgrades Cost of Roanoke's Poff Federal Building Project*, THE ROANOKE TIMES, Aug. 30, 2010, available at <http://ww2.roanoke.com/news/roanoke/wb/258663/>.

<sup>87</sup> An image of the sculpture "Force One: Consciousness is Crucial" can be viewed via the Library of Congress, Prints and Photographs Online Catalog (PPOC), available at <http://www.loc.gov/pictures/resource/highsm.02428/>.

<sup>88</sup> Hammack, *Art Study Upgrades Cost*, *supra* note 86.

<sup>89</sup> *Id.* According to *The Roanoke Times*, the McKay Lodge Fine Arts Conservation Laboratory offered to store the sculpture free of charge, but GSA must still pay to move it back.

relative to the larger scheme—that contributed to the escalation in the costs of the Poff renovation.

## **B. Other Necessary Modifications and the GSA’s Fiscal Year 2015 Budget Request**

*“What began as a \$51 million project paid for by stimulus funds continues to be plagued by add-ons.”*

*~The Roanoke Times*<sup>90</sup>

The administration of justice at the Poff Federal Building ground to a halt in late 2012 when the GSA acknowledged that there were loose bricks on the west-facing side of the Poff Federal Building. The problem was brought to the GSA’s attention by TranSystems Corporation, the recipient of the design contract, on November 14, 2012,<sup>91</sup> in a letter in which TranSystems warned the GSA that the façade needed to be demolished because it was “in danger of collapse.”<sup>92</sup> The faulty brickwork, provided by a previous GSA contractor during construction of the building, consisted of a long crack resulting from bulging bricks that had separated from the wall behind them.<sup>93</sup>

But this was not the first time that there had been a problem with loose bricks on the building’s façade. According to the Roanoke Times, the federal government invested at least \$400,000 to reinforce the bricks upon previously learning that the façade had never been properly anchored to the underlying concrete wall.<sup>94</sup> Apparently, this was only a temporary fix. *The Roanoke Times* reported that Carl Doebley, vice president of TranSystems, indicated that the space between the bricks and “the underlying concrete wall, which was supposed to be about 1 inch wide, ‘was seen to have grown to as much as 7.5 inches.’”<sup>95</sup> So, for a *third* time, the GSA oversaw a taxpayer-funded attempt to construct a sound brick façade on the Poff Federal Building.

The unanticipated project added a multitude of new challenges for the staff of the Poff Federal Building. The GSA initially closed the building for two days, but the disruption worsened as the GSA extended the closure to the entire week of Thanksgiving.<sup>96</sup> “Court proceedings had to be postponed or moved to other federal courthouses in the district. And while some court filings were made electronically by lawyers and court staff, the general public was denied access to the clerk’s office,” reported *The Roanoke Times*.<sup>97</sup>

---

<sup>90</sup> Jeff Sturgeon, *Poff Renovation Costs Climb to \$80 million*, THE ROANOKE TIMES, Apr. 1, 2014, available at [http://www.roanoke.com/news/local/roanoke/poff-renovation-costs-climb-to-million/article\\_657eb8e6-b9f6-11e3-bd10-001a4bcf6878.html](http://www.roanoke.com/news/local/roanoke/poff-renovation-costs-climb-to-million/article_657eb8e6-b9f6-11e3-bd10-001a4bcf6878.html).

<sup>91</sup> See Laurence Hammack, *Bricks Try Patience of Court Workers*, THE ROANOKE TIMES, Dec. 2, 2012.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

In the meantime, the GSA began preparing a new financial appeal to Congress. The request was necessary because the GSA's misguided Poff renovation plan either failed to include, or purposely excluded, other foreseeable expenses at the Poff Federal Building. Therefore, in the spring of 2014, the GSA followed up its approximately \$65 million Poff stimulus project with a \$15.1 million request for major repairs and alterations in the President's fiscal year 2015 budget request.<sup>98</sup> The critical structural repairs and life safety upgrades contemplated would involve replacing the failing exterior brick façade walls and addressing the serious deterioration of the parking garage's steel reinforcement structure.<sup>99</sup>

The GSA estimates the costs of these projects to be \$1,076,000 for design, \$12,762,000 for construction, and \$1,290,000 for management and inspection, which together amount to an additional \$15,128,000.<sup>100</sup> In addition, as reported in *The Roanoke Times*, the GSA also plans to reconstruct a brick barrier encircling its outdoor plaza, where a retaining wall is leaning.<sup>101</sup>

Furthermore, the GSA informed the federal courts and the Department of Veterans Affairs that it is finally prepared to consider upgrading security at the Poff Federal Building.<sup>102</sup> However, the GSA will only agree to undertake the work if the federal judiciary and the VARO first agree to pay for the work out of their own budgets.<sup>103</sup>

## VII. FINDINGS

### A. The GSA Failed to Properly Plan and Squandered Millions of Taxpayer Dollars

“...[C]ertain features like solar panel roofs typically do not see any return until well after the useful life of the roof.”

~The Honorable Jeff Denham (R-CA), Chairman,  
U.S. House of Representatives Committee on Transportation and Infrastructure,  
Subcommittee on Economic Development, Public Buildings, and Emergency Management<sup>104</sup>

---

<sup>98</sup> *Fiscal Year 2015 Budget Request*, General Services Administration. Page FBF-40. Available at [http://www.gsa.gov/portal/mediaId/187523/fileName/FY15\\_Budget\\_Request.action](http://www.gsa.gov/portal/mediaId/187523/fileName/FY15_Budget_Request.action).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Sturgeon, *Poff Renovation Costs Climb*, *supra* note 90.

<sup>102</sup> *GSA's Failure to Meet the Needs of the Judiciary*, *supra* note 75 at 103-104 (testimony of the Honorable Glen E. Conrad, Chief Judge, United States District Court, Western District of Virginia).

<sup>103</sup> *Id.*

<sup>104</sup> *Richard H. Poff Federal Building: Is It Costing the Taxpayer Too Much?*, *supra* note 5 at 1. Congressman Denham was referencing observations detailed in a 2010 Republican Staff Report of the House Committee on Transportation & Infrastructure entitled “Sitting on Our Assets: The Federal Government's Misuse of Taxpayer-Owned Assets.” The report is available at [http://archives.republicans.transportation.house.gov/Media/file/111th/Sitting\\_On\\_Our\\_Assets\\_Report.pdf](http://archives.republicans.transportation.house.gov/Media/file/111th/Sitting_On_Our_Assets_Report.pdf).

See also, Eric A. Fischer, *Issues in Green Building and the Federal Response: An Introduction – R40147*, Congressional Research Service (Jul. 20, 2010). The author notes, “[P]roponents of green building assert that operational cost savings will eventually recoup any initially higher investment... However, information on true costs is not always easy to obtain, and such informational barriers can distort perceptions about the economic benefits of green building.”

In the face of considerable scrutiny, the GSA steadfastly maintained that constructing a new mixed-use building like the Poff Federal Building would cost more than twice as much as renovating it,<sup>105</sup> even as evidence indicating that the GSA grossly underestimated the true cost of renovating the Poff building piled up. In fact, the GSA continued to advance this myth despite the fact that its original \$51 million cost estimation never included the costs of addressing the Poff Federal Building's serious security flaws, repairing the structural deficiencies, or adapting the building to better accommodate disabled veterans and other users, *and* despite the fact that its estimations were skewed by the GSA's fondness for adding unnecessary and expensive "green" energy accoutrements to federal buildings.

The GSA's hasty, unprofessional calculation proved to be far off base. Foreseeable, but overlooked, problems arose; costs steadily increased. Rather than \$51 million, the GSA spent approximately \$65 million and is requesting over \$15 million more. Funds that could have been put toward a new building were used to, among other things, pay a needlessly generous sum for construction, rent new office space for the Roanoke VARO (and move the agency out of and back into the Poff building), and shore up integral walls.

Despite the ironic fact that they were never installed, the solar panels—which the process of elimination suggests were the driving force behind the GSA's decision to target the Poff Federal Building with its Recovery Act funding—were decidedly unlikely to ever recover their value via reductions in energy spending during the remaining useful life of the building. According to a calculation by *The Roanoke Times*, it could have taken more than 200 years for the Poff renovations to pay for themselves via reductions in energy spending.<sup>106</sup> However, to this day, the House Judiciary Committee is left wondering what happened to the photovoltaic system that GSA had planned to install on the Poff Federal Building's roof. Due to the GSA's lack of responsiveness to questions from Congressman Goodlatte's staff, it is unclear whether any of the funds were spent to purchase the solar panels or even when or why the funds were diverted (although the House Judiciary Committee staff has learned that the funds were likely diverted to address some of the many expensive complications that the GSA failed to anticipate). Perhaps the GSA's refusal to disclose how much it costs to heat and cool the Poff Federal Building post-renovation should have been the first clue that the GSA had misled the public about the nature and value of the Poff renovation.<sup>107</sup>

The Recovery Act put the GSA at the forefront of the Obama Administration's efforts to install expensive, undue alternative energy systems in federal buildings and facilities. From its inception, this goal was at odds with the traditional responsibility of the agency. The GSA's role is to provide "superior workplaces for federal customer agencies at good economies to the American taxpayer."<sup>108</sup> However, "A building that is not useful to its occupants is unlikely to be

---

<sup>105</sup> *Id* at 18 (testimony of David H. Ehrenwerth, Regional Administrator, U.S. General Services Administration).

<sup>106</sup> Hammack, *Balancing Poff Federal Building Bills, Benefits*, *supra* note 82. The *Roanoke Times* admits that this calculation is an unscientific one. However, even an unscientific calculation can easily prove that the Poff building's "green" energy enhancements will not result in appreciable savings within the useful life of the building or the equipment itself.

<sup>107</sup> See Laurence Hammack, *Poff Costs Still Too Shrouded in Secrecy, Goodlatte Says*, THE ROANOKE TIMES, Sept. 24, 2010, available at <http://ww2.roanoke.com/news/roanoke/wb/261480/>.

<sup>108</sup> U.S. General Services Administration, *Public Buildings Service*, last visited July 31, 2014, available at <http://gsa.gov/portal/category/21391>.

worth its cost, no matter how much less an environmental footprint it has than other buildings,” affirms Eric A. Fischer, a Senior Specialist in Science and Technology at the Congressional Research Service.<sup>109</sup> Rather than carefully inspecting the building to determine its essential needs, consulting with the building’s tenants, thoroughly considering other options, or undertaking even a cursory cost benefit analysis, the GSA took unjustifiable shortcuts. Its astoundingly poor judgment resulted in higher costs and complications that could easily have been avoided. Simply put, the GSA indefensibly squandered more than \$80 million on its misguided decision to renovate the ailing Poff Federal Building when it could have made sensible, cost-effective decisions geared toward the eventual replacement of the Poff building.

### **B. The GSA Violated Federal Contracting Law & Undermined Public Confidence by Foolishly Offering to Pay a Maximum Sum for the Poff Project**

*“[Part 15 of the Federal Acquisition Regulations] which governs contracting by negotiation, notes that ‘normally, price competition establishes price reasonableness.’ Since the Guaranteed Maximum Price was not set through price competition, GSA has no assurance that a fair and reasonable price was achieved.”*

~R. Nicholas Goco, Deputy Assistant Inspector General for Real Property Audits,  
U.S. General Services Administration<sup>110</sup>

Without question, the GSA violated federal procurement and contracting laws when it expressly disclosed the maximum amount the government could pay for the renovation and failed to get an independent government estimate for the project. By including the Guaranteed Maximum Price in its request for bids, the GSA eliminated the very competition that helps to make the best use of taxpayer dollars. Further undermining public confidence in the agency and the federal government in general, the GSA declined to get an independent government estimate for the construction to support its price.

With neither a cost-benefit analysis nor an independent government estimate, the GSA guessed that it would cost twice as much to build a new mixed-use building like the Poff Federal Building.<sup>111</sup> Now, as the cost of the initial renovations plus the costs of subsequent efforts to address the security and soundness of the building inch toward \$100 million, the GSA’s decision to casually skip basic, federally-mandated procedures designed to prevent government waste becomes even more vexing. These mistakes and omissions, combined with a lack of transparency, thoroughly undermined public confidence in the federal government, particularly this Administration.

---

<sup>109</sup> Fischer, *Issues in Green Building and the Federal Response*, *supra* note 104.

<sup>110</sup> *Recovery Act Report*, *supra* note 48 at 2.

<sup>111</sup> *Richard H. Poff Federal Building: Is It Costing the Taxpayer Too Much?*, *supra* note 5 at 18 (testimony of David Ehrenwerth, Regional Administrator, U.S. General Services Administration).

### **C. The GSA's Misfeasance Prevented the Implementation of Important Security, Building Code, and Life Safety Improvements**

*"[Our employees] had to endure these many months of hardship, and now they are given to understand that they are no better off in terms of security, in terms of working environment, than they were at the outset."*

~The Honorable Glen E. Conrad,  
United States Chief Judge for the Western District of Virginia<sup>112</sup>

There is little doubt that the GSA could have steered the stimulus funds toward enhancements that would have increased the productivity and functionality of the Poff Federal Building. Perhaps, with some foresight, it could even have leveraged the funds into a multi-phased effort to construct a new, more secure building. Instead, GSA used its resources to prioritize "green" energy projects over functionality and security.

Moreover, because the GSA failed to follow federal law while rushing its flawed renovation effort to market, it managed to squander its second opportunity to address the building's security, building code, and life safety needs. As a result, the effects continue to compound. In August 2014, the U.S. Department of Veterans Affairs confirmed that an employee reported being injured due to a dangerously malfunctioning elevator.<sup>113</sup> The employee alleges that he was injured when the elevator dropped "at least two floors" while he was riding in it.<sup>114</sup> *The Roanoke Times* reports that "[a]ll six public elevators at the Poff building, four on the west end and two on the east end, 'malfunction frequently,'" according to Jennifer L. Smith.<sup>115</sup> She told *The Roanoke Times*, "I personally have been on them when they have dropped several feet suddenly, when the doors have opened when the car was between floors, when the doors were jammed and would not open."<sup>116</sup>

Five years and tens of millions of dollars later, the GSA has yet to address the deficiencies that threaten the well-being of the federal employees and guests of the Poff Federal Building. And, after greatly inconveniencing its tenants, overseeing faulty equipment that is allegedly causing them injuries, and wasting tens of millions of dollars before their eyes on a misguided boondoggle, the GSA is even attempting to shift the costs of the necessary upgrades to the tenant agencies themselves.

---

<sup>112</sup> *GSA's Failure to Meet the Needs of the Judiciary*, *supra* note 75 at 104 (testimony of the Honorable Glen E. Conrad).

<sup>113</sup> Jeff Sturgeon, *Worker Reports Injuries After 'Drop' in Poff Elevator*, THE ROANOKE TIMES, Aug. 13, 2014, available at [http://www.roanoke.com/news/local/roanoke/worker-reports-injuries-after-drop-in-poff-elevator/article\\_819bc06f-aac0-574c-996a-5f561ef32f20.html](http://www.roanoke.com/news/local/roanoke/worker-reports-injuries-after-drop-in-poff-elevator/article_819bc06f-aac0-574c-996a-5f561ef32f20.html).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

**D. The Poff Project Repeatedly Impacted the Ability of the U.S. District Court for the Western District of Virginia to Administer Justice and Negatively Impacted the Ability of the Roanoke Veterans Affairs Regional Office to Serve Veterans**

*“The federal court system, the building’s second largest tenant, will not be affected.”*

*~The Roanoke Times, paraphrasing remarks by  
Gina Blyther Gilliam, Agency Spokesman,  
General Services Administration<sup>117</sup>*

The GSA’s mismanaged renovation of the Poff Federal Building was unnecessarily disruptive and burdensome to the two primary tenants of the building: the U.S. District Court for the Western District of Virginia and the Roanoke VARO. Without consulting either entity, the GSA proceeded to upend their operations. The GSA decided that the District Court would remain in the Poff Federal Building throughout the entirety of the three-year renovation, citing the absence of alternative court facilities in the area. This decision compelled the Court to maintain its essential operations in a structure that was continually undergoing renovations that put security at risk. Notwithstanding the GSA’s public assurances that the Poff project would not negatively affect the operation of the federal court system in the Western District of Virginia, the GSA’s mismanagement of the Poff renovation resulted in serious disruptions, inexcusable safety hazards, distress, and waste.

The Poff project repeatedly impacted the ability of the federal Judges, the Clerk of Court and the Probation Office in Roanoke to perform their constitutional and statutory duties. According to Ms. Smith, Architect and Project Manager for the U.S. District Court for the Western District of Virginia, the Court endured five floods during a 17-month period. The flooding collapsed ceilings and saturated walls and carpeting.<sup>118</sup> Additionally, a subcontractor working on the Poff project once deliberately turned off the emergency circuit breaker to the U.S. District Court’s server room.<sup>119</sup> “Two servers were destroyed, public Internet and phones were disrupted, and IT staff worked hours of overtime to restore systems,” testified Ms. Smith.<sup>120</sup> Still, most disturbing was the GSA’s disregard for life safety codes during the construction.

Meanwhile, the GSA’s lack of forethought ultimately forced the Roanoke VARO to relocate to four separate locations for three years. Veterans had to go to the former Stone Printing building to have claims processed, visit First Campbell Square for the regional loan center or vocational programs, and head to the Higher Education Center to meet with service organizations.<sup>121</sup> During this time the agency’s files remained in the Poff building and as a result had to be shuttled back and forth between offices.<sup>122</sup> The GSA’s poor planning led a veterans lobbying group to file court papers asking to halt the move, worsened the existing backlog of

---

<sup>117</sup> Laurence Hammack, *Poff Renovation Still Irks Goodlatte*, THE ROANOKE TIMES, July 18, 2010.

<sup>118</sup> *GSA’s Failure to Meet the Needs of the Judiciary*, *supra* note 75 at 36 (testimony of Jennifer L. Smith).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Laurence Hammack, *Poff Work Starting to Spread the Wealth*, THE ROANOKE TIMES, Nov. 27, 2011.

<sup>122</sup> *GSA’s Failure to Meet the Needs of the Judiciary*, *supra* note 75 at 9 (remarks of Chairman Bob Goodlatte).

processing claims, and alone accounted for an additional cost of approximately \$11 million to taxpayers.<sup>123</sup>

Now that the Roanoke VARO has moved back into the Poff Federal Building, the GSA's failure to address the building's safety needs causes concern among VA employees and the veterans who must use the building.<sup>124</sup> The VARO primarily occupies floors 8 through 13 of the Poff Federal Building.<sup>125</sup> As such, its employees and visitors rely heavily on the structure's elevators. Recent reports of malfunctioning elevators and even injuries have led to additional discord between the VARO and the GSA. "The VA won't tolerate any situation that places our employees in danger," Department of Veterans Affairs spokesman Kevin Thompson remarked to *The Roanoke Times*.<sup>126</sup>

#### **E. The GSA Attempted to Avoid Accountability by Refusing to Fully Address Questions from the Roanoke Community, the Press, and Virginia's Representatives in Washington, D.C.**

*"When even a congressman can't get answers to straightforward questions, what hope do average citizens have?"*

~Editorial Board, *The Roanoke Times*<sup>127</sup>

Since 2009, the GSA has obligated or requested more than \$80 million of taxpayer funds for the planned \$51 million Poff Federal Building renovation. In the end, the GSA will likely spend more than \$80 million to renovate a building that cost just \$14 million in the mid-1970s—a building that is, by the GSA's own embarrassing admission, only expected to have a useful life of 20 more years.<sup>128</sup> Yet, the agency still refuses to take proper responsibility for the mismanagement of the project or even the security deficiencies at the facility.

Despite requests for answers to entirely fair questions, the GSA hedged and obfuscated for well over a full year without producing serious responses. For example, on July 14, 2009, the GSA denied being aware of "specific security issues" that might have been raised previously with the office of Virginia's Sixth Congressional District,<sup>129</sup> despite the GSA's possession of a 2008 feasibility study documenting security concerns at the Poff Federal Building.<sup>130</sup> Later, when asked to disclose the cost-benefit analysis supporting the GSA's decision to undertake the expensive renovation rather than construct a new building,<sup>131</sup> Acting Regional Administrator

<sup>123</sup> *Id* at 114 (written statement of Thomas A. Schatz, President, Citizens Against Government Waste).

<sup>124</sup> *See*, Sturgeon, *Worker Reports Injuries*, *supra* note 113.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Editorial, *Expensive Renovations at the Poff Building: Rep. Bob Goodlatte Deserves Answers to His Questions about Roanoke's Federal Building*, THE ROANOKE TIMES, June 23, 2010.

<sup>128</sup> Hammack, *Art Study Upgrades Cost*, *supra* note 86.

<sup>129</sup> Linda C. Chero, Acting Regional Administrator, U.S. General Services Administration. Letter to the Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District (July 14, 2009).

<sup>130</sup> PSA-Dewberry, Inc., et al., *Feasibility Study*, *supra* note 37.

<sup>131</sup> The Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District. Letter to Dale Anderson, Acting Regional Commissioner—Region III, Public Buildings Service, U.S. General Services Administration (Dec. 10, 2009).

Linda Chero insisted that the GSA had performed such an analysis, but declined to provide details.<sup>132</sup> She stated that the GSA was unable to provide a line item cost estimate because the project was still in the design phase—an unusual admission given the risk the GSA took in publishing its guaranteed maximum price seven months earlier.

A subsequent attempt<sup>133</sup> to review the GSA's cost justification analysis resulted in the GSA disclosing a brief summary prepared *after* the GSA commenced the project.<sup>134</sup> When the GSA did eventually posit an explanation for why it did not do a *timely* cost-benefit analysis, the GSA claimed that it was because building a new courthouse “was not on the Judiciary’s five-year construction plan.”<sup>135</sup> However, this excuse conflicted with the GSA’s more frequent excuse, which was that it viewed renovating the Poff Federal Building to be far more cost-effective than building a replacement.<sup>136</sup> Finally, all the way through the most recent Congressional hearing on the Poff renovation, GSA officials continued to evade questions and attempted to distract attention from the poor judgment and failures that characterize the botched Poff project.

## VIII. CONCLUSION AND RECOMMENDATIONS

*“GSA has an obligation to spend the taxpayers’ money on sound, well-thought-out projects that make the best use of taxpayer dollars. Our reviews show that GSA does not always meet this obligation, and did not do so here, at the Poff Federal Building.”*

~The Honorable Brian D. Miller, Inspector General,  
General Services Administration<sup>137</sup>

### A. Conclusion

The GSA’s spectacularly tone-deaf and mismanaged Poff Federal Building project squandered tens of millions of taxpayer dollars on an ill-considered renovation driven by a desire to install dubious green energy enhancements, foreclosed opportunities for critical security and safety improvements necessary to the operation of a federal building in the 21<sup>st</sup> century, and resulted in inexcusable disruptions to important veterans’ services and the impediment of the administration of justice in the U.S. District Court for the Western District of Virginia. This fundamentally flawed endeavor was exacerbated by the GSA’s failure to do a timely cost-benefit analysis and its violation of federal laws designed to prevent government waste. Finally, according to all available evidence, the project failed to measurably improve the building, extend

<sup>132</sup> Linda C. Chero, Acting Regional Administrator, U.S. General Services Administration. Letter to the Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District (Jan. 7, 2010).

<sup>133</sup> The Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District. Letter to Linda C. Chero, Acting Regional Administrator, U.S. General Services Administration (Mar. 3, 2010).

<sup>134</sup> Linda C. Chero, Acting Regional Administrator, U.S. General Services Administration. Letter to the Honorable Bob Goodlatte, U.S. Congressman, Virginia 6<sup>th</sup> District (Mar. 24, 2010).

<sup>135</sup> *Richard H. Poff Federal Building: Is It Costing the Taxpayer Too Much?*, *supra* note 5 at 43 (written statement of the Honorable Brian D. Miller, Inspector General, General Services Administration).

<sup>136</sup> Linda C. Chero. Letter to the Honorable Bob Goodlatte, *supra* note 129.

<sup>137</sup> *Richard H. Poff Federal Building: Is It Costing the Taxpayer Too Much?*, *supra* note 5, testimony of the Honorable Brian D. Miller, Inspector General, General Services Administration at 7.

its useful life, decrease net energy costs,<sup>138</sup> or even address the building's most pressing needs. As a result, the GSA's renovation of the Poff Federal Building is truly a hallmark in taxpayer waste.

The myriad costs of the GSA's misguided renovation of the Poff Federal Building have surprised even the most cynical observers of government waste. The GSA could have attempted to control costs by merely following federal law, and it could have anticipated many of the complications it encountered if it had done a proper inspection and analysis. Furthermore, the Administration's single-minded pursuit of an ad hoc "greening" agenda not only wasted taxpayer funds but, from its inception, was an entirely unjustifiable substitute for the security, building code, and life safety improvements needed at the Poff Federal Building. Each new miscalculation that comes to light further diminishes the GSA's fundamental assertion that renovating the building would be more economical than constructing a new building. At the very least, a new building could be expected to have a longer useful life than the 20-year extension the GSA claims the renovation will afford the Poff Federal Building.<sup>139</sup> The Poff Federal Building project now promises to cost nearly 60 percent more than the GSA's original, liberal estimation of \$50.9 million, and, to date, no one at the GSA involved in the management of the Poff Federal Building project has been held accountable for this remarkably expensive and wasteful misadventure.

## **B. Recommendations**

The experience with the GSA's renovation of the Poff Federal Building illustrates how the GSA's decisions can have significant and lasting impacts on the U.S. Courts, other agencies' operations, and constituencies such as the area's veteran community. For this reason, the GSA must improve its processes and address the lack of accountability within its ranks. To reduce the risk of similar waste and mismanagement in the future, GSA should heed the following recommendations:

1. To adequately discern the value of renovating an asset versus replacing it, the GSA must institute and follow a formalized process for developing a thorough cost-benefit analysis *before* making such a decision.
2. To guard against rising costs that result from unanticipated complications, such as the unobserved building conditions that added enormous costs to the Poff renovation, the GSA must carefully inspect a building prior to making a decision to renovate.
3. To prevent cost-overruns such as those that plagued the Poff Federal Building renovation, the GSA must revise its protocols to ensure that its projects are sufficiently developed *before* a solicitation is issued.

---

<sup>138</sup> GSA has refused to tell the Roanoke Times how much it currently costs to heat and cool the building. See Hammack, *Poff Costs Still Too Shrouded in Secrecy*, *supra* note 107.

<sup>139</sup> Hammack, *Art Study Upgrades Cost*, *supra* note 86.

4. Because achieving fair and reasonable pricing is an invariable requirement of Government contracting—and because federal law demands it—the GSA must institute and follow fail-safe procedures to ensure that competitive processes are used to establish pricing.

5. To guard against future instances of senseless government waste, the GSA must hold individuals accountable for the type of careless mistakes, policy misjudgments, and disregard for federal law that resulted in the inexcusable lapses that characterize the Poff Federal Building renovation.

6. To identify and respond appropriately to the most pressing security and operational needs of the U.S. Courts, the GSA must work more closely with the Administrative Office of the United States Courts. In addition, the GSA must establish clear procedures for addressing security issues that may arise during court renovations.

7. The GSA must closely consult with building tenants on their needs and concerns before commencing a project, and maintain communications with representatives of buildings that are operating while undergoing a major renovation.

## **APPENDIX**

### **TIMELINE**

#### **RENOVATION OF THE RICHARD H. POFF FEDERAL BUILDING AND COURTHOUSE--ROANOKE, VIRGINIA**

- February 17, 2009 President Obama signs the American Reinvestment and Recovery Act of 2009.<sup>140</sup>
- March 2009 The GSA's Public Buildings Service (PBS) publishes its Recovery Act spending plan,<sup>141</sup> identifying how the agency intends to allocate the \$5.55 billion Congress appropriated to it. The plan targets the Richard H. Poff Federal Building and Courthouse in Roanoke, Virginia for a high performance green building modernization at a projected cost of \$50,968,000.
- April 15, 2009 An e-mail from an architectural and engineering firm in the Sixth Congressional District of Virginia to Congressman Bob Goodlatte expresses concern that the Poff project is not being subjected to the normal Request for Proposals (RFP) process to solicit bids. The firm is concerned that qualified local contractors are not being given an opportunity to submit bids at a time when they are desperate for work. Congressman Bob Goodlatte (R-VA) directs an inquiry to the GSA's Region III office in Philadelphia, Pennsylvania.
- April 16, 2009 The PBS awards Philadelphia-based TranSystems Corporation a \$610,839 contract to work on a Project Development Study in relation to the Poff Federal Building. Consequently, the government reports that "1 Project Architect" job was "created."
- April 30, 2009 Congressman Goodlatte's office contacts the GSA's Acting Regional Administrator to express concerns about the scope of the Poff project and request all feasible options be considered before expenditure of public funds.
- May 2009 Congressman Goodlatte receives communication from the GSA's Region III office confirming that the Poff Federal Building project is included in the GSA's Recovery Act spending plan. The building is described as a "federal asset" that "needs reinvestment." The agency notes that restraints imposed by the Recovery Act required the agency to move forward

---

<sup>140</sup> Pub. L. 81-152, 63 Stat. 377.

<sup>141</sup> *American Recovery and Reinvestment Act Spending Plan*, *supra* note 30.

quickly using previously negotiated procurement contracts with architectural design firms to present a "sustainable design" for the renovated building. According to the GSA, the project scope has not been finalized, but will include a solar/vegetative roof, facade improvements, and security improvements. GSA describes the bidding process as "not uncommon."

June 18, 2009      The GSA's Region III office responds to Congressman Goodlatte's inquiry on behalf of the Roanoke business that expressed original concerns about the project.

June 19, 2009      The GSA's Region III office notifies Congressman Goodlatte that the agency posted an advertisement the day before soliciting a Construction Manager as Contractor (CMc) for the Poff Federal Building project. Businesses in Roanoke continue to complain about being shut out of the early bidding process for the project, saying that architecture and engineering professionals in the region will not realize any early benefits from the Recovery Act.

June 24, 2009      Congressman Goodlatte sends a follow-up letter to the GSA's Region III office seeking an analysis with regard to the proposed effort to turn the Poff Federal Building into a "green" structure and requests a breakdown of annual energy savings. He also requests additional information about security issues at the building and specifics about planned security improvements.

July 14, 2009      The GSA's Region III office responds to Congressman Goodlatte's inquiry of June 24, 2009. The agency says it is in the early phases of project design.

July 6, 2009      The GSA's Region III office calls Congressman Goodlatte's staff in Roanoke. Officials provide more details about the Poff Federal Building project, explaining that many of the building's systems (heating, ventilation, air conditioning, and elevators) are at the end of their useful lives. Officials also note that the project will include new curtain wall systems. Officials dispute that the agency is spending money recklessly on the project. Officials also say they had no personal knowledge of security problems at the building, explaining that the Federal Protective Service handles security for the building.

July 15, 2009      Poff Federal Building project team meets for the first time with Congressman Goodlatte's staff in Roanoke.

September 2009      Congressman Goodlatte follows up with the GSA Region III office regarding the status of the project. The GSA official explains that the

agency continues to interview firms that submitted bids to be CMC for the project.

- October 19, 2009 The GSA announces it has awarded a \$2.9 million contract to TranSystems Corporation of Philadelphia for architectural and engineering (A&E) design services for the Poff Federal Building project. Businesses in the Sixth District complain that their expertise to handle such projects was ignored by the agency.
- October 22, 2009 The GSA releases its first formal public announcement about the Poff Federal Building project, announcing the award of the design contract for turning the structure into a high-performance green building. The announcement comes on the same day that Congressman Goodlatte schedules a conference call with GSA Region III officials to discuss his concerns about the project and to repeat his request for a cost-benefit analysis that compares the project to new construction. GSA officials inform Congressman Goodlatte that security improvements are outside the scope of what was approved in the Recovery Act spending plan but that security upgrades had been discussed with a building security committee.
- November 6, 2009 The GSA's Region III office communicates with Congressman Goodlatte's staff to advise him that the agency had awarded a \$225,000 pre-construction phase services contract to Balfour Beatty Construction LLC of Fairfax, Virginia. Options for construction services (\$39 million), security (\$7.6 million), and codes (\$4.6 million) are listed in the contract award dollar amount. The GSA admits for the first time that the Recovery Act presented the agency an opportunity to list the Poff Federal Building and other projects for upgrades, as opposed to addressing needs in piecemeal fashion through normal budget requests. Until this time (and since taking office in 1993), Congressman Goodlatte was never aware that the agency had been seeking funds to improve the Poff Federal Building.
- November 9, 2009 Congressman Goodlatte issues a news release about the GSA's failure to fully answer questions about the Poff Federal Building project.
- December 2009 After awarding the A&E and pre-construction phase services contracts, the GSA conducts, but does not publicly disclose, a cost-benefit analysis of the Poff project. (It does not disclose this fact until July 9, 2010.)
- December 2, 2009 Congressman Goodlatte learns from the GSA's Region III office that the agency has advertised to lease 15,000 to 20,000 square feet of "swing space" to house the United States Department of Veterans Affairs while Poff Federal Building renovations take place.
- December 10, 2009 Congressman Goodlatte again writes to the GSA's Region III office to restate his concerns about the cost of the Poff Federal Building project,

repeat his request for a cost-benefit analysis, seek a breakdown of the various costs of the project, ask how many jobs are expected to be created by the work, and seek clarification with regard to the need to temporarily relocate the VA offices. The Congressman also seeks more information about the need for security updates. The Congressman seeks full disclosure of the spending on the project due to its enormity.

- January 11, 2010 The GSA's Region III office replies to Congressman Goodlatte's inquiry. The agency claims a "cost advantage" of more than \$18 million over a 20-year period compared to a new building.
- January 21, 2010 The GSA's Region III office discloses that a potential problem with floor loads created by files and cabinets in the Poff Federal Building was uncovered in August 2009. It relays that files were redistributed and the building was returned to normal operations in October 2009. Congressman Goodlatte seeks information about what will be included in the redesign of the building to avoid the same problems in the future.
- March 3, 2010 Congressman Goodlatte again writes to the GSA's Region III office to request a cost-benefit analysis and further clarification about overloaded floors in the Poff Federal Building.
- March 29, 2010 The GSA's Region III office replies to Congressman Goodlatte's inquiry. A one-page "cost comparison" of renovation of the Poff Federal Building versus new construction is included with the response.
- May 20, 2010 The Roanoke VARO discloses to Congressman Goodlatte's Roanoke staff that the agency, originally expected to be able to stay in the Poff Federal Building during renovations, will relocate to other space. The agency mentions for the first time that it would like to find an existing facility or build a new facility that would meet its needs for more efficient operation in the future.
- June 2010 Congressman Goodlatte hears from City of Roanoke officials concerned about the Roanoke VARO relocating outside the city during renovation of the Poff Federal Building, depriving the city of revenues associated with VA employees who eat, shop, and park downtown.
- June 2010 The GSA awards a \$39.9 million construction phase services contract to Balfour Beatty Construction, a company based in Fairfax, Virginia.
- June 11, 2010 Congressman Goodlatte consults with the Roanoke VARO Director regarding the agency's concerns about the Poff Federal Building project.
- June 17, 2010 Congressman Goodlatte writes to the GSA Administrator, the GSA Inspector General, and the U.S. Government Accountability Office (GAO)

to express his concerns with the Poff Federal Building project. He asks that the \$50.9 million project be halted and that the GSA examine alternatives better suited for the tenants and making more effective use of taxpayer dollars. He reiterates the need for a comprehensive cost-benefit analysis in addition to citing concerns about the negative impact the project will have on the processing of veterans' cases. He again emphasizes the importance of addressing the security and safety of the Poff Federal Building sooner rather than later.

- July 2010            The GAO reports that federal agencies obligated more than \$169 billion in government contract spending in 2009—a third of all such spending—without first holding competitions among vendors.<sup>142</sup>
- July 2010            Congressman Goodlatte begins the process of speaking to Federal Protective Service officials about security at the Poff Federal Building.
- Downtown Roanoke, Inc., reports its concerns about VA employees possibly leaving the downtown area during renovations.
- July 9, 2010        The GSA's Region III office notifies Congressman Goodlatte's Roanoke staff that the agency exercised the option for construction phase services, awarding the remainder of the contract to Balfour Beatty Construction.
- The GSA also discloses for the first time that it surveyed the Poff Federal Building in 2008 and as a result produced a report that recommended various systems replacements or upgrades.
- July 15, 2010      After learning that the GSA awarded the construction phase services, Congressman Goodlatte formally asks the GSA's Inspector General and the Comptroller General of the GAO to investigate the Poff Federal Building project.
- July 29, 2010      U.S. Senators Jim Webb and Mark Warner of Virginia write to the Honorable Eric Shinseki, Secretary of the Department of Veterans Affairs, and the Honorable Martha Johnson, Administrator of the GSA, to express concerns about the Poff Federal Building project. Senators Webb and Warner note that the VA's 34 percent backlog will be increased by the Roanoke VARO's removal from the Poff Federal Building, and they ask the GSA to "consider alternatives to the current reconstruction plan."
- August 11, 2010    The GAO declines to intervene in the Poff Federal Building project, saying that the agency only investigates complaints that are broad in focus.

---

<sup>142</sup> See U.S. Government Accountability Office, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*. Report to the Committee on Oversight and Government Reform, U.S. House of Representatives. GAO-10-833. (July 2010)

- August 13, 2010 The GSA's Region III office releases to Congressman Goodlatte a redacted copy of the October 2008 survey of the Poff Federal Building.
- August 30, 2010 *The Roanoke Times* reports that the GSA paid an arts conservation firm in Ohio \$7,246 to study how a sculpture outside the Poff Federal Building will be affected by renovations.<sup>143</sup>
- September 13, 2010 Congressman Goodlatte writes to the GSA Administrator regarding the redacted portions of the October 2008 survey of the Poff Federal Building, noting that he had not been informed of the study despite raising concerns about the project for more than a year. He also states that he has yet to receive a reply to his June 17, 2010 letter regarding Recovery Act funds being used to update the Poff Federal Building and reiterates his interest in receiving a formal response.
- September 23, 2010 GSA Administrator Johnson responds to Congressman Goodlatte's June 17, 2010 and September 13, 2010 letters. She justifies the Poff project by stating that the building is 35 years old and has never had a major renovation and claiming a new updated "analysis" shows that "constructing a new building would cost more than twice the amount of the renovations (\$124 million vs. \$50.9 million for the renovation), but also [would] over a 30-year period, [have] a cost advantage of \$8.4 million." She attempts to assure him that "[b]uilding security ... remains a high priority," and states, "The mandatory upgrades will be addressed in a coordinated sequence with the modernization project." She goes on to state, "This renovation project is being carefully synced with the recommendations from the most recent security assessments and should not require, based on the most recent security assessments, any other mandatory upgrades to address security concerns."
- October 4, 2010 Congressman Goodlatte attends a meeting that federal judges have with the GSA and the Poff renovation contractor. The group discusses concerns expressed by officials of the United States District Court for the Western Virginia about arrangements for the courts and personnel during the renovations.
- October 15, 2010 The GSA's Region III office replies to Congressman Goodlatte's concerns about redacted portions of the October 2008 feasibility study of the Poff Federal Building. The GSA official describes the redacted information as highly sensitive and related to building systems and security.
- October 22, 2010 The GSA's Region III office announces that the GSA awarded contracts for swing space at four locations for the Roanoke VARO during the Poff

---

<sup>143</sup> Hammack, *Art Study Upgrades Cost*, *supra* note 86.

Federal Building renovation. Estimated additional costs for the space, equipment, and moving expenses are \$10 million.

October 25, 2010

Congressman Goodlatte meets with members of the Poff Federal Building's Security Committee and GSA officials in Roanoke.

After learning that GSA signed a lease and that the Roanoke VARO will be displaced from the Poff Federal Building, Kevin Hall, a spokesman for Senator Warner, states, "Senator Warner has let GSA know that he is very disappointed both in their process and by their lack of responsiveness."<sup>144</sup>

October 29, 2010

The Honorable Brian Miller, the GSA's Inspector General, responds to Congressman Goodlatte's inquiry of July 15, 2010. His letter states that the GSA "did not conduct a cost-benefit analysis prior to awarding the contracts," but the "analysis conducted after the award indicates that renovating ... is more cost-effective than constructing a new building." Regarding the effects on veterans' claims, Miller notes there will be "some disruption" but that the VA and the GSA are working to minimize delays. Addressing the Congressman's concerns about security upgrades, Miller states that mandatory security upgrades are not part of the Recovery Act plans but they are "planned for completion within the next three years." He states security improvements recommended in 2006 "were included as an option in the construction project [but] the funding for this project was insufficient to make these improvements."

November 2010

Congressman Goodlatte continues to receive inquiries from veterans and employees of the Roanoke VARO concerned about the Poff Federal Building project and the impact on availability of parking and services.

November 3, 2010

Congressman Goodlatte sends a follow-up inquiry to the GSA's Inspector General. He requests a more thorough review than the " cursory examination" received from the GSA to date. He states that he fears an ongoing whitewash of the facts for a number of reasons including the absence of a well-developed cost-benefit analysis and the offering of only a cursory analysis done after the Recovery Act award was announced. In conclusion, he states he remains skeptical that the project was properly conceived from the beginning and asserts again that the GSA should order a halt of the project until the Inspector General completes a more thorough review.

November 6, 2010

Senator Warner states, "It's just inexcusable that [the GSA] wouldn't have done that kind of cost-benefit analysis first."<sup>145</sup>

---

<sup>144</sup> Hammack, Laurence. *Veterans Affairs Office to Redeploy, Scatter for Poff Renovation*. THE ROANOKE TIMES, Oct. 25, 2010, available at <http://ww2.roanoke.com/news/roanoke/wb/265087/>.

<sup>145</sup> Hammack, *Poff Funds Dedicated before Cost Analysis*, *supra* note 63.

November 17, 2010    Congressman Goodlatte receives a letter from the GSA's Inspector General and an unsolicited Recovery Act report that contains an audit of the Poff Federal Building project. The audit pertains to the use of a Construction Manager as Constructor (CMc) contract. It concludes that the GSA violated the Competition in Contracting Act (CICA), in pricing the project.

The report affirms that GSA included the Guaranteed Maximum Price (GMP) of \$42,000,000 in its July 2009 Request for RFP and that ten bidders on the Poff project submitted "bids for construction services [that] were identical."

The audit also notes that "the pricing had limited support, as GSA did not get an independent government estimate ... as required by the Federal Acquisition Regulation (FAR) 36.203" and that the GMP for Poff "was based on an internal budget estimate using the feasibility study estimate of \$28.9 million."

Rather than halt or re-bid the contract, the Inspector General recommends that the GSA not exercise its options for security improvements and building and life safety improvements unless compliance with applicable laws is assured.

November 23, 2010    Congressman Goodlatte writes GSA Administrator Johnson a third time to request that the GSA halt the proposed renovation in light of the new information and concerns raised by the Inspector General's audit. He writes, "Because of the mounting data that continues to reflect poorly on how the GSA has handled this taxpayer-funded undertaking, I strongly urge the GSA to discontinue the full contract for the project. Taxpayers have been compromised by the lack of competition in pricing for the project, leaving no assurances that fair and reasonable prices were reached for such an enormous mission."

November 30, 2010    A federal judge rejects an attempt by a veterans lobbying group to block the relocation of the Roanoke VARO while the renovation project proceeds. Congressman Goodlatte meets with David Ehrenwerth, the GSA's Regional Administrator for the Mid-Atlantic Region, to reiterate his concerns and restate his request that the Poff project be halted or redirected.

February 2, 2011    The GSA Region III office responds to Congressman Goodlatte's inquiry of October 26, 2010.

February 17, 2011    Congressman Goodlatte addresses the matter on the floor of the U.S. House of Representatives with Representative JoAnn Emerson (R-MO). He reiterates that he has "repeatedly demanded a comprehensive cost-

benefit analysis from the GSA showing that this project is financially worthwhile, as is required by law” and states, “it is completely unacceptable for GSA to move forward any further until such an analysis is produced.” Rep. Emerson agrees and commits that she is “very happy to work ... to conduct better oversight of the GSA and ensure that it does cost-benefit analyses.”

- February 27, 2011 *The Roanoke Times* reports that the GSA’s plan to break ground on the renovations is delayed from spring to summer. According to the article, the GSA’s Regional Public Affairs Officer, Gina Blyther Gilliam, provided no reason for the delay other than stating it is not unusual for construction projects.<sup>146</sup>
- March 21, 2011 In advance of GSA Region III official David H. Ehrenwerth delivering an address to the Roanoke City Council, Congressman Goodlatte renews his request to the GSA Administrator for answers to his most recent inquiries about the project. He notes the Mid-Atlantic Regional Administrator “had failed to respond to any of my questions,” and “strongly urge[s] the GSA to discontinue the full contract for the project.” He renews his concerns regarding the lack of an appropriate cost-benefit analysis and the documented violations of procurement laws. He also characterizes the GSA’s claims that constructing a new building would cost twice the \$51 million requested for renovations as a “guesstimate.”
- The Roanoke Times* reports that Ehrenwerth did not cover “in detail” the Congressman’s concerns during his appearance in Roanoke but that he “assured the council that relocating the [VARO] will not disrupt operations at the office.” *The Roanoke Times* also reports that Ehrenwerth insisted that funds were being “well-spent.”
- March 23, 2011 The GSA’s Region III office replies to Congressman Goodlatte’s October 26, 2010 inquiry on behalf of veterans concerned about the Poff Federal Building project.
- March 29, 2011 The GSA’s Region III office replies to Congressman Goodlatte’s November 8, 2010.
- April 10, 2011 The GSA’s Region III office notifies Congressman Goodlatte of an April 11 forum in Roanoke for minority-owned, veteran-owned, and women-owned contractors interested in working as subcontractors on the Poff Federal Building project.
- April 14, 2011 The House Committee on Transportation and Infrastructure conducts an oversight hearing entitled, “Richard H. Poff Federal Building Renovation:

---

<sup>146</sup> Laurence Hammack, *Face-lift for Poff Building in Roanoke Has Wrinkles*, THE ROANOKE TIMES, February 27, 2011.

Is It Costing the Taxpayer Too Much?" Four witnesses testify including Congressman Goodlatte; the Honorable Brian D. Miller, Inspector General of the U.S. General Services Administration; David H. Ehrenwerth, the GSA's Mid-Atlantic Region Administrator; and Ms. Julia Dudley, Clerk, U.S. District Court for the Western District of Virginia.

- April 11, 2011 A *Roanoke Times* report speaks of a new cost-benefit analysis that comprises "two paragraphs of text and a single chart," and which projects an \$8 million savings over 30 years.<sup>147</sup>
- August 1, 2012 A GSA contractor notices a crack in the 14-story west-facing brick facade.
- November 8, 2012 A consultant notifies the GSA that areas around the building, including a parking lot, the main public entrance, and a sidewalk, should be secured.
- The GSA notifies tenants, closes the main entrance, including the handicap ramp, and requires security personnel and screening equipment to relocate.
- November 9, 2012 The GSA reports that the "structural integrity of the building has not been impacted."
- November 14, 2012 With regard to structural problems identified at the Poff Federal Building, *The Roanoke Times* reports, "[i]t was not clear ... how long it might take GSA to devise a plan of action, or how much it might cost."<sup>148</sup>
- November 15, 2012 Rep. Goodlatte writes to the GSA's Regional Administrator to request "an independent building inspector to review the defects ... to determine the cause of the bulging facade, when the current conditions occurred, and whether or not the problems could have been detected earlier." He also requests a cost estimate to repair or replace the facade.
- November 2012 The GSA closes the Poff Federal Building for two days to remove the brick veneer on the west-facing wall.
- October 4, 2013 Rep. Goodlatte writes to the Comptroller General of the GAO to request that GAO perform a comprehensive study of court facilities that GSA selected to be recipients of Recovery Act courthouse or high performance green building funds. He requests that the GAO assess, among other things, whether the projects have been conducted in accord with statutorily mandated requirements and whether GSA considered and coordinated its

---

<sup>147</sup> Laurence Hammack. *Congressional Hearing to Weigh Poff Building Renovation*, THE ROANOKE TIMES, April 8, 2011.

<sup>148</sup> Laurence Hammack. *Brick Façade Bulging on Poff Building*, THE ROANOKE TIMES, November 14, 2012.

selections with the judges, courts, and other federal tenants who were most directly impacted by GSA's selection.

- November 1, 2013 The GAO accepts Rep. Goodlatte's request to review the GSA's use of Recovery Act funds that were specifically targeted for federal courthouses.
- January 2014 The GSA deems the base package of energy and fixture upgrades at the Poff Federal Building, which includes re-roofing, substantially complete.<sup>149</sup>
- March 2014 In its fiscal year 2015 budget submission to Congress, the GSA requests \$15,128,000 for a repair and alterations project to replace two exterior brick façade walls and to undertake structural and life safety upgrades to the parking garage at the Poff Federal Building.<sup>150</sup>
- June 19, 2014 The House Committee on the Judiciary conducts an oversight hearing entitled, "GSA's Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste." Four witnesses testify including the Honorable William P. Johnson, District Judge, United States District Court for the District of New Mexico; the Honorable Glen E. Conrad, Chief Judge, United States District Court for the Western District of Virginia; Jennifer L. Smith, Architect and Project Manager, United States District Court for the Western District of Virginia; and the Honorable Michael Gelber, Deputy Commissioner of the GSA's Public Buildings Service.
- Mr. Michael Gelber testifies that no one at the GSA has been held accountable with regard to the mismanagement of the Poff Federal Building project.
- August 13, 2014 *The Roanoke Times* reports that an employee of the Roanoke VARO was injured when a faulty elevator dropped while he was riding in it.<sup>151</sup> The newspaper includes testimony from other building employees demonstrating that the elevator's dangerous malfunction was not an isolated incident.
- October 2, 2014 House Judiciary staff learns from the GAO that GSA did not install a new "green" roof with a photovoltaic system on the Poff building.

<sup>149</sup> Jeff Sturgeon, *Repair Costs for Roanoke's Poff Building Head Toward \$65 Million*, THE ROANOKE TIMES, Feb. 20, 2014.

<sup>150</sup> *Fiscal Year 2015 Budget Request*, supra note 98.

<sup>151</sup> Sturgeon, *Worker Reports Injuries*, supra note 113.