

**UNITED STATES  
DEPARTMENT OF AGRICULTURE**



**LEASING HANDBOOK**

**SEPTEMBER 2004**

**OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT  
PROPERTY MANAGEMENT DIVISION**

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# INTRODUCTION

## A. PURPOSE

This handbook sets forth the policy and procedures for planning, acquiring and managing leasehold workspace to meet USDA needs. The procedures contained in this handbook are applicable to all lease contracts that are executed pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

As the overwhelming majority of leases held by the agencies of the Department are for small blocks of space, this handbook applies to the acquisition of space under 10,000 square feet. For acquisitions of space over 10,000 square feet, use the procedures prescribed in GSAR 570.2 (48 CFR Subpart 570.2).

## B. AUTHORITY

The authority to lease, using GSA delegated authority, may be exercised only by duly authorized individuals who have been certified under the Department's Real Property Leasing Officer Warrant System.

Prior to acquiring lease space, first consideration must be given to USDA-owned or leased then any other Federally-controlled space. For additional information concerning the location of USDA facilities, see AGPMR 110-79.65 "Location of USDA facilities" and DR 1620-2 "USDA Space Management Policy."

When acquiring leasehold interests in real property, Real Property Leasing Officers (RPLOs) will comply with the Competition in Contracting Act.

## C. AGENCY GUIDANCE

Each designated Head of the Real Property Leasing Activity (HRPLA) is authorized to issue or authorize the issuance of internal guidance which does not have a significant effect on lessors or prospective lessors. "Significant effect" is defined generally as something which has an effect beyond the internal operating procedures of the Leasing Activity, or has a cost or administrative impact on offerors or lessors.

## D. STATUTORY AND REGULATORY REQUIREMENTS

The basic Government-wide authority for leasing real property is contained in Section 210(h)(1) of the Federal Property and Administrative Services Act of 1949, as amended

(63 Stat. 377) (40 U.S.C. 490(h)(1). Section 205(d) of the Act authorizes the Administrator of GSA to delegate and authorize successive redelegations of authority contained in the Act (except for the authority to issue regulations on policy.)

Portions of this authority have been delegated to the Secretary of Agriculture by the Administrator, including the authority to enter into leases with firm terms up to twenty years, and to liquidate the obligations out of annual appropriations. This authority has been delegated to the Agency Heads. The authority to lease in major metropolitan areas has also been delegated to the Secretary of Agriculture. This authority has not been redelegated to the agencies. USDA agencies must submit written requests to lease in major metropolitan areas to the Director, Office of Procurement and Property Management (OPPM) for approval.

The following statutes and regulations are applicable to the acquisition of leasehold interest in real property.

1. The Anti-Kickback Act of 1986 (41 U.S.C. 51) The Act was passed to deter subcontractors from making payments and contractors from obtaining or rewarding favorable treatment in connection with a contract or subcontract.
2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) The Act is intended to ensure that certain buildings financed with Federal funds are designed, constructed, altered and leased in accordance with standards to provide ready access to and use of such buildings to physically handicapped people.
3. Assignment of Claims Act of 1940 (31 U.S. C. 3727) Allows contractors to assign rights to payment, including rent, to established financing institutions.
4. Competition in Contracting Act of 1984 (41 U.S.C. 253) This act amends the Federal Property and Administrative Services Act of 1949, which requires, with certain limited exceptions, that the RPLO will promote and provide for full and open competition in soliciting offers and awarding Government lease contracts.
5. Contracts Disputes Act of 1978 (41 U.S.C. 601-613) Requires disputes arising from federal contracts to be adjudicated by established process and procedures.
6. Copeland Act of 1934 (18 U.S. C. 874; U.S. C. 276c) This Act makes it unlawful for a contractor to force a kickback from any person employed in the construction or repair of a public building or public work. The Act also requires contractors and subcontractors to furnish compliance statement with respect to wages paid to employees. This Act is potentially applicable to lease acquisitions when an offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the Government.
7. Covenant Against Contingent Fees (U.S.C. 245(a) Requires that no individuals

other than full-time bona fide employees or established bona fide agents maintained by the contractor have been retained to solicit or obtain a Federal contract. This requirement is not applicable to contracts below the simplified acquisition threshold for leasing.

8. Davis-Bacon Act of 1931 (40 U.S. C. 276a - 276a-7) Provides for payment of prevailing wages to laborers on Federal construction projects. This act is potentially applicable to lease acquisitions when an offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the Government.
9. Drug-Free Workplace Act of 1988 (P.L. 100-690) The Act was passed to ensure that Government lessors establish and maintain a drug-free workplace.
10. Examination of Records (P.L. 103-355, 2551) Authorizes the head of an agency and the Comptroller General to inspect records of Federal contracts. This authority is not applicable to contracts below the simplified acquisition threshold for leasing.
11. Fire Administration Authorization Act of 1992 (15 U.S.C. 2227) Requires that an entire building be sprinklered or provide an equivalent level of life safety when Federal funds are used to lease 35,000 square feet or more of space in a building (under 1 or more leases) and some portion of the leased space is on or above the 6<sup>th</sup> floor. Also requires that all hazardous areas be sprinklered in all Government leases.
12. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 531-535) Requires GSA to consult with planning agencies and local elected officials and to coordinate federal projects (i.e., usually large projects requiring Congressional prospectus approval) with development plans and programs of the state, region, and locality where the project is located.
13. National Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 770) Requires the establishment and maintenance of an effective earthquake hazards reduction program to reduce the risks of life and property from future earthquakes.
14. National Energy Conservation Policy Act of 1978 (42 U.S.C. 6201) Requires that each Federal agency give appropriate preference to buildings which use solar heating and cooling equipment or other renewable energy sources.
15. The National Environmental Policy Act of 1969 (U.S.C. 4321 et. seq.) Requires an assessment of the environmental impacts associated with major Federal actions. This Act is implemented by Executive Order 11541. Normally this does not apply to acquisitions of less than 10,000 square feet.

16. National Historic Preservation Act of 1966 (16 U.S.C. 470 -470w-6) Requires listed historical properties be protected from harm as a result of Federal actions, including leasing.
17. Occupational Safety and Health Act of 1970 (5 U.S.C. 7902) Requires Federal agencies to ensure that leased space provides safe, healthful working conditions, including building features such as lighting, guardrails, firesafety features, emergency elevator requirements, etc.
18. Officials Not To Benefit (41 U.S.C. 22) Prohibits any member of Congress from receiving any benefit arising from a Federal contract.
19. Prohibits Against Payments to Influence (31 U.S.C. 1352) Requires certifications from contractors that funds have not and will not be paid to any person to influence the award of a Federal contract.
20. Prompt Payment Act (31 U.S.C. 3901-3907) Requires Federal payments to contractors be made in an expeditious manner, provides penalties for late payment by the Government, and requires that the Government be entitled to discounts for early payment.
21. Public Buildings Amendments Act of 1988 (P.L. 100-678) The Act amended the Federal Property and Administrative Services Act of 1949 and the Public Buildings Act of 1959. The Act raised the threshold for prospectus approval. The Act also repealed Section 322 of the Economy Act of 1932 which limited the amount of funds the Government could spend on alterations in leased facilities.
22. Public Buildings Cooperative Act of 1976 (40 U.S.C. 601a) Requires historic properties to be utilized when practical.
23. Rural Development Act of 1972 (42 U.S.C 3122(b)) This act requires that when moving or establishing new offices, consideration be given to locating them in rural communities. In general practice, a rural community is one with a population of less than 50,000.
24. Amendments to the Small Business Act (15 U.S.C. 637) Requires a positive effort by Federal contractors to place subcontracts with small and disadvantaged business concerns.
25. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) Requires Federal agencies to provide relocation services and benefits to persons displaced as a result of Federal lease construction projects
26. Amendment to the Toxic Substances Control Act (15 U.S.C. 2669) Directed

Federal agencies to establish radon measurement procedures in Federally leased facilities.

27. Executive Order 12072 - Federal Space Management Initiated Central Business Area priority locating leased locations, designed to exert a positive social and economic influence on the areas in which facilities are to be located. Implemented within USDA by Memorandum of Understanding between USDA and GSA on Location of Federal Facilities (December 29, 1979).
28. Executive Order 12411 - Government Work Space Management This order established Government-wide policies for the management of work space and related furnishings. This is the basis for the GSA managed space utilization program.
29. Executive Order 11738 - Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans Requires that each Federal agency empowered to enter into contracts shall undertake such procurement in a manner which will result in effective enforcement of the Clean Air Act and Federal Water Pollution Control Act.
30. Executive Order 11988 - Floodplain Management and Executive Order 11990 - Protection of Wetlands Preclude Federal agencies from leasing space in buildings located within a 100-year floodplain.
31. Federal Management Regulation (FMR) (41 CFR Chapter 102) The FMR is the successor regulation to the Federal Property Management Regulations (FPMR). It contains updated regulatory policies applicable to GSA and Federal agencies to whom GSA real property authority has been delegated.
32. Executive Order 13006 - Locating Federal Facilities on Historic Properties in Our Nation's Central Cities Reaffirms the commitment set forth in E.O. 12072 and the Public Buildings Cooperative Use Act of 1976. It requires that first consideration be given to locate in historic buildings and districts within central business areas. It directs Federal agencies to remove regulatory barriers, review their policies and build new partnerships with the goal of enhancing participation in the National Historic Preservation Program
33. Executive Order 13123 Section 403 (e) Model Lease Provisions Greening the Government Through Efficient Energy Management Agencies entering leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference for buildings having

the ENERGY STAR® building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR® building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors' Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

34. Executive Order 13101 Greening the Government through Waste Prevention, Recycling, and Federal Acquisition requires agencies in their acquisition planning, including acquisition of leases, to consider the following factors: recycling of waste materials; waste prevention (including toxicity reduction); life cycle costing; elimination of virgin materials; and use of recovered or environmentally preferable materials at the site and for services provided at the site. For further information: [www.ofee.gov](http://www.ofee.gov) and [www.epa.gov/cpg](http://www.epa.gov/cpg).
35. General Services Administration Acquisition Manual (GSAM) (APD 2800.12B) The GSAM was issued by GSA, effective September 1, 1999. It consolidates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy. GSAR material is shaded. The shading helps users to distinguish and identify those parts that are regulatory from those that apply internally to GSA. The shaded parts are those subject to section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C.418b).
36. General Services Administration Acquisition Regulations (GSAR) (48 CFR Chapter 5) The GSAR was issued by GSA, effective April 1, 1984. It applies to all GSA contracts for supplies or services, including construction through purchase or lease. Part 570 of the GSAR contains policies and procedures on the acquisition of leasehold interests in real property. Parts 501, 502,503, 505, 533, 552, 553, and subparts 504.70, 509.4, 515.1, and 532.8 include policies and procedures which have general application to all contracts including leases of real property. Other GSAR provisions do not apply to leases of real property unless a specific cross-reference is made to the provisions in Part 501 and 570. Federal agencies which lease space under a delegation of authority from the Administrator of GSA are required to comply with the provisions of the GSAR.
37. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) The FAR became effective April 1, 1984, and is now the procurement regulation followed by all Federal agencies. This regulation does not specifically include contracting for leased space but many of the general requirements have been interpreted by the GSAR to include leases.
38. Executive Order 13327 Establishes a number of actions intended to promote efficient and economical use of national real property assets. The order requires agencies establish the position of Senior Real Property Officer to ensure better organization, planning, and accountability of property management. It also

requires the development and implementation of asset management plans. This order revokes E.O. 12512.

**E. ABBREVIATIONS**

AGPMR - Agriculture Property Management Regulations  
ATBCB - Architectural and Transportation Barriers Compliance Board  
CBD - Commerce Business Daily  
CICA - Competition in Contracting Act  
FMR - Federal Management Regulations  
GSAM - General Services Administration Acquisition Manual  
GSAR - General Services Administration Acquisition Regulations  
HRPLA - Head of the Real Property Leasing Activity  
HVAC - Heating, Ventilation, Air-Conditioning  
PCB's - Polychlorinated Biphenyls  
PNM - Price Negotiation Memorandum  
PVA - Present Value Analysis  
RPLO - Real Property Leasing Officer  
s.f. - Square feet  
SFO - Solicitation For Offers  
SLA - Supplemental Lease Agreement

**F. DEFINITIONS**

See Glossary or refer to Code of Federal Regulations for definition of terms.

## **CHAPTER I. OVERVIEW**

The acquisition of leasehold interests in real property is unique. Because no two properties are alike, the recommended method of contracting is through procedures that are different from those for supplies and services. An overview of the leasing process begins with the determination of agency's space requirement. The Real Property Leasing Officer (RPLO) will then prepare a Solicitation for Offers (SFO).

Locations are identified through advertising and contacts with local real estate companies and other related business concerns. During the market survey, the RPLO will survey all buildings and sites within the delineated area that either meet the Government's requirements or have the potential to meet the Government's requirements. The RPLO meets with prospective lessors and issues the SFO package as warranted.

The Government's requirements package will instruct potential lessors where and when to submit offers. The offers are then evaluated by the RPLO. Offers will be evaluated on the basis of the lowest annual price per square foot and other award factors, as stated in the SFO.

Negotiations will be conducted with all offerors whose space meets, or is capable of meeting, the Government's minimum requirements. Negotiations are terminated when the RPLO is convinced that the most favorable rental rate to the Government has been obtained.

The requirement for an appraisal to support negotiated contract rentals for leases has been eliminated. GSA determined that acquiring an appraisal is a time consuming and expensive process and is not a common industry practice for lease acquisitions. Price can now be based on market survey information gathered during the acquisition process. Under certain circumstances, the Truth in Negotiations Act, (TINA), may cause the RPLO to perform an appraisal. TINA requires offerors to submit cost or pricing data when adequate price competition does not exist for leases having a total contract value greater than \$550,000. In such circumstances, the market price exemption from this requirement may be applied based on market survey information or an appraisal. When the cost or pricing data provisions of TINA are triggered and no market information is available, an appraisal should be prepared instead of requiring lessors to submit costs or pricing data.

An award is made to the offeror that is most advantageous to the Government's requirements as stated in the SFO, price and other factors considered. Prior to occupancy, the RPLO or agency representative will inspect the space to ensure it meets the requirements of the lease contract. A lease commencement date is based on the results of the inspection.

## **CHAPTER II. PLANNING FOR ACQUISITION**

### **1. REVIEW OF AGENCY REQUIREMENTS**

Federal policy on space requirements is established by the Federal Management Regulation which sets forth the methodology and criteria to determine the amount of space required to develop the basic buildout requirements for new or expansion space. Establishing the need involves identifying and describing the delineated area, the personnel to be housed, furniture and equipment needs, square footage required per person and in total, and technical requirements.

Agency space requirements must be thoroughly reviewed before proceeding with a lease acquisition.

The review should include the following:

#### **A. Type and Amount of Space**

When planning a space action, Departmental Regulation 1620-2, USDA Space Management Policy, should be used. This policy is to be implemented whenever entering into a new or expanded GSA assignment, new and superseding USDA leases, space reduction actions, or other space actions resulting in significant space changes in owned and leased space.

All space requirements should be documented. Use of the Standard Form 81 (Request for Space) and its related documents (SF-81A, Parts 1 and 2) facilitates requirements development. (As established in “Can’t Beat GSA Leasing” October 1996, these forms are no longer mandatory in the formulation of a space need when making requests to GSA. However, their continued use is permissible, and they remain the recommended tool for capturing this information and explaining requirements.) The “Space Requirements Guidelines and Questionnaire”, developed by GSA is available from their Regional Offices and is a useful document in putting together information on the technical aspects of the space needs.

#### **B. Location**

Leasing authority for agencies within the Department is generally restricted to areas outside of major urban centers. There are four exceptions:

- (1) Leases for county level offices of the NRCS, FSA, and/or RD and for FS District Ranger stations;

- (2) Leases for which there is an approved specific delegation from the Administrator, GSA;
- (3) Leases for special purpose space as described in FMR 102-73.155. Lease terms for cotton-classing laboratories are limited to 5 years including all options. The same 5 year lease term applies to office space when it is required to be located in or adjacent to stockyards, produce markets, produce terminals, airports, and other ports.
- (4) GSA has extended to the Secretary of Agriculture the option of leasing in major metropolitan areas. This authority has not been redelegated to the agencies within the Department. All requests for leasing in major metropolitan areas must receive the approval of the Director, OPPM. Agencies should fax a copy of correspondence from GSA acknowledging the lack of vacant space under Government control to the Property Management Division, PMD, and OPPM. The OPPM fax number is 202-720-3339.

### **C. Delineated Area**

#### **(1) Size**

Program requirements ultimately govern the location of required space and may limit the area of consideration. However, the limitations on the area must be fully justified on the basis of mission requirements. Court decisions and legislation have reduced the flexibility of agencies in fixing boundaries in locating new facilities. To avoid conflict with statutory requirements and to avert protests from bidders, the area of consideration must be consistent with mission requirements, conform to Federal location policy, and provide adequate competition. The area should not be too restrictive to allow for adequate competition. Any site within a 100-year floodplain should be excluded from the delineated area.

#### **(2) Boundaries**

In the determination of the geographic location to house a Federal activity, a number of statutes, orders, and regulations come into play. Specifically, under the Rural Development Act of 1972, agencies are required to give first consideration to the location of new offices and other facilities in rural areas. If an agency concludes that a particular activity must be located in an urban area, then the requirements of Executive Order 12072 (Federal Space Management) must be applied. The Executive Order mandates that in urban areas first consideration be given to locating Federal facilities in the Central Business Area (CBA) and adjacent areas of similar character. Regulations governing the application of Executive Order 12072 to specific space actions are contained in FMR 102-83, Location of Space. Additional information on identifying a delineated area can also be found in the GSA Customer Guide to Real

Property. GSA is given final approval authority for delineated areas when GSA is handling the acquisition for an agency. USDA agencies using GSA delegated leasing authority must adhere to the GSA location policy.

In addition to the above, other factors that must be considered before a final decision is made on the delineated area are:

- The availability of existing or planned Government-controlled space. A decision not to use such space must be fully justified.
- The existence of historic buildings in the general area. Use of such buildings is prescribed in the Public Buildings Cooperative Use Act of 1976 and Executive Order 13006.

### **(3) Language**

In describing the boundaries of the delineated area, use specific terms to avoid misunderstanding or confusion. Make it clear that the needed space must be “within or fronting the area bounded by ... (list streets, or other features).” If a feature other than a street is involved such as a river, freeway, etc., the description should continue “...and the northerly edge of Interstate 80 on the south.”

## **2. ACQUISITION OF SPACE**

### **A. Federally Controlled**

The agency must inquire into the availability of suitable Government controlled space, as required by FMR 102-73.60 and the terms of the September 25, 1996 delegation. When Government controlled space is available but is not suitable for the agency's program mission, the agency must get written approval from the GSA Assistant Regional Administrator. In order to obtain this approval, agencies must demonstrate why the available space is not suitable for the activity to be housed.

Agencies should also ascertain colocation opportunities with other agencies when contemplating relocation.

### **B. Competition In Contracting Act**

Agencies must comply with the requirements of the Competition in Contracting Act (CICA). All new leasehold acquisitions, including succeeding and superseding leases and renewal options, are subject to the requirements of the Act.

(1) **Full and Open Competition** CICA requires that there be full and open competition. Permitting all responsible sources to compete constitutes full and open competition. A market survey should be conducted to determine possible sources for fulfilling space requirements.

(2) **Other Than Full and Open Competition** If after review of the agency's space requirements and/or the market survey indicates that full and open competition is not possible, then use other than full and open competition procedures to fulfill the space needs. This process requires preparing a formal justification and requesting the required approval for other than full and open competitive actions.

(3) **Exceptions For Use of Full and Open Competition** The agency must cite one of the following in the justification for other than full and open competition.

41 USC 253(c)

\*(c)(1) - only responsible source

\*(c)(2) - unusual and compelling urgency

(c)(3) - industrial mobilization; experimental, developmental or research work

(c)(4) - international agreement

(c)(5) - authorized or required by statute

(c)(6) - national security

(c)(7) - public interest

\*Exceptions most frequently used in leasing process. (See GSAR 570.104 and FAR 6.302)

Examples of supportable justification, 41 USC 253 (c) (1) or (c) (2), of other than full and open competition for new lease acquisitions are:

(a) Location specific due to program mission, e.g., border stations, airports, grain elevators, etc. Cite (c) (1).

(b) Only one location available supported by market survey and/or advertising. Cite (c)(1).

(c) Disaster or emergency. Cite (c)(2).

(d) Time critical so that the Government would be injured seriously by delay. Cite (c)(2).

(4) **Justifications** A justification generally should include (1) supporting data, market survey and program mission as it relates, to space (2) program certification that requirements are accurate and complete, and (3) Real Property Leasing Officer (RPLO) certification that information is accurate and complete.

(5) **Approval Levels of Justification** - A justification for other than full and open competition must be approved in writing at the appropriate level. The total value of the lease contract including any options establishes contract approval thresholds.

If the total value of the lease contract is less than \$25,000, no approval is required.

Note: Written justification for lease contracts less than \$25,000 must be included in the file but contract approval is not required. If the total value of the lease contract is equal to or greater than \$25,000 but less than \$100,000, then approval at one level above the RPLO is required.

If the total value of the lease contract is equal to or greater than \$500,000 but less than \$10,000,000, then approval by the contracting activity's competition advocate is required.

If the total value of the lease contract is equal to or greater than \$10,000,000 but less than \$50,000,000, then approval by the Head of Real Property Leasing Activity (HRPLA) is required.

The written approval of the justification by the authorized person must be obtained before the RPLO can begin negotiations. This approval must be retained in the lease contract file.

### **3. ACQUISITION PLAN**

All proposed acquisitions in excess of \$25,000 (total contract amount) shall have an "acquisition plan." The RPLO shall be responsible for preparing the plan. All plans shall be reviewed and approved at least one level above the individual writing the plan.

All plans over \$100,000 must be in writing. The HRPLA or their designee may authorize oral plans for acquisitions between \$25,000 and \$100,000. For oral plans, the file must be documented with the name of the individual who approved the plan.

In cases of unusual or compelling urgency a written plan may be waived if the preparation of the plan prior to award would unreasonably delay the acquisition. Document an oral plan and complete the acquisition plan after the award.

Acquisition plans for contracts expected to exceed \$500,000 and using other than full and open competition must be coordinated with and concurred with by the agency's competition advocate.

**REQUEST FOR SPACE** (See instructions on reverse)

1. DATE

2. AGENCY REQUEST NO.

3. LOCAL AGENCY CONTACT (Name)

PHONE NO.

4. AGENCY MARKET SURVEY REPRESENTATIVE (Name)

PHONE NO.

5. TO: **GENERAL SERVICES ADMINISTRATION**  
**PUBLIC BUILDINGS SERVICE**

NO., STREET  
CITY & STATE  
ZIP CODE

6. FROM: AGENCY NO., STREET  
CITY & STATE  
ZIP CODE

7. FOR: AGENCY ADDRESS  
ZIP CODE  
BUREAU CODE

8. TYPE OF REQUEST:  INITIAL EXPANSION  CONTINUING REQUIREMENTS REDUCTION

9a. GEOGRAPHIC SERVICE AREA

9b. DELINEATED AREA

10. TERM OF OCCUPANCY FROM (mo. & yr.) TO (mo. & yr.)

11. TOTAL NO. OF PERSONNEL TO BE HOUSED

**12. SPACE REQUIREMENTS**

| TYPE OF SPACE                             | NO. OF PERSONNEL | SO. FT. PER PERSON | SO. FT. | TOTALS |
|---|------------------|--------------------|---------|--------|
| OFFICE                                    |                  |                    |         |        |
| a. PRIMARY OFFICE AREA                    |                  |                    |         |        |
| OFFICE SUPPORT AREA                       |                  |                    |         |        |
| OFFICE SPACE SUBTOTAL                     |                  |                    |         |        |
| b. ST 1 GENERAL STORAGE                   |                  |                    |         |        |
| c. ST 2 WAREHOUSE STORAGE                 |                  |                    |         |        |
| d. STORAGE SUBTOTAL (Lines b, c)          |                  |                    |         |        |
| SPECIAL                                   |                  |                    |         |        |
| e. SP 1 LABORATORY & CLINIC               |                  |                    |         |        |
| f. SP 2 FOOD SERVICE AREA                 |                  |                    |         |        |
| g. SP 3 STRUCTURALLY CHANGED              |                  |                    |         |        |
| h. SP 4 AUTOMATED DATA PROCESSING         |                  |                    |         |        |
| i. SP 5 CONFERENCE & TRAINING             |                  |                    |         |        |
| j. SP 6 LIGHT INDUSTRIAL                  |                  |                    |         |        |
| k. SP 7 QUARTERS/RESIDENTIAL HOUSING      |                  |                    |         |        |
| l. SPECIAL SUBTOTAL (Lines e-k)           |                  |                    |         |        |
| m. TOTAL SPACE REQUIRED (Lines a, d, & l) |                  |                    |         |        |
| n. OPEN LAND (Total acres)                |                  |                    |         |        |
| o. ST 2 INSIDE PARKING (No. of spaces)    |                  |                    |         |        |
| p. OUTSIDE PARKING (No. of spaces)        |                  |                    |         |        |
| q. TOTAL PARKING SPACES (Lines o, p)      |                  |                    |         |        |

13. SPECIAL REQUIREMENTS AND SERVICES (see attached)

ATTACHMENT(S)

14. AGENCY CERTIFICATION

I certify that this request is accurate and complete; is for the minimum amount of space required; is in compliance with FPMR 101-17, including all laws and executive orders governing the location of space; and that funds are available for payment of rent, moving expenses, telecommunication expenses, and any related reimbursable costs.

SIGNATURE

PHONE NO.

DATE

15. FOR GSA USE ONLY (Action by Authorized GSA Official)

GOV'T CONTROLLED SPACE TO BE ASSIGNED

NO GOV'T SPACE AVAILABLE LEASING ACTION PLANNED

UNIQUE AGENCY SPACE DETERMINED - SEE ATTACHED

AGENCY AUTHORIZED TO ACQUIRE SPACE UNDER ITS OWN AUTHORITY

COMMENTS ATTACHED

PRINT NAME AND TITLE

SIGNATURE OF AUTHORIZED GSA OFFICIAL

PRINT NAME AND TITLE

SPACE REQUEST NO.

DATE RECEIVED

NAME OF GSA REGIONAL CONTACT

PHONE NO.

**GENERAL SERVICES ADMINISTRATION**

## **INSTRUCTIONS**

### **Submitting the SF-81**

Submit the SF-81 in triplicate, accompanied by a completed SF-81A, Space Requirements Worksheet, Space Requirements Questionnaire and any additional documentation to fully support the agency's space needs. Failure to provide complete and accurate information will delay processing and may result in return of the SF-81 for correction, update, and resubmission.

The SF-81 **must** be submitted by the office which has authority to obligate funds to reimburse GSA for all applicable costs associated with the delivery of space. Agency field components which do not have delegated authority to obligate funds must coordinate submission and approval of the SF-81 with offices which have this authority. A GSA Form 2957, Reimbursable Work Authorization, should be submitted when applicable.

**Item 1.** Date form is prepared.

**Item 2.** Agency established request number.

**Item 3.** Name and phone number of the local agency official who is knowledgeable of the request and will serve as the agency's point of contact for this project.

**Item 4.** Name and phone number of agency representative who will work with GSA if a market survey is conducted. This individual must have the authority to determine acceptability of the building and/or sites and their location.

**Item 5.** GSA regional office which has jurisdiction for geographical area where space is required.

**Item 6.** Name and address of organization making the request.

**Item 7.** Name of agency, and bureau code of the organization which will occupy the space (e.g., regional office, district office, field office) if different than information provided in block 6. City and state where the space is requested.

**Item 8.** Type of request. Initial: A request for new space that is not associated with an existing assignment. Expansion: A request for additional space associated with an existing assignment. Continuing requirements: A space action required for a lease renewal, succeeding lease, lease extension or move. Reduction: A space action that requires regional Real Estate Division effort to effect the partial or total termination of an assignment.

**Items 9a. and 9b.** Geographic/Delineated area that the agency will service. The geographic area (State, city, county, zip code, etc.) for which an agency/bureau has operational responsibility as well as the specific delineated area as identified and justified by the requesting agency. GSA review of the delineated area shall be limited to ensuring that the delineated area will provide adequate competition and the maximum use of existing Government controlled space (see Item 14 Agency Certification).

**Item 10.** Period of time the organization will use the space and the suggested number of years for a firm term period. This time period must be representative of the longest period for which the agency can commit. "Indefinite" and "ASAP" are not acceptable responses.

**Item 11.** Total number of personnel to occupy the requested space. ("Personnel" means the peak number of persons to be housed, regardless of how many workstations are provided for them. In addition to permanent employees of the agency, personnel includes temporaries, part-time, seasonal, contractual employees and budgeted vacancies.)

**Item 12.** This portion of the SF-81 is used to identify agency's square footage requirements by type of space. All information should be supported by a detailed explanation on the Space Requirements Questionnaire and SF-81A.

**Item 12, line a.** This line identifies the Office Space Subtotal. The Office Space Subtotal is determined by entering the amount of space required for the primary office area and adding this to the amount required for the office support area. "Primary Office Area" is the primary people occupied area in which an activity's normal operational functions are performed.

"Office Support Area" refers to the areas constructed as office space and used to meet needs outside the agency's primary work area requirements (e.g., reception, conference, file, libraries, hearing, interview, and secondary work area). Office support areas should be clearly identified on the attached SF-81 A and Space Requirements Questionnaire.

**Item 12, lines b, c.** Amount of general and warehouse storage space required. (See Item 12, line o for ST 2 inside parking).

**Item 12, line d.** Total amount of storage space required (Add lines b and c).

**Item 12, lines e-k.** Amount of special space required.

**Item 12, line I.** Total amount of special space required (Add lines e through k).

**Item 12, line m.** Total amount of Office, Storage and Special space required. (Add lines a, d, and I).

**Item 12, line n.** Total acres needed. For amounts less than 1 acre, 1 acre equals 43,560 square feet.

**Item 12, line o, p.** Agency's inside and outside parking requirement. Certification that the parking is necessary for the efficient operation of the agency mission is required. One parking space equals 300 square feet. Please indicate the number of spaces.

**Item 12, line q.** Total parking spaces required. (Add lines o and p).

**Item 13.** This item refers to the specific architectural, mechanical, electrical, structural, and other special requirements related to each of the types of space requested in Item 12. These include security; electrical; HVAC; floor loading; sound conditioning; fire and safety; and the need for after hours building access, utilities, and cleaning services. Such requirements must be fully defined by area, including computer rooms, laboratories, conference rooms, etc. These requirements must be specified in detail on the Space Requirements Questionnaire and SF-81A. Check box in Item 13 to indicate if this information is attached.

### **Agency Certification**

**Item 14.** The certification must be signed by an authorized agency official.

**Item 15.** GSA will evaluate the request in terms of the space available in its inventory and determine the appropriate action. If GSA determines that space requested is unique agency space, GSA will take no action until the agency has concurred with that designation. GSA will assign a space request number which will be used to track the request until it is satisfied.

Name and phone number of the GSA regional official who is knowledgeable of the request and will serve as GSA's point of contact.



SEP 25 1995

Office of the Executive Secretary, USDA  
Administrator  
General Services Administration -8 A 11: 09  
Washington, DC 20405

Action Office: PPM  
Referral Code: 35-06



\* 3 1 1 4 1 7 4 \*

The Honorable Dan Glickman  
Secretary of Agriculture  
Washington, DC 20250

Dear Mr. Secretary:

The General Services Administration (GSA) has established a new leasing program that offers Federal agencies the option of continuing to use GSA as their leasing agent for general purpose space or taking on that responsibility within their own agency.

This new program, called "Can't Beat GSA Leasing," is an outgrowth of our commitment to streamline our leasing operations. Under this new program, GSA provides you a simple choice. Either engage us to provide you with the most cost-effective and fastest service in the real estate market today or use the enclosed delegated leasing authority to do it yourself.

We have taken this bold step to respond to the needs of a changing world in which Government must work faster, smarter, cheaper and better. We are committed to provide space for your agency so you can meet those needs.

GSA must also meet these challenges to work up to new standards of excellence. At the same time, we have listened carefully to the recommendations from many of our client agencies and the Vice President's National Performance Review to open ourselves to competition.

Under "Can't Beat GSA Leasing," we have developed new strategies and retooled our entire leasing operation. We refocused our energies on the needs of you, our customers. To cite just a few examples:

- o Our pricing structure is now clearer and more responsive to our customers.
- o Your rent for space that we lease will be based on our rent plus a service fee comparable to that charged by private sector agents.
- o We can now provide customized tenant allowances and flexibility in payment alternatives for above standard items.

The most important change, however, is the "can do" attitude of our experienced, warranted real estate contracting officers. We have empowered them to respond to your needs with sound business practices that make sense.



As you would expect, GSA's leasing specialists will continue to follow all the statutory requirements – the same ones you will be expected to follow if you choose to use other brokerage services.

All of us at GSA hope you will choose to stay in the GSA family. Your leasing requirements are our most important business. We look forward to providing you with the most efficient, experienced, cost-effective service offered anywhere today, a service we think you will agree lives up to its name: "Can't Beat GSA Leasing."

Sincerely,

A handwritten signature in black ink that reads "David". The signature is stylized with a large, sweeping initial "D" and a trailing flourish.

David J. Barram  
Acting Administrator

Enclosure

## **Delegation of Leasing Authority**

Pursuant to the authority vested in the Administrator of General Services by subsections 205(d) and 210(h)(1) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, I hereby delegate authority to the heads of all Federal agencies to perform all functions related to the leasing of general purpose space for a term of up to 20 years regardless of geographic location. This delegation of authority does not alter the space delegations in sections 101-18.104-2 and -3 of the Federal Property Management Regulations, which pertain to "categorical" and "special purpose" space.

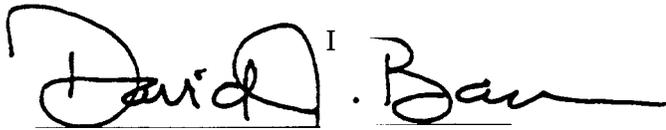
This delegation is effective October 14, 1996, and subject to the following conditions:

1. Prior to instituting any action under this delegation, the head of a Federal agency or its designee shall notify the appropriate GSA, Assistant Regional Administrator for Public Buildings Service (ARA/PBS) of the agency's need for general purpose space and the agency's intent to exercise the authority granted in this delegation. The agency may exercise the authority contained in this delegation when the ARA/PBS determines that suitable Government-controlled space is not available to meet the space need of the Federal agency.
2. Relocation of Government employees from GSA-controlled federally owned or leased space may take place when prior written confirmation has been received from the appropriate ARA/PBS that suitable Government-controlled space cannot be provided for them.
3. A prospectus has been approved by the Congressional Committees pursuant to the Public Buildings Act of 1959 when the annual rental for the lease contract, excluding service and utilities, exceeds \$1.74 million, as adjusted annually in accordance with 40 U.S.C. 606 (f). In this circumstance GSA will prepare the prospectus in consultation with the agency.
4. Redelegation of the authority to lease may be made to those officers, officials, and employees who have been adequately trained as lease contracting officers.

5. Federal agencies must acquire and utilize the space in accordance with all applicable laws and regulations, including, but not limited to, the Competition in Contracting Act, Federal Property Management Regulations, Executive Order 12072, Executive Order 13006, Davis Bacon Act, and the General Services Administration Acquisition Regulations.

6. Agencies periodically provide GSA with leasing performance information.

The Associate Administrator for the Office of Governmentwide Policy and the Commissioner of the Public Buildings Service will issue further information regarding this program.

A handwritten signature in black ink that reads "David J. Barram". The signature is written in a cursive style with a large, stylized "D" and "B".

September 25, 1996

David J Barram  
Acting Administrator  
General Services Administration

Date

# Real Property

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## GENERAL SERVICES ADMINISTRATION

Washington, DC 20405

June 28, 1996

GSA BULLETIN FPMR D-238

### PUBLIC BUILDING AND SPACE

To: Heads of Federal Agencies

**SUBJECT:** Locating Federal Facilities on Historic properties in Our Nation's Central Cities

1. **Purpose.** This bulletin announces the policy concerning the location of federal facilities on historic properties in our central cities.
2. **Expiration date.** This bulletin contains information of a continuing nature and will remain in effect until canceled.
3. **Background.**
  - a. On May 21, 1996, President Clinton signed Executive Order 13006, entitled "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities," to encourage "learning, acquiring, locating, maintaining, or managing" federal facilities on historic properties in our nation's central cities. So that federal agencies may benefit from GSA's real property management expertise, government-wide policy guidance is being provided concerning the acquisition and use of historic properties to be utilized by federal agencies where operationally appropriate and economically prudent.
  - b. The Public Buildings Cooperative use Act of 1979 (40 U.S.C. § 601a) directs the Administrator of General Services to "acquire and utilize space in suitable buildings of historic, architectural, or cultural significance, unless use of such space would not prove feasible and prudent compared with available alternatives. "In the

past, some federal agencies have successfully promoted the acquisition and use of space in "buildings of historic, architectural, and cultural significance" by extending a 10 percent cost preference for these properties.

4. **Action.** In accordance with Executive Order 13006, and subject to the requirements of Section 601 of Title VI of the Rural Development Act of 1972, as amended, (42 U.S.C. § 3122), and Executive Order 12072, when locating federal facilities, federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall consider historic properties outside of historic districts, if no suitable site within a district exists.

All Federal agencies must use procedures which implement the policy to extend first consideration to locations as prescribed in the Executive Order. These implementation procedures should be consistent with the existing policy set forth in Executive Order 12072 (Federal Space Management), which extends first consideration to central business areas (CBAs), and should consider applicable requirements relating to full and open competition under the Competition in Contracting Act, 41 U.S.C. 253 et seq.

Federal agencies are encouraged to consider the Government's previous approach extending preference to historic properties. Where operationally appropriate and economically prudent, Federal agencies may extend first consideration to historic properties using various methods, including but not limited to extending a cost preference (similar to GSAR 570.701-4, Historic Preference); limiting competition to historic districts and/or historic properties; conducting market surveys and market analyses to identify historic properties or districts to be included in the area of consideration; providing notice of a requirement and an opportunity to respond to local, state or regional historic preservation officials, or a combination of the foregoing.

**G. MARTIN WAGNER**  
Associate Administrator  
Office of Policy, Planning and Evaluation

## ACQUISITION PLAN

### A. Analysis of Requirement

1. Project Number \_\_\_\_\_
2. Location \_\_\_\_\_
3. Type of Space \_\_\_\_\_
4. Square Footage \_\_\_\_\_
5. Estimated Rental: Total \_\_\_\_\_ Per Sq. Ft. \_\_\_\_\_
6. Contract Period: \_\_\_\_\_

### 7. Background and Acquisition History

- New Requirement
- Continuing Need
- Change in Square Feet
- Other

Total \_\_\_\_\_ Per Sq. Ft. \_\_\_\_\_

Award Year of Current Lease \_\_\_\_\_

### B. Current Considerations Affecting the Acquisition

1. Is this a rural area as defined by GSA in the FMR? Yes \_\_\_\_\_ No \_\_\_\_\_
2. If "NO", was first consideration given to relocating to a rural area?  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. If the answer is "NO", then the relocation is not in compliance with the Rural Development Act of 1972 and OPPM should be notified immediately. If "YES", explain why the rural area(s) considered were found to be inadequate. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Subcontracting plans required? Yes \_\_\_\_\_ No \_\_\_\_\_  
If answer is "yes", will options be evaluated? Yes \_\_\_\_\_ No \_\_\_\_\_

- 5. Is competition expected? Yes \_\_\_\_\_ No \_\_\_\_\_
- 6. CPI adjustment necessary? Yes \_\_\_\_\_ No \_\_\_\_\_
- 7. Acquisition Approach
  - Full and Open Competition
  - Other than Full and Open Competition

| <u>B. Milestone Events</u>   | <u>Projected Date</u> |
|--|-----------------------|
| 1. Approved space request  |                       |
| 2. Acquisition plan approval   |                       |
| 3. Justification and approval of other than full and open competition and/or any required D&F approval |                       |
| 4. Issuance of advertisements, flyers, etc.  |                       |
| 5. Issuance of solicitation  |                       |
| 6. Evaluation of proposals, audit, other field pricing reports, and technical reports                  |                       |
| 7. Beginning and completion of negotiations  |                       |
| 8. Lease preparation, review, and clearance  |                       |
| 9. Lease award   |                       |

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
(When required)

## CHAPTER III. LEASING PROCEDURES

### 1. MARKET SURVEY

The market survey is the most critical step in the acquisition process because it helps to identify all possible blocks of space which meet, or are capable of meeting, the Government's minimum requirements. This is where you become familiar with the marketplace and gather data for negotiation strategy as well as the development of the Solicitation for Offers (SFO). You also determine which proposed properties meet your requirements and which might be made acceptable. The information gathered must document thoroughly the availability of space, quality of space, services offered, and rental rates. A poor market survey puts you at a disadvantage and can multiply the difficulties in the leasing process.

#### A. Identify Potential Locations

The first step is to identify as many potential locations as possible. This can be done by using the following means:

- Advertising in a local newspaper;
- Consultations (by telephone or in person) with real estate agents, owners, real estate service contractors, and others, as appropriate.
- Drive or walk the delineated area, noting signs, vacant buildings or lots, construction sites, etc. Inspect any building you may identify to assure that they contain adequate facilities for your needs.
- Contacting local officials.
- Multiple listing services or other database services which provide current information on commercial space.

**Note:** In the past, market surveys required an on-site inspection of available properties. This is no longer required at the market survey stage because of the detailed information that is available from many sources. However, after initial offers, but before evaluation of best and final offers, all properties in consideration must be inspected if the Government has not previously inspected them.

When conducting a market survey, it is important to note that the RPLO should not conduct any negotiations during this process. You can point out defects with the properties or allow the potential offeror to state the asking price, but do not go any further with negotiations. Each potential offeror should be advised that the market survey does not constitute the issuance of an SFO, and should be told that an SFO asking for a written offer will be sent if the space meets the minimum requirements.

## B. Advertising

There are two types of advertisements. One is a “Sources Sought” advertisement where the Government is seeking expressions of interest from potential offerors. The second is a notice that an SFO is available and the Government is soliciting offers for space to meet its needs.

The RPLO should obtain information on the availability and cost of space for the solicitation through the use of circulars or newspaper advertisements. Advertising in local newspapers or an on-line information system\* is required for:

(1) Leases over 10,000 square feet

(2) Lease construction projects on pre-selected sites. A 15-day notice in the Commerce Business Daily prior to issuing the SFO is required.

- The square footage in the advertisement will be stated in rentable square feet and be based upon the agency’s usable square footage requirement. The RPLO should have the understanding of the market. The RPLO should prepare the newspaper advertisement reflecting the “appropriate “rentable” square feet. In addition, the advertisement must state that the rentable square footage must “yield \_\_\_\_\_ to \_\_\_\_\_ ANSI/BOMA usable square feet (minimum-maximum range), available for use by tenant for personnel, furnishings and equipment. The RPLO will include the minimum-maximum lease usable square footage, necessary to satisfy the agency. The ad must also contain the delineated area, date occupancy is required, and any special or unusual requirements.

- If the required space is more than 10,000 square feet, copies of the ad must be sent to the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20004-2590 and the State Historic Preservation Officer on the day the ad is placed.

- The Historic Preservation Office should respond prior to your performance of the market survey. However, if this does not occur, you are still required to identify any historic building capable of meeting your needs during the market survey.

- If the space does not exceed 10,000 square feet, advertising is discretionary with the RPLO, based on whether it would increase competition.

\* Changes in the GSAR now allow for a choice for advertising. You can now choose to place the notice on an on-line information system. Advertising in local newspapers is still the best method because it reaches more potential sources.

**C. Survey of Existing Agency Occupied Space.**

When applicable, a walk through of existing agency occupied space should be conducted to:

- (1) Understand their operations;
- (2) Look for special alterations that may be needed;
- (3) Check the layout; and
- (4) Ask about any problems to be avoided in replacement space.

**D. Tools of the Trade.**

When inspecting buildings with owners or agents, the agency RPLO or designee should take:

- (1) Camera to photograph buildings;
- (2) Tape measure to get approximate measurements;
- (3) Local street map to identify subject property within delineated area; and
- (4) General agency/SFO requirements and GSA Forms 3516, 3517 and 3518. Take along Building Accessibility Description data and Fire and Life Safety Specifications. Also, determine whether the buildings can, or will meet fire and life safety as well as accessibility requirements.

**E. Polychlorinated Biphenyls/Asbestos.**

The agency RPLO or designee shall ask if the building contains asbestos and/or equipment containing polychlorinated biphenyls (PCB's).

- (1) **Asbestos** - If present, certain asbestos material must be removed by the successful offeror prior to occupancy. If asbestos containing boiler lagging or pipe insulation is present, it must be removed, encapsulated, or enclosed prior to the Government's occupancy.
- (2) **PCBs** - Potential lessors must certify the presence or absence of PCB transformers and other equipment, and whether or not they are leaking.

**Note:** While inspecting potential sites or vacant space on the market survey, the RPLO should collect information on comparable space leased to others.

**F. Historic Preference.**

Advance notice to the Advisory Council on Historic Preservation is not required for leases under 10,000 square feet. Preference should be given to historic buildings capable of meeting the Government's requirements and the cost to lease the building is no more than 10 percent higher than the lowest acceptable offer.

**G. Recording your Findings.**

The purpose of recording your findings on the market survey is to document the lease case file of the available space surveyed, its cost, ability to meet the SFO requirements, etc. The GSA Form 3627, Market Survey Form, may be used to document the lease file.

This documentation can also be used as supportive justification for "other than full and open competition." Acquisitions by other than full and open competition require approval by higher officials that may be required by the RPLO before negotiations commence. Any exclusion of a building from competition, in an acquisition involving other than full and open competition, must be documented thoroughly by setting forth the reasons, such as building conditions, location, accessibility of facilities, fire and life safety deficiencies, etc.

**1. ANALYSIS OF FINDINGS**

The SFO should allow for full competition in the market place. If the analysis of the market data, after completing the market survey, suggests that the standardized SFO will require modifications, these changes should be made to the SFO before proceeding with the acquisition.

**MARKET SURVEY**

DATE

**I. REQUIREMENTS**

**II. BUILDING SURVEYED**

|   |                                     |   |                              |
|---|-------------------------------------|---|------------------------------|
| 1. DELINEATED AREA                                    | 2. BOMA USABLE SQUARE FEET REQUIRED | 6. BUILDING NAME AND LOCATION             |                              |
| 3. CLIENT AGENCY                                      |                                     | 7. OWNER OR AGENT NAME AND ADDRESS        |                              |
|   |                                     | 8. TELEPHONE NO. OF OWNER/AGENT: (      ) |                              |
| 4. SPECIAL REQUIREMENTS (If any)                      |                                     | 9. SPACE AVAILABLE                        |                              |
|   |                                     | A. FLOOR(S)                               | B. AMOUNT (Rentable Sq. Ft.) |
| 5. SELECTION FACTORS OTHER THAN PRICE (If applicable) |                                     | 10. NEIGHBORHOOD DESCRIPTION              |                              |

**III. ASKING PRICE AND TERMS**

|                                      |  |                               |                               |                              |
|--------------------------------------|--|-------------------------------|-------------------------------|------------------------------|
| 11. RENT                             | A. PER ANNUM<br>\$   | B. PER RENTABLE SQ. FT.<br>\$ | C. MEASUREMENT USED FOR QUOTE | <i>Place PHOTOGRAPH Here</i> |
| 12. SERVICES INCLUDED IN RENT        | <input type="checkbox"/> FULL <input type="checkbox"/> PARTIAL (State below what is excluded.) |                               |                               |                              |
| TENANT IMPROVEMENTS INCLUDED IN RENT |  |                               |                               |                              |
| 14. COMMENTS                         |  |                               |                               |                              |

**IV. DECISION TO CONSIDER FOR NEGOTIATION**

15.  WILL CONSIDER THIS BUILDING FOR NEGOTIATION. IT MEETS OR CAN MEET THE REQUIREMENTS OF THE CLIENT AGENCY.

16.  WILL NOT CONSIDER THIS BUILDING FOR NEGOTIATION. IT DOES NOT MEET OR CANNOT MEET THE REQUIREMENTS OF THE CLIENT AGENCY FOR THE FOLLOWING REASONS:

---

17. THE CLIENT AGENCY REPRESENTATIVE PRESENT ON THE MARKET SURVEY

AGREES WITH THE ABOVE DECISION.                       DOES NOT AGREE WITH THE DECISION BECAUSE:

|   |                                     |           |
|---|-------------------------------------|-----------|
| 18A. SIGNATURE OF AGENCY REPRESENTATIVE | 18B. TITLE OF AGENCY REPRESENTATIVE | 18C. DATE |
| SIGNATURE OF GSA REPRESENTATIVE         | 19B. TITLE OF GSA REPRESENTATIVE    | 19C. DATE |

**V. BUILDING DESCRIPTION**

| ITEM                          | CONDITION   |  | YES         | NO   |  |  |
|-------------------------------|---|--|-------------|--|--|--|
| 20. GENERAL                   | <input type="checkbox"/> A. NEW <input type="checkbox"/> B. OLDER, WELL MAINTAINED <input type="checkbox"/> C. OLDER, POORLY MAINTAINED |  |             |  |  |  |
| 21. TRANSPORTATION ACCESS     | A. PARKING AVAILABLE ON SITE  |  |             |  |  |  |
|                               | B. PUBLIC PARKING IN VICINITY   |  |             |  |  |  |
|                               | C. SERVED BY PUBLIC TRANSPORTATION  |  |             |  |  |  |
| 22. INTERIOR WALLS            | A. TYPE   | <input type="checkbox"/> DRYWALL <input type="checkbox"/> OTHER ( <i>Specify</i> )<br><input type="checkbox"/> PLASTER                                     |             |  |  |  |
|                               | B. ACCEPTABLE COVERING IN OFFERED AREA  |  |             |  |  |  |
| 23. LIGHTING                  | A. ADEQUATE IN PUBLIC AREAS   |  |             |  |  |  |
|                               | B. ADEQUATE IN WORK AREAS   |  |             |  |  |  |
| 24. CEILINGS                  | A. UNIFORM HEIGHT ( <i>8' to 11'</i> )  |  |             |  |  |  |
|                               | B. SUSPENDED  |  |             |  |  |  |
|                               | C. FINISH   | <input type="checkbox"/> ACOUSTICAL <input type="checkbox"/> OTHER ( <i>Specify</i> )<br><input type="checkbox"/> PLASTER<br><input type="checkbox"/> TILE |             |  |  |  |
| 25. WINDOWS                   | A. IN SPACE   | <input type="checkbox"/> FIXED<br><input type="checkbox"/> CAN OPEN  | B. COVERING | <input type="checkbox"/> BLINDS <input type="checkbox"/> OTHER ( <i>Specify</i> )<br><input type="checkbox"/> DRAPES |  |  |
| 26. FLOOR COVERING            | A. TYPE   | <input type="checkbox"/> CARPET <input type="checkbox"/> OTHER ( <i>Specify</i> )<br><input type="checkbox"/> VINYL  |             |  |  |  |
|                               | B. EXISTING ACCEPTABLE FOR OCCUPANCY  |  |             |  |  |  |
| 27. RESTROOMS                 | A. SEPARATE FACILITIES FOR WOMEN AND MEN ON FLOOR(S) OFFERED  |  |             |  |  |  |
|                               | B. EXISTING ACCEPTABLE  |  |             |  |  |  |
| 28. DRINKING FOUNTAINS        | EXISTING ACCEPTABLE   |  |             |  |  |  |
| 29. ELEVATORS                 | A. TYPE   | <input type="checkbox"/> PASSENGER <input type="checkbox"/> FREIGHT  |             |  |  |  |
|                               | B. CURRENT CERTIFICATE OF INSPECTION  |  |             |  |  |  |
| 30. HEATING                   | A. TYPE   | <input type="checkbox"/> CENTRAL <input type="checkbox"/> INDIVIDUAL UNITS   |             |  |  |  |
|                               | B. FUEL   | <input type="checkbox"/> OIL <input type="checkbox"/> GAS<br><input type="checkbox"/> ELECTRIC <input type="checkbox"/> OTHER ( <i>Specify</i> )           |             |  |  |  |
| 31. AIR CONDITIONING          | TYPE  | <input type="checkbox"/> CENTRAL <input type="checkbox"/> INDIVIDUAL WINDOW UNITS  |             |  |  |  |
| 32. ACCESSIBLE TO HANDICAPPED | A. ROUTE TO AND WITHIN THE BUILDING   |  |             |  |  |  |
|                               | B. ENTRANCE AND ELEVATORS   |  |             |  |  |  |
|                               | C. DRINKING FOUNTAINS AND RESTROOMS   |  |             |  |  |  |
| 33. COMMENTS                  |   |  |             |  |  |  |

## ABSTRACT AND EVALUATION OF OFFERS:

Agency:

Solicitation:  Initial

Final

Amended

Realty Specialist:

|  |  |  |
|--|--|--|
| <b>OFFERORS:</b>   |  |  |
| Square Footage Offered   |  |  |
| Initial Term/Alternate Offer   |  |  |
| Termination Rights/Alt. Offer  |  |  |
| Annual Rental/Alternate  |  |  |
| Composition Square Foot  |  |  |
| Operating Cost Escalator   |  |  |
| Base Cost of Services  |  |  |
| Services by Government   |  |  |
| Escalated Rental Increase  |  |  |
| Renewal Option(s)  |  |  |
| Renewal Rental/sq. ft.<br>- Present value price eval.<br>[if applicable] |  |  |
| Parking (or other cost)  |  |  |

**ABSTRACT AND EVALUATION OF OFFERS:**

|   |  |  |
|---|--|--|
| <p>Overtime<br/>HVAC<br/>(Zoned?)<br/>- Janitorial</p>  |  |  |
| <p>Unit Prices<br/>- Ceiling High Partition<br/>- Screens<br/>- Duplex Electrical Outlet<br/>- Wall Electric Outlet<br/>- Other</p> |  |  |
| <p>\$/sq. ft. ISA/Spec. Req.<br/>or<br/>Lump Sum Payment</p>  |  |  |
| <p>Other Price Factors:<br/>- Moving Cost<br/>- Other</p>   |  |  |
| <p>Total Cost to Government<br/>Per Rentable sq. ft.</p>  |  |  |
| <p>Historic Preference?<br/>- Eligible (Yes or No)</p>  |  |  |
| <p>Award Factors:<br/>- Handicapped Accessibility<br/>- Other</p>   |  |  |
| <p>Comments</p>   |  |  |

## **CHAPTER IV. SOLICITATION FOR OFFERS (SFO)**

The SFO is the basis for the entire lease negotiation process and must be made part of the lease. SFO's must contain the necessary information to enable all potential offerors an opportunity to gain a clear understanding of the Government's requirements and ensure that all offers are reviewed against the same criteria.

A written SFO is required for all acquisitions. Copies of the latest versions of the SFO and leasing forms are available from the following sources:

- Local GSA Regional Offices;
- U.S. Government Electronic Library of GSA, Standard and Optional forms. This website allows you to print, fax or e-mail such forms as SF-81, Request for Space and GSA Form 2957, Reimbursable Work Authorization, directly from the Internet. The address for this website is <http://www.gsa.gov/forms>.
- GSA Leasing Library at <http://www.gsa.gov/leasingform>

### **1. A description of the minimum requirements:**

- A. Approximate rentable and ANSI/BOMA usable square feet of office, storage, and special space. (Describe method used to measure space). Amount of space required should be clearly stated within a minimum-maximum range.
- B. Initial space requirements (partitions, electric and telephone outlets, window coverings, painting, (HVAC).)
- C. Special requirements - contiguous, first floor, parking, computer or laboratory requirements, floor load, etc. (These specifications may be stated in terms of function, performance or design requirements.)
- D. Delineated area.
- E. Lease term including occupancy date.
- F. Specify a date and place for submission of offers.
- G. Identify all factors including price per square foot and unit costs which will be considered in awarding the lease and stating the relative importance the Government places on the award factors. (Recommend award factors be kept to a minimum, and list the factors by descending order to identify importance.
- H. Fire and life safety requirements.
- I. Accessibility requirements.

- J. Include applicable provisions and contract clauses, GSA Forms 3516, 3517 and 3518 as part of the SFO. The RPLO should insert other clause/provisions to the SFO as appropriate, i.e., historic preference, liquidated damages, operating cost escalator, seismic safety.

Note: The operating cost escalator clauses are used at the discretion of the RPLO. The escalation can be applied to operating costs, utilities, and services as listed on GSA Form 1217, Lessor's Annual Cost Statement. The escalation can be tied to the changes in the Consumer Price Index (CPI).

- K. Statement emphasizing that an offeror, other than a small business concern, before being awarded a contract exceeding \$500,000 (\$1,000,000 for construction) will be required to demonstrate that its subcontracting plan represents a creative and innovative program for involving small, small disadvantaged, and women-owned small business concerns as subcontractors in performance of the contract. Failure to submit an acceptable plan and/or correct deficiencies in a plan within the time specified by the Real Property Leasing Officer will make the offeror ineligible for award.

USDA is committed to assuring that maximum practicable opportunity is available to provide small business opportunities whenever possible and expects any subcontracting plan submitted pursuant to FAR 52.219-9, Small, Small Disadvantaged and Women Owned Small Business Subcontracting Plan, to reflect this commitment.

- L. Energy Cost Savings. The solicitation should also include a statement encouraging all building owners to: (1) contact an energy service company qualified under the Energy Policy Act to perform Energy Savings Performance Contracts (ESPC) to determine whether opportunities for cost effective energy improvements to the space are available. Owners can contact the Federal Energy Management Program (FEMP) for further information or visit their website at [www.eren.doe.gov/femp](http://www.eren.doe.gov/femp). (2) Apply for the Energy Star® building label and to explore and implement projects that would reduce costs to the Federal Government. For more information visit <http://www.epa.gov>.
- M. Environmental and Recycling Provision. The solicitation should include provisions that address recycling and other environmental factors in accordance with E.O. 13101.
- N. Greening the Government Through Efficient Energy Management, E.O. 13123. GSA has developed lease clauses that promote the implementation of E.O. 13123. These clauses encourage energy and water efficiency wherever life cycle cost effective. Build-to-suit lease solicitations should contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. A preference for buildings having the ENERGY STAR® building label in their selection criteria for acquiring leased buildings. These requirements should be used for new, superseding and succeeding leases. They should be used as appropriate for simplified leases when a building will be constructed under the simplified acquisition threshold. These clauses will also be used as appropriate for expansion, temporary, and disaster leases as well as supplemental lease agreements when alterations will be performed.

- O. Posting of Rules and Regulations in Public Buildings. The solicitation should include a statement informing offerors that the Government must conspicuously post “Rules and Regulations Regarding Public Buildings” (GSA document control number 8911101946) at each public entrance of the leased facility occupied by the USDA. This is pursuant to the statutory requirements of 18 U.S.C. 930(f) and Department requirements contained in the OPPM Memorandum, dated May 25, 1999. This notice contains an important warning prohibiting the possession of firearms or other dangerous weapons in Federal facilities. **Those possessing firearms cannot be successfully prosecuted unless this notice is clearly posted.**

Posters containing rules and regulations for public buildings can be obtained by submitting an AD-14, Request for Supplies, Forms, and/or Publications, to the Consolidated Forms and Publications Distribution Center, 6351 Ammendale Road, Beltsville, MD 20705, or by accessing the Beltsville Service Center website at the following address: [http://www.bsc.usda.gov/newbsc\\_website/](http://www.bsc.usda.gov/newbsc_website/) or by calling 301-394-0271. <http://www.bsc.usda.gov/>

- P. Davis-Bacon Act clauses. Both standard and small solicitations must include the paragraph entitled “Labor Standards” when delivery schedules of such SFO are long enough to permit satisfaction of the SFO requirements through construction or total renovation of a building.

All SFO’s will advise offerors that they may be requested to provide “test fit” layouts for a typical floor. Test fits are valuable in determining whether or not particular building feature(s) may adversely impact the potential for efficient layout making it impossible for the tenant to fit into the offered space even though it is within the usable range. This will put the lessors on notice of certain building features, such as multi-story atriums or irregularly shaped floor plans, that have a high probability of triggering the request for test fit layouts.

Test fits may be requested from one or more of the offerors. The RPLO does not have to request fits from all offerors since the requirement is triggered by the design of each individual building. Test fits will be completed by the offeror based on the information provided in the SFO and/or additional information provided by the RPLO.

If the test fit shows that the agency cannot be housed within the ANSI/BOMA usable space, the offeror will have the option of increasing the usable space offered provided it does not exceed the maximum usable square footage in the SFO. If the offer is already providing the maximum usable square feet called for in the SFO and cannot house the agency’s space requirement, then the offeror should be advised that his offer is unacceptable.

When space efficiency is used as an award factor in the SFO, the RPLO should consider requiring all offerors to provide test fit layouts. Test fit layouts may be necessary to assist the RPLO in evaluating the space layout efficiency of the buildings offered.

## **2. Changes Prior to Award.**

When either before or after receipt of offers, changes occur in the Government's requirements or a decision is to relax, increase or otherwise modify the scope of work or statement of requirement, such changes are to be issued in the same form as the original SFO, written or electronic, as an amendment to the SFO. If any change or modification of the Government's requirements is so substantial that it is outside of the scope of the SFO, the SFO should be canceled and a new SFO issued.

The amendment document must reference the solicitation number, agency and location. The change or modification of the Government's requirements must be identified in the SFO. Where possible, restate the original requirement and then describe the change, addition, or deletion.

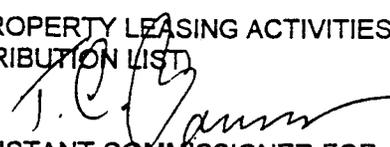


General Services Administration  
Public Buildings Service  
Washington, DC 20405

PQRP-94-07

SEP 13 1994

MEMORANDUM FOR ALL REAL PROPERTY LEASING ACTIVITIES  
(PQRP DISTRIBUTION LIST)

FROM: T.C. BOWEN   
ACTING ASSISTANT COMMISSIONER FOR  
REAL PROPERTY DEVELOPMENT - PQ

SUBJECT: Davis-Bacon Act and the Acquisition of Leasehold Interests in Real Property

1. Purpose. This acquisition letter establishes procedures for the implementation of the Davis-Bacon Act in the acquisition of leasehold interests in real property.
2. Background.
  - a. In a 1988 opinion, the Office of Legal Counsel (OLC) at the Department of Justice (DOJ) concluded that the plain language of the Davis-Bacon Act bars its application to any lease contract, whether or not the lease contract also calls for construction of a public work or public building. The OLC opinion arose out of a dispute between the Veterans Administration and the Department of Labor (DOL) regarding whether a contract with a developer for the long-term lease of space for use as a VA health clinic, in a building that the developer would build to house the clinic was subject to the Act. The DOL Wage Appeals Board (WAB) ruled the Act applied to the contract. The VA disagreed and asked DOJ to resolve the dispute. The AFL-CIO sought a court judgment to compel the VA to comply with the DOL's decision. The result was a court determination that the WAB decision was a reasonable interpretation of ambiguous language in the Act and an OLC ruling that the WAB decision conflicted with the plain language of the Act. The DOJ did not appeal the case because of the confused procedural posture it presented, but instructed the DOL to comply with the reasoning of the OLC opinion in future cases.
  - b. In a May 23, 1994, opinion, the OLC concluded that the 1988 opinion erred in concluding that the plain language of the Davis-Bacon Act bars its application to any lease contract, whether or not the lease contract also calls for construction of a public work or public building. OLC now believes that the applicability of the Davis-Bacon Act to any specific lease contract can be determined only by considering the facts of the particular contract. OLC indicated that the plain language would seem to require only that there be a contract and that one of the things required by the contract be construction of a public work. OLC stated in its opinion that, in general, the determination whether a lease-construction contract calls for construction of a public building or public work likely will depend on the details of the particular agreement. These may include such factors as the length of the lease, the extent of government involvement in the construction project, the extent to which the construction will be fully paid for by the lease payments, and whether the contract is written as a lease contract solely to evade the requirements of the Davis-Bacon Act.
  - c. By memorandum to all contracting agencies dated June 22, 1994, the Administrator of the Employment Standards Administration, DOL, instructed agencies to comply with the May 23, 1994, OLC opinion.

3. Effective Date/Expiration Date.

- a. Subject to the criteria prescribed in Paragraph 6, these procedures are effective for solicitations for offers (SFOs) having closing dates for receipt of proposals or best and final offers on or after June 22, 1994.
- b. This acquisition letter will expire in 12 months, unless otherwise extended or cancelled.

4. Cancellation. None.

5. Applicability. All real property leasing activities.

6. Instructions/Procedures.

- a. SFO Paragraph. Contracting Officers shall include the paragraph entitled "Labor Standards (AUG 1994)" (Attachment 1) in standard and small lease SFOs when the delivery schedules of such SFOs are long enough to permit satisfaction of the SFO requirements through construction of a building.
- b. Miscellaneous Labor Clauses. Contracting Officers shall include the clauses set forth in the attachment entitled "Miscellaneous Labor Clauses" (Attachment 2) in SFOs which include the "Labor Standards (AUG 1994)" paragraph prescribed above in paragraph "a."
- c. Wage Determinations. Contracting Officers shall include a copy of the appropriate Department of Labor wage determination for the applicable geographical area in SFOs which include the "Labor Standards (AUG 1994)" paragraph prescribed above in paragraph "a" and the "Miscellaneous Labor Clauses" prescribed in paragraph "b."

Contracting Officers should review FAR 22.404 through 22.404-11 for information and instructions on Davis-Bacon Act wage determinations including information on the types of wage determinations, procedures for requesting wage determinations, modifications of wage determinations, etc. It is important to note that general wage determinations are published weekly in a Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." The wage determination selected and incorporated into an SFO may change before the contract is awarded. Modifications to general wage determinations are effective upon publication and SFOs must be amended to reflect the modified wage determination if an award has not been made. Therefore, Contracting Officers should check to be sure the wage determination in the SFO is current before requesting best and final offers. If it has been modified, the modified wage determination should be included by amendment to the SFO when requesting best and final offers.

In addition to using the GPO publication, Contracting Officers may obtain general wage determinations by accessing the GSA Acquisition Information Network bulletin board on (816)926-3387.

- d. Regions may update the August 1994 CD-ROM SFOs to reflect these paragraph additions by following procedures identified in the Standard SFO Workbook. The "Labor Standards" paragraph and the "Miscellaneous Labor Clauses" shall be included at the end of the SFO section entitled "Summary" and "Miscellaneous," respectively. The CD-ROM version to be issued in February 1995 will include these paragraph additions.

- e. The "Labor Standards" paragraph and the "Miscellaneous Labor Clauses" will be provided, in the form of a floppy disk, under separate cover to GSA Real Estate activities and other Federal agencies upon request.
- f. Additional guidance concerning contract administration matters will be forthcoming.

Attachments

**LABOR STANDARDS (AUG 1994)**

If an offeror proposes to satisfy the requirements of this Solicitation for Offers through the construction of a new building or the complete rehabilitation or reconstruction of an existing building, and where the Government will be the sole or predominant tenant such that any other use of the building will be functionally or quantitatively incidental to the Government's use and occupancy, the following Federal Acquisition Regulation clauses shall apply to work performed in preparation for occupancy and use of the building by the United States:

- 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation
- 52.222-6 Davis-Bacon Act
- 52.222-7 Withholding of Funds
- 52.222-8 Payrolls and Basic Records
- 52.222-9 Apprentices and Trainees
- 52.222-10 Compliance with Copeland Act Requirements
- 52.222-11 Subcontracts (Labor Standards)
- 52.222-12 Contract Termination-Debarment
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations
- 52.222-14 Disputes Concerning Labor Standards
- 52.222-15 Certification of Eligibility

MISCELLANEOUS LABOR CLAUSES

## 1. 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (MAR 1986)

- (a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) *Payrolls and basic records.*
- (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  - (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

## 2. 52.222-6 DAVIS-BACON ACT (NOV 1992)

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is

performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (b) (1) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
- (i) Except with respect to helpers, as defined in Section 22.401 of the Federal Acquisition Regulation, the work to be performed by the classification requested is not performed by a classification in the wage determination.
  - (ii) The classification is utilized in the area by the construction industry.
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (iv) With respect to helpers, such a classification prevails in the area in which the work is performed.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**3. 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**4. 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types

specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

6. **52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

7. **52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)**

- (a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination—Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility*, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.
- (b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

8. **52.222-12 CONTRACT TERMINATION—DEBARMENT (FEB 1988)**

A breach of the contract clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility* may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

9. **52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

10. 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

11. 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

TO: Deputy Administrators for Management

FROM: W. R. Ashworth  
Director

MAY 25 1999

SUBJECT: Possession of Firearms or Other Dangerous Weapons in  
Federally Owned or Leased Facilities

In accordance with Title 18, U.S.C. 930(f) the Rules and Regulations Governing Public Buildings and Grounds poster must be displayed conspicuously at each public entrance to a Federal facility. An individual can only be federally prosecuted for possession of firearms or other dangerous weapons in a federally owned or leased facility if a prohibitive notice is clearly displayed.

The attached notice must be posted in all Department of Agriculture owned and leased buildings. The General Services Administration (GSA) has the responsibility for insuring that this notice is displayed in all GSA owned and leased buildings. If your agency has space in a GSA assigned building and a notice is not displayed, please contact the appropriate GSA Regional Office.

The January 1996 notice is available in English (GSA DC-8911101946) and Spanish (GSA DC-8911101946-S). Copies can be obtained by submitting an AD-14, Request for Supplies, Forms, and/or Publications, to the Consolidated Forms and Publications Distribution Center, 3222 Hubbard Road, Landover, Maryland 20785, or electronically. The telephone number for the Center is (301) 436-8450.

If you have any further questions, please contact Denise Hayes, Chief, Property Management Division, Office of Procurement and Property Management, at (202) 720-3141.

Attachment

cc:  
Administrative Services Council

OPPM:PMD:RPB:JM Mercer:720-7266:5/19/99:FILE 5100-1  
REWRITTEN:OPPM:W Ashworth:jm:5/24/99

*Mercer*  
*5/24/99*

# Rules and Regulations Governing Public Buildings and Grounds

January 1996

## Federal Property Management Regulations Title 41, Code of Federal Regulations, Subpart 101-20.3

**Authority.** These rules and regulations are promulgated pursuant to Public Law 566, 80th Congress, approved June 1, 1948 (Title 40, U.S. Code 318); and the Federal Property and Administrative Services Act of 1949 (Title 63, United States Statutes at Large, 377), as amended.

**Applicability (41 CFR 101-20.300).** These rules and regulations apply to all property under the charge and control of the General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations.

**Inspection (41 CFR 101-20.301).** Packages, briefcases, and other containers in the immediate possession of visitors, employees, or other persons arriving on, working at, visiting, or departing from Federal property, are subject to inspection. A full search of a person and any vehicle driven or occupied by the person may accompany an arrest.

**Admission to property (41 CFR 101-20.302).** Property shall be closed to the public other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal working-hours use of buildings or portions thereof for activities authorized by Subpart 101-20.4. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency Program after consultation with the GSA Property Manager and the ranking representative of the Federal Protective Service responsible for protection of the facility or the area. The designated official is defined in §101-20.003(g) as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested, display Government or other identifying credentials to the Federal Protective Police Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the above applicable provisions is a violation of these regulations.

**Preservation of Property (41 CFR 101-20.303).** The improper disposal of rubbish on property; the willful destruction of or damage to property; the theft of property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from or at a building or the climbing upon statues,

fountains, or any part of the building, is prohibited.

**Conformity with signs and directions (41 CFR 101-20.304).** Persons in and on property shall at all times comply with official signs of a prohibitory, regulatory, or directory nature with the lawful direction of Federal Protective Police Officers and other authorized individuals.

**Disturbances (41 CFR 101-20.305).** Any loitering, disorderly conduct, or other conduct on property which creates loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; or which prevents the general public from obtaining the administrative services provided on the property in a timely manner, is prohibited.

**Gambling (41 CFR 101-20.306).** Participating in games for money or other personal property or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph Sheppard Act (20 U.S.C. 107, et seq.).

**Alcoholic beverages and narcotics (41 CFR 101-20.307).** Operation of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. The prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occasions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the GSA Property Manager and the Federal Protective Service, or other authorized officials, responsible for the security of the property.

**Soliciting, vending, and debt collection (41 CFR 101-20.308).** Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting

private debts on GSA-controlled property is prohibited. This rule does not apply to (a) national or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR, Parts 110 and 950, Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations, issued by the U.S. Office of Personnel Management under Executive Order 12353 of March 23, 1982, as amended, and sponsored or approved by the occupant agencies; (b) concessions or personal notices posted by employees on authorized bulletin boards; (c) solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95-454); and (d) lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(16)). Public areas of GSA-controlled property may be used for other activities permitted in accordance with subpart 101-20.4.

**Posting and distributing materials (41 CFR 101-20.309).** Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property is prohibited, except as authorized in §101-20.308 or when these displays are conducted as part of authorized Government activities. Distribution of materials, such as pamphlets, handbills, or flyers, is prohibited, except in the public area of the property as defined in §101-20.003(z), unless conducted as part of authorized Government activities. Any person or organization proposing to distribute materials in a public area under this section shall first obtain a permit from the GSA Property Manager under Subpart 101-20.4, and shall conduct distribution in accordance with the provisions of Subpart 101-20.4. Failure to comply with those provisions is a violation of these regulations.

**Photographs for news, advertising, or commercial purposes (41 CFR 101-20.310).** Photographs may be taken in space occupied by a tenant agency only with the consent of the occupying agency concerned. Except where security regulations apply or a Federal court or rule prohibits it, photographs for news purposes may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings. Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of an authorized official of the agency occupying the space where the photographs are to be taken.

**Dogs and other animals (41 CFR 101-20.311).** Dogs and other animals, except seeing eye dogs, other guide dogs, and animals used to guide or assist handicapped persons, shall not be brought upon property for other

than official purposes.

**Vehicle and pedestrian traffic (41 CFR 101-20.312).** (a) Drivers of all vehicles entering or while on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of Federal Protective Police Officers or other authorized individuals and all posted traffic signs; (b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on property is prohibited; and (c) Except in emergencies, parking on property is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owners' risk and expense. This paragraph may be supplemented from time to time with the approval of the Regional Administrator by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part thereof. Proof that a motor vehicle was parked in violation of these regulations or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

**Explosives (41 CFR 101-20.313).** No person entering or while on property shall carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes. (Weapons, see Title 18, U.S. Code Section 930.)

**Nondiscrimination (41 CFR 101-20.314).** There shall be no discrimination by segregation or otherwise against person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the property.

**Penalties and other laws (41 CFR 101-20.315).** Whoever shall be found guilty of violating any rule or regulations in this Subpart 101-20.3 while on any property under the charge and control of the U.S. General Services Administration is subject to a fine of not more than \$50 or imprisonment of not more than 30 days, or both. (See Title 40, U.S. Code 318c.) Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (Sec. 205(c), 63 U.S. Statutes, 390; 40 U.S. Code 486 (c)).

# WARNING

## Title 18, United States Code, Section 930

### WEAPONS PROHIBITED

Federal law prohibits the knowing possession or the causing to be present of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by Title 18, United States Code, Section 930(d). Violators shall be subject to fine and/or imprisonment for periods up to five (5) years.

## **CHAPTER V. EVALUATION OF OFFERS**

Once the market has been surveyed, Solicitations for Offers (SFO) issued, and offers received, the evaluation process begins. Offers are evaluated with respect to price and other factors to determine which is most acceptable to the Government's requirements. Ensure that GSA Form 1364, Proposal to Lease Space, is included in the SFO.

### **1. Preparation for Evaluation of Offers**

- Review the SFO to become reacquainted with the full requirements.
- Read each offer carefully.
- Verify that each offer is signed by an authorized party: owner(s), agent with written authority to represent owner, a general partner of a partnership, or the appropriate official of company/corporation.
- Review names to ensure that the offeror is not a Federal employee or member of Congress. If a Federal employee has interest in the property, you will need approval from the HRPLA or his/her designee to consider the offer. Approval will only be given if there is a compelling reason. The intent of this requirement is to avoid any conflict of interest or favoritism, or appearance thereof.

### **2. ANSI/BOMA Usable Measurement**

All offers of space must be evaluated on an equal basis. Requirements for leased space will be stated in the SFO in approximate "rentable square feet" to yield space within an ANSI/BOMA usable (commonly referred to as usable) square foot range. The SFO requirement for leased rentable space is the area for which a tenant is charged rent. It is determined by the building owner, and may vary by local real estate markets or by building within the same market. The "rentable" space generally includes a share of building support/common areas such as elevator lobbies, building corridors, and restrooms. Vertical building penetrations such as stairs and elevator shafts are generally excluded. Offerors must demonstrate that the space offered will yield square footage within the stated ANSI/BOMA usable range.

The RPLO should make a preliminary determination that each offer meets the minimum requirements of the SFO, sometimes called the "go/no go" requirements. If the minimum requirements appear to be met, the RPLO should review each floor plan to ensure that they show proposed corridor patterns. The corridor patterns should be reviewed to determine if they achieve an acceptable level of safety and provide access to all essential building elements. Corridor areas that are deducted to calculate lease usable space may or may not be defined by ceiling high partitions.

After required corridors have been determined, the plans must be measured to verify that the usable measurement submitted by the offeror is correct. The usable measurement will be used

for price evaluation purposes. The RPLO should recognize that the corridor pattern may vary when the actual layouts are completed, and that this measurement is based on the best information available for evaluation purposes. Particular attention should be paid to irregularly shaped buildings or other conditions that may trigger the need to request test fit layouts.

If the usable square footage has been confirmed to be within the required usable square foot range, the RPLO should calculate the price per ANSI/BOMA usable square foot. This is done by multiplying the rentable square foot rate by rentable square feet offered. This figure is then divided by the usable measurement to arrive at a rate per square foot.

The price of space offered should then be evaluated on the basis of the cost per square foot per annum.

The usable area of space offered is computed from actual measurements of the offeror's floor plan, or by actual field measurements.

### **3. Abstract of Offers (without present value analysis)**

The abstract of offers allows the RPLO to reduce all costs to a square foot rate, providing comparable units for evaluation of one offer to another and each offer to Government estimates. The RPLO will negotiate all items which require the lessor to submit a price quotation. When renewal options are part of the Government's requirements and will be evaluated for purposes of award, present value analysis (PVA) shall be used in the evaluation process. When the SFO requests alternative offers, PVA must also be used. The following documentation should be collected:

- All correspondence
- The offer itself (GSA Forms 1217, 1364, 3518, etc.)
- Lease market survey
- Floor plan

An Abstract and Evaluation of Offers should be prepared for each offer. Make specific notes about each offer regarding its acceptability, areas that need further clarification, omissions, etc. These "notes" will help to prepare for negotiation sessions, and to determine the lowest responsive offer.

The abstract of each offer may contain the following categories:

- Termination rights/Alternative offer
- Annual rental/Alternative offer
- Square footage offered
- Initial term/Alternative offer
- Composite square foot rate/Alternative offer
- Operating cost escalator
- Base cost of service (this is the per square foot negotiated,

estimated cost of operating expenses, utilities and services listed on GSA Form 1217)

- Services to be provided by the Government
- Escalated rental increases per square foot
- Renewal options (Present Value Analysis)
- Parking
- Overtime and janitorial services
- Unit prices
- Cost of alterations
- Other factors, e.g., moving cost, and telecommunications cost
- Present Value Analysis

Note: The resultant per square foot rate for each offer is the total overall cost to the Government.

#### **A. Square Footage Offered**

The measured plan must be within the range specified in the SFO ... for example, "a minimum of 5,000 to a maximum of 5,250 usable square feet".

If the measurement is less than the minimum requirement, the offeror must amend the offer to bring it within the SFO range or it cannot be accepted.

By the same token, if the measurement is greater than the maximum stated in the SFO, the offeror must also amend the offer to be within the SFO range (or include the additional space in the lease at no charge to the Government). Insert the square feet in the appropriate block.

#### **B. Alternate Offer**

Occasionally, alternate offers are solicited to find what set of circumstances (in this case, the length of years of the initial term) will yield the best offer to the Government. For example, a 5-year lease with no cancellation rights is desired. The SFO also states that alternate offers of a 2-year firm term lease with three options to renew for one year each will be considered. Committing Government occupancy to a 5\_year firm term, rather than 2\_year firm term, often results in a lower rate per square foot, particularly if the cost of extensive alterations can be amortized over a longer period.

#### **C. Termination Rights/Alternate Offer**

Section III of the GSA Form 1364, Proposal to Lease Space, provides the number of days prior written notice to be given to the lessor before the Government may terminate the lease. It is also necessary to insert the year during which the termination may first occur.

Also insert the termination rights of the alternate offer, if applicable.

**D. Annual Rental/Alternate Offer**

Insert the annual rental and, if applicable, the annual rental of the alternate offer. The annual rental, while not used in the evaluation process of comparing one offer to another, is an item worth noting. It, rather than the square foot rate, is stated in the actual lease. Various actions to be taken by the RPLO are determined by certain thresholds based on annual rentals, such as contract clearance. Also the composite square foot rental for different types of space, which is the basis for comparative evaluation, is calculated from the annual rental.

**E. Composite Square Foot Rate/Alternate Offer**

Insert the composite square foot rental rate and the composite square foot rental rate of the alternate offer. Verify that the composite rate is correct. For example, an offer is structured as follows:

2,000 sq. ft. of storage at \$1.00/s.f.  
3,000 sq. ft. of laboratory space at \$15.00/s.f.  
5,000 sq.ft. of office space at \$13.00/s.f.

The easiest way to evaluate this offer for comparative purposes is to determine the composite square foot rate by calculating the annual rental.

Thus:

|                                |                 |
|--------------------------------|-----------------|
| Storage space annual rental    | \$ 2,000        |
| Laboratory space annual rental | \$45,000        |
| Office space annual rental     | <u>\$65,000</u> |

|                     |           |
|---------------------|-----------|
| Total annual rental | \$112,000 |
|---------------------|-----------|

\$112,000 divided by the total footage, 10,000 square feet, results in an \$11.20 per square foot composite rental.

If only one type of space is solicited, the rental rate quoted for that space should be inserted in the abstract.

**F. Operating Cost Escalator**

If the SFO has an escalator clause, indicate this in the abstract ("Yes-CPI" "Yes-Pass thru" or "No", etc.). An offer may have either no escalation or annual escalation tied to changes in the CPI.

**G. Base Cost of Services**

The base cost of services is the estimated cost of operating expenses, utilities, and services listed on GSA Form 1217, Lessors Annual Cost Statement. These costs should be broken out into a cost per square foot basis. All costs should be negotiated, and be verified by an experienced RPLO. If the lease contains an escalator clause, the rental will vary upward (escalation) or downward (de-escalation), in accordance with the CPI. Items that are

operating expenses subject to cost escalation or de-escalation are:

- Utilities
- Janitorial services
- Building system repair\*
- Building system maintenance
- Property protection
- Services of a building engineer for that portion of management costs devoted to the above items.

\*Does not include major repairs, e.g., replacement of systems, replacement of roof, etc.

Compare the lessor's projected cost to other similar buildings. Make direct inquiries to the local utility company as to their past usage and projected cost of utilities. If possible, obtain copies of past utility bills and/or cleaning contracts or invoices. The Government's estimate for services must be reasonable. The base cost of services is included in the overall composite rental quoted for the term, but is broken out as a separate cost item for purposes of evaluation and escalation.

#### **H. Services to be Provided by the Government**

RPLO's should always try to solicit fully serviced space. However, in the event services or utilities are not included in the rental, and must be provided by the Government, they are to be listed separately. This occurs when an offer is made which excludes some service, i.e., an offer which is not "fully serviced". After estimating the cost of providing these services in the subject building, insert the per square foot cost to the Government. The RPLO should exercise judgment in this regard and document the file by an attachment to the abstract. This can be done in the same method as noted above in the base cost of services section. During negotiations, the offeror should be advised of the cost the Government has attributed to the service excluded from the offer. The offeror at this point may wish to include the service as part of the rental consideration, raising the offer somewhat but still below the Government's estimate, to remain competitive.

#### **I. Escalated Rental Increase Per Square Foot**

If one or more offerors in a competitive situation has included annual escalation tied to the CPI, the estimated cost of that escalation must be added to the rental to determine overall cost to the Government. If one offer is received fully serviced and one offer is partially serviced, the cost of the Government provided services must be escalated as well.

To estimate the cost of the escalation when PVA is not used:

- (1) Multiply the base cost of services by the percentage rate of increase to represent the overall rate of inflation for the previous year by the number of years of the

initial term. (Insert the percentage rate of increase to be used in the abstract.);

- (2) Multiply the cost of Government provided services by that same rate and number of years of the initial term;
- (3) The difference between the negotiated base cost of services and average cost over the initial term is added to the rental to determine the overall cost to the Government;
- (4) The total escalated cost of Government provided services is added to the rental to determine the overall cost to the Government.

An example follows:

Offer A provides for a \$12 per annual square foot rate, with a base cost of services or \$3.00 per square foot with the Government providing electricity for lights and office machines estimated at \$.30.

Offer B provides for an \$11.95 per square foot rate, fully serviced, with a base cost of services at \$3.50 per square foot.

The rate of inflation for the previous year was 4 percent. Therefore, for instructional purposes a 4 percent annual compound interest rate is being used.

|         |  |        |   |        |        |
|---------|--|--------|---|--------|--------|
| Year #1 | Base cost of services (provided by lessor) |        |   |        | =3.00  |
| Year #2 | 1st escalation                             | \$3.00 | x | 1.0400 | =3.120 |
| Year #3 | 2nd escalation                             | \$3.00 | x | 1.0816 | =3.244 |
| Year #4 | 3rd escalation                             | \$3.00 | x | 1.1249 | =3.374 |
| Year #5 | 4th escalation                             | \$3.00 | x | 1.1699 | =3.509 |

(\$16.25 rounded) \$16.247

\$16.25 divided by 5 years = \$3.25 as the average estimated, escalated annualized per square foot cost of services provided by the lessor over the initial term. That represents a \$.25/s.f. increase from the base. (\$3.25 - \$3.00 = \$.25)

|         |  |        |   |        |        |
|---------|--|--------|---|--------|--------|
| Year #1 | Base cost of services (provided by Government) |        |   |        | = .300 |
| Year #2 | 1 <sup>st</sup> escalation                     | \$ .30 | x | 1.0400 | = .312 |
| Year #3 | 2 <sup>nd</sup> escalation                     | \$ .30 | x | 1.0816 | = .324 |
| Year #4 | 3 <sup>rd</sup> escalation                     | \$ .30 | x | .1249  | = .337 |
| Year #5 | 4 <sup>th</sup> escalation                     | \$ .30 | x | 1.1699 | = .350 |

(\$1.625 rounded) \$ 1.62

\$1.62 divided by 5 years = \$.32 as the average estimated escalated per square foot cost of Government provided services. That represents a \$.02/s.f. increase from

the estimated base cost of Government provided services. The two figures calculated above are inserted in the abstract of offers and added to the rental to determine overall cost to the Government.

Offer A:  $\$12.00 + .25 + .30 + .02 = \$12.57$

Offer B

|         |  |                        |           |
|---------|--|------------------------|-----------|
| Year #1 | Base cost of services (fully serviced) |                        | = \$3.50  |
| Year #2 | 1 <sup>st</sup> escalation             | $\$3.50 \times 1.0400$ | = \$3.640 |
| Year #3 | 2 <sup>nd</sup> escalation             | $\$3.50 \times 1.0816$ | = \$3.785 |
| Year #4 | 3 <sup>rd</sup> escalation             | $\$3.50 \times 1.1249$ | = \$3.937 |
| Year #5 | 4 <sup>th</sup> escalation             | $\$3.50 \times 1.1699$ | = \$4.094 |

$(\$18.96 \text{ rounded}) = \$18.956$

\$18.96 divided by 5 years = \$3.79 as the average estimated, escalated per square foot cost of all services provided by the lessor over the initial term. That represents a \$.29 s.f. increase from the base. This figure is inserted in the abstract and added to the rental to determine the overall cost to the Government.

**J. Parking (or other costs)**

Indicate the rate per square foot for parking required by the SFO, if not included in the rental. For example, an offer quoted a rate of \$50 per month per vehicle in addition to the rental for 5,000 square feet of office space. The SFO had specified a need for parking for three official Government vehicles.

$(\$50 \times 3 \text{ vehicles} \times 12 \text{ months}) \text{ divided by } 5,000 \text{ square feet} = \$3.6 \text{ per square foot. Insert } \$3.6 \text{ in the abstract.}$

A rental rate quoted for employee parking, which is usually not included as a requirement in the SFO, should not be added to the rental for purposes of evaluating cost to the Government.

Also insert here any other cost item not covered by the abstract.

**K. Overtime: HVAC (Zoned) and Janitorial Services**

Insert the rates quoted for use of heating, ventilating and air conditioning systems, and utilities and janitorial services specifically requested by the Government beyond normal working hours. These are subject to negotiations using the same method as described in the section “base cost of services.” Indicate if the rate, which is expressed in “hourly” terms, is per floor, per zone, other area, or the entire leased space. For example, in a modern high-rise, the system may be such that in order to heat 5,000 square feet or say one-third of the building (or one zone)

must also be heated. Each building system is different, but if it is a modern high-rise it is probably zoned. Ask the offeror. It is important to know what floors of the building the space is located on and how many zones cover the space to be leased.

**L. Unit Prices**

Insert the prices the offeror has quoted for installation, per unit, of ceiling high partitions (linear foot rate), floor electrical outlets, wall electrical outlets, telephone outlets, etc. These are the costs which will be added to or deducted from the actual awarded rental to reflect what was ultimately requested and installed. Also, the unit prices remain if additional alterations are required.

**M. Cost of Alterations**

Depending upon the circumstances of a particular acquisition, solicitations may be issued where the cost of initial space alterations or special requirements are to be itemized separately from the rental, either on a lump sum basis or square foot rate above the rental or alternate offers, or both. Offerors must be advised of the time period over which these costs will be evaluated. The square foot cost of the alterations is added to the rental for evaluating the overall cost to the Government.

The lump sum cost must be supported by a written evaluation. For example, an offer is received for 5,000 square feet at \$11.00 per square foot for a 5-year term with lump sum payments totaling \$6,500.

$$\frac{\$6,500}{5 \text{ yrs.}} = \$1,300 \text{ per year}$$

$$\frac{1,300}{5,000} = \$.26 \text{ per square foot}$$

\$.26 is inserted in the abstract and this cost is included in the evaluation of overall cost to the Government.

**N. Other Price Factors**

Moving cost. The Government must provide an estimate of the potential cost of the move. Be sure to include telecommunication costs (phones, etc.) since this can be a major expense. The moving cost is then reduced to an annualized square foot rate and stated in the SFO. It is added for evaluation purposes to the square foot rental rate of those offers to relocate. The current lessor obviously has an advantage here, but offerors, knowing this advantage are able to structure their offers to narrow or eliminate that competitive edge.

Others. List the factors which may be quantified in terms of an annual per square foot cost to the Government.

**4. Abstract of Offers (using PVA)**

Present value analysis for acquisitions of leasehold interest in real property calculates today's dollar value of future rental cost. The importance of the distribution of future rental cost over the term of the lease is based on the concept of the "time value" of money. The "time value", concept is that the present value of a dollar of future rental costs decreases with the amount of time that will elapse before the dollar is paid. Assume, for example, we know that 4 years from today that we would have to pay \$100. Knowing this, we could invest an amount less than \$100, which when added to the original amount would provide \$100 needed to pay the debt in 4 years. The amount we would have to invest is called the present value of \$100. The conversion of future costs into their present values is called "discounting". The values to be used in discounting have been previously calculated. GSA annually prescribes a discount and escalation rate. When calculating PVA use this table. When the SFO contains renewal options PVA shall be a part of the evaluation process. Leases under 10,000 square feet do not require present value price evaluation when all responsive best and final offers are structured as follows:

- There will be no free rental periods,
- Net annual rental will be level over the full term (including rental options, if requested in the solicitation), and,
- Special requirements and other items not covered in the rental are to be paid over the same period of time, e.g., lump sum or amortized (lump sum plus interest) over an identical number of years.

**THE FOLLOWING IS A SAMPLE OF PVA OF AN OFFER CONTAINING RENEWAL OPTIONS:**

Initial Term (yrs) 5                      Gross Rent \$16.00 (s.f.)

Base Cost of Services Provided by Lessor                      \$2.75 (s.f.)

Estimated Costs of Services provided by Government                      \$ .90 (s.f.)

Services Total \$3.65 (s.f.)

Lump Sum Payments \$ \_\_\_\_\_

Additional Costs                      \$ \_\_\_\_\_(s.f.)

|     |         |              |   |     |      |               |
|-----|---------|--------------|---|-----|------|---------------|
| 1st | Renewal | Option (yrs) | 4 | Net | Rent | \$14.00(s.f.) |
| 2nd | Renewal | Option (yrs) | 6 | Net | Rent | \$18.00       |
|     |         |              |   |     |      | (s.f.)        |

- (1) Calculate the net rent of the initial term by subtracting the total cost of services (if services are included in the rent subject to annual adjustments) from the "Gross" rent:  $\$16.00 - \$3.65 = \$12.35$ .
- (2) Multiply the net rent by the discount factor from Table A which corresponds to the length of the initial term:  $\$12.35 \times 3.99 = \$49.28$ .
- (3) Multiply the net rent of the 1st renewal option by the discount factor from Table B which is the intersection of the years of the initial term (5) and the years of the 1st renewal option (4):  $\$14.00 \times 2.25 = \$31.50$ .
- (4) Multiply the net rent of the 2nd renewal option by the discount factor from Table B which is the intersection of the years of the initial term plus the years of the 1st option ( $5 + 4 = 9$ ) with the years of the 2nd option (6):  $\$18.00 \times 2.31 = \$41.58$ .
- (5) Multiply the total annual cost of services by the discount/escalation factor from Table C which corresponds to the length of the total lease (initial term plus option term(s)) (15 years):  $\$3.65 \times 10.81 = \$39.46$ .
- (6) Add the present value costs calculated in 2, 3, 4, and 5. Divide by the total number of years, including all options, to yield the annualized present value cost per square foot:  $\$49.28 + \$31.50 + \$41.58 + \$39.46 = \$161.82 - 15 = \$10.79$ .
- (7) If an additional price per square foot is offered for an item specified in the SFO but not included in the offeror's rental rate, that square foot price must be discounted. Add that price to the net rent price of steps 2, 3, and 4 (as applicable) prior to applying the discount factor, and proceed through step 6. (Also see 13 below.)
- (8) If a lump sum payment is to be made at the onset of a lease, that cost is present value, assuming award will be made within a reasonable time. Divide that lump sum cost by the square footage and then divide by the total years of the lease (initial term plus option term(s)). Add the resulting annualized cost to the present value cost calculated in step 6. (Also see 13 below.)
- (9) If no services are included in the offered rent, follow steps 2, 3, and 4. Then escalate and discount the cost of Government provided services in step 5 and add that cost in step 6.
- (10) If no annual adjustments in operating expenses are included and the offer is fully serviced, use the gross rent in steps 2, 3, and 4 and omit step 5.
- (11) If three, four or more renewal options are offered, steps should be added, and the appropriate factor in Table B found in creating an artificial "initial term" comprised of all the years of the lease up to the point of the option under analysis, intersection by years of that renewal option under analysis.

- (12) If one or more options are offered at the same rent as that of the initial term, omit steps 3 and 4.
- (13) Any square foot costs to be added to the rental price to determine the low offer must be discounted, except lump sum payments made at the onset of a lease. (See 7 and 8 above.)
- (14) If only one option is offered, omit step 4.

When the SFO does not contain renewal options, the RPLO may want to make PVA a part of the evaluation process. It is suggested that the RPLO include PVA in SFO that request alternative offers, or in which lump sum payments are anticipated, and/or when a period of free rental is anticipated.

**THE FOLLOWING ARE TWO SAMPLE PVAS. EXAMPLE I, A STRAIGHT 5-YEAR LEASE AND EXAMPLE II A 10-YEAR LEASE, THE FIRST 18 MONTHS FREE RENTAL.**

**Example I:** A straight five-year lease

Net rental \$16.25/s.f.      Services \$3.75/s.f.      Gross \$20.00/s.f.

- (1) Multiply the net rental by the discount factor from Table A which corresponds to the years in the lease:  $\$16.25 \times 3.99 = \$64.84$ .
- (2) Multiply the cost of services by the escalation and discount factor from Table C which corresponds to the years in the lease:  $\$3.75 \times 4.30 = \$16.13$ .
- (3) Add the present value costs calculated in #1 and #2. Divide by the number of years in the lease:  $\$64.84 + \$16.13 \text{ divided by } 5 = \$16.19$ .

The present value per square foot cost of this lease is \$16.19 per year.

**Example II:** A 10-year lease, the first 18 months free rental.

Net rental \$14.50/SF      Services \$3.50/s.f.      Gross \$18.00/s.f.

- (1) There are no costs for year 1.
- (2) Calculate the effective annual per square foot rates for year 2 by multiplying the percentages of the year for which rental will be paid (6 months - 50%) times the rental and services rates above: Net rental  $\$14.50 \times 50\% = \$7.25$

Services  $\$3.50 \times 50\% = \$1.75$

- (3) Calculate the discount factor for year 2 net rental by subtracting the Table A factor for 1 year from the factor for year 2 ( $1.78 - 0.93 = 0.85$ ). Multiply the factor times the

effective net rental for year 2:  $\$7.25 \times 0.85 = \$6.16$ .

- (4) Calculate the discount/escalation factor for year 2 services by subtracting the Table C factor for 1 year from the factor for year 2 ( $1.82 - 0.93 = 0.89$ ) Multiply the factor times the effective service rate for year 2:  $\$1.75 \times 0.89 = \$1.56$ .
- (5) Calculate the present value costs of net rental for years 3 through 10 as follows:  
Subtract the Table A factor for 2 years from the factor for 10 years ( $6.71 - 1.78 = 4.93$ ) since the costs for year 2 were calculated in #2 and #3. Multiply the rental rate times the factor:  $\$14.50 \times 4.93 = \$71.49$ .
- (6) Calculate the present value costs of services for years 3 through 10 by multiplying the rate times the Table C Factor for 10 years minus the factor for 2 years ( $7.86 - 1.82 = 6.04$ ).  $\$3.50 \times 6.04 = \$21.14$ .
- (7) Add the present value cost calculated in #3, #4, #5, #6 and divide by the number of years in the lease.  $\$6.16 + \$1.56 + \$71.49 + 21.14$  divided by 10 =  $\$10.04$ .

The present value per square foot cost of this lease is  $\$10.04$  per year.

Note: Step #5, above may be performed using Table B. Consider years 1 and 2 as an initial term and years 3 through 10 as an 8-year renewal. The intersection of years 2 and 8 is the factor 4.93, the same factor as was calculated by subtraction in #5.

If the RPLO determines to use PVA and the SFO does not contain renewal options, nor requests for alternative offers, PVA can be used, i.e. offers containing escalation clauses.

Remember the present value costs are used only for comparative purposes to determine the low offer. The annualized present value cost per square foot figure should be inserted in the abstract of offers as applicable.

## **5. Total Cost to the Government**

Add (for each offer):

A. Square Foot Rate +b

B. Escalated Increase/s.f.

The average estimated, escalated cost of Government provided services. (If CPI adjustments are included in the offer.)

AND/OR

The average estimated, escalated cost of Government provided services (if offer is not fully

serviced).

C. Parking+

D. Cost of Alterations+

E. Other Price Factors =

Total Cost to Government

## **6. Award Factors**

The purpose of award factors is to provide a basis for determining which offer is most advantageous to the Government with regard to factors other than price.

Use pertinent factors which will have a real influence on the outcome of the award.

Offerors must be advised in the SFO of the evaluation criteria used for the award.

First consideration shall be given to buildings fully meeting the accessibility requirements.

Note: Accessibility requirements are to be cited in the Award section of the SFO package. Because it could be interpreted during the initial evaluation that certain offerors could be eliminated for non-compliance before negotiations, the SFO language has been changed to make accessibility requirements an award factor, so that offers are not eliminated from competition because of non-compliance with accessibility requirements until after negotiations have been completed and "best and final" offers received.

Thus, offerors now have an opportunity to discuss and revise their offers to identify what they are willing to modify to meet the accessibility requirements. The offers will then be reviewed against the Government's criteria to determine which buildings fully meet, or substantially meet the requirements.

All offers received in response to a solicitation for offers should be evaluated to determine whether the offer fully meets the accessibility requirements for new construction of the Americans With Disabilities Act Accessibility Guidelines (ADAAG) (36 CFR Part 36, App.A) and the Uniform Federal Accessibility Standards (UFAS) (Federal Register vol. 49, No. 153, August 7, 1984, reissued as FED. STD.795, dated April 1, 1998, and amended by the Federal Property Management Regulations Amendment D-88, 54 FR 12627, March 28, 1989). If any offers are received which fully meet accessibility requirements of new construction, then other offers which do not fully meet these requirements will not be considered. Where standards conflict, the more stringent applies.

## **7. Non-Responsive Offers**

A non-responsive offer is one that does not meet the terms and conditions of the Solicitation for Offers. Before determining that the offer is non-responsive a statement must be prepared describing what made the offer non-responsive.

## **CHAPTER VI. NEGOTIATIONS**

After receipt and evaluation of offers and an inspection of all locations, oral discussions should be conducted with all competitive offerors meeting, or capable of meeting, the minimum stated requirements. The key ingredient to successful negotiations is advance preparation.

### **1. Establish Negotiation Objectives**

One of the most critical aspects of leasing space is negotiating the best price for the Government. Establishing pre-negotiation objectives is a valuable step to aide the RPLO in achieving this goal. These written pre-negotiation objectives will provide a pricing guide that will enhance the effectiveness of negotiations for the purpose of obtaining the best possible price.

Gather together the “notes” developed from the abstract of each offer, market survey, and any other technical input, establish a minimum and maximum rental range per rentable square foot, base cost of services, lump sum alterations, and unit prices, etc. for each building offered prior to entering the first round of negotiations. Written negotiation objectives are to be established prior to negotiations.

The negotiations will address these costs as well as reviewing the SFO to resolve any uncertainty relating to the requirements and specifications, e.g., review special requirements to be amortized or lump sum, accessibility and fire/life safety requirements to be included in the basic rent, time frames to complete the space, etc.

### **2. Negotiation Session**

The RPLO or representative should meet with the offeror or authorized agent face-to-face (preferred) or confer by telephone and correspondence.

Separate negotiations must be conducted with each offeror. During the negotiations, the following rules should be observed:

- A. Any concession or additional requirement given to one offeror must be given to all others.
- B. Offers must be kept confidential prior to award.
- C. Time extensions and other modifications to the SFO must be in writing to all offerors.
- D. Oral agreements must not be used.

Negotiations should be continued, as necessary, to obtain the rental rate most favorable to the Government.

### **3. Termination of Negotiations**

After the final negotiation sessions have been held, and the RPLO is convinced that all items have been adequately discussed and negotiated, and all offerors are within the Government's price estimates, negotiations should be closed. A date and time for closing the negotiations is established and offerors will be requested in writing to submit a "best and final offer" by that date. Negotiations may not be conducted after the closing date for best and final offers unless negotiations are reopened with all offerors in the competitive range.

### **4. Documentation**

A written negotiation record must be placed in the lease file. A price negotiation memorandum (PNM) is useful in outlining information supporting the recommendation for award.

SFO No. \_\_\_\_\_

General Services Administration  
Public Buildings Service  
**PRE-NEGOTIATION RECORD**  
(Real Property Lease Acquisition)

|                                  |                                     |
|----------------------------------|-------------------------------------|
| <b>Building Name and Address</b> | <b>Owner/Agent Name and Address</b> |
| _____                            | _____                               |
| _____                            | _____                               |
| _____                            | _____                               |
| _____                            | _____                               |

Rentable Square Footage Offered: \_\_\_\_\_

GSA Measured Occupiable: \_\_\_\_\_

**NEGOTIATION OBJECTIVES**

| <u>POINTS FOR NEGOTIATION</u>                                  | <u>OBJECTIVE RANGE</u> | <u>BASIS</u> |
|--|------------------------|--------------|
| 1. Rentable SF Rate  | \$ _____               | _____        |
| 2. Operating Cost Rate per Rentable SF                         | _____                  | _____        |
| 3. Percentage of Occupancy                                     | _____                  | _____        |
| 4. Hourly Overtime Rate  | _____                  | _____        |
| 5. Unit Prices   |                        |              |
| • ceiling high partitions                                      | _____                  | _____        |
| • screens  | _____                  | _____        |
| • wall duplex electrical outlets                               | _____                  | _____        |
| • floor duplex electrical outlets                              | _____                  | _____        |
| • wall telephone outlets                                       | _____                  | _____        |
| • floor telephone outlets                                      | _____                  | _____        |
| • other unit prices  | _____                  | _____        |
| 6. Parking Rates per Space per Month                           | _____                  | _____        |
| 7. Renewal Term in Rentable SF Rate                            | _____                  | _____        |
| 8. Termination Rights  | _____                  | _____        |
| 9. Other Items for Negotiation<br>(continue on attached sheet) | _____                  | _____        |

APPROVED:

\_\_\_\_\_  
REALTY SPECIALIST SIGNATURE      Date

\_\_\_\_\_  
CONTRACTING OFFICER SIGNATURE      Date

## **CHAPTER VII. APPRAISAL**

An appraisal performed by the RPLO or an outside contractor has generally been required to support negotiated contract rentals for leases. However, acquiring an appraisal is a time consuming and often an expensive process and is not a common industry practice for lease acquisitions. Therefore, the requirement for an appraisal has been eliminated by GSA.

Certain circumstances as set forth in the Truth in Negotiations Act (TINA) , 41 U.S.C. 254b, may still require an appraisal be performed. TINA requires offerors to submit cost or pricing data when adequate price competition does not exist for leases having a total contract value greater than \$550,000. The market price exemption from submission of cost or pricing data may be applied to proposed leases where there is evidence that the price is based on an established market price for similar space leased to the general public. A market survey and/or an appraisal may be used as evidence to establish the market price. (See FAR 15.304 and GSAR 570.204-4). When the cost or pricing data provisions of TINA are triggered and no market price information is available, for example, border stations or laboratories, an appraisal should be prepared instead of requiring lessors to submit cost or pricing data.

The elimination of the requirement for appraisals to support lease acquisitions does not preclude the RPLO from obtaining an appraisal if best judgment leads to a determination that an appraisal is needed.

## **CHAPTER VIII. AWARD**

### **1. Layouts**

During the negotiations, preliminary layouts are discussed. Prior to award, the RPLO must finalize these drawings to ensure accountability with the SFO to include accessibility and fire/life safety concerns and identify any extra requirements as noted in "change" amendments prior to the award. The approved layouts should be forwarded to the lessor, in writing, to document the transmittal date. Agency approval of the layout should be limited to the location and arrangement of partitions, the number and location of telephone and electrical outlets, paint, floor coverings, and window covering selections. Do not sign off on the lessor's mechanical, electrical, structural or architectural drawings. The design and operation of these systems is the responsibility of the lessor.

### **2. Contract Clearance Thresholds**

Prior to award, written contract clearances and written approval are required for lease actions at the following thresholds:

Less than \$50,000\* no approval required

\$50,000 - \$500,000\* One level above the RPLO

\$500,000\* - \$2,290,000\*\* HRPLA

Note: All lease contracts that exceed \$2,290,000\*\* net annual rental (prospectus threshold for FY 2004) must be forwarded to OPPM for transmittal by GSA to the House and Senate Committees on Public Works. The Committees' approval must be obtained prior to execution of the lease contract. The prospectus threshold level for fiscal year 2005 will be \$2,360,000.

\* Net annual rental for initial term

\*\* Indexed excluding services and utilities. This amount changes annually and is based on the prospectus threshold set by GSA. Annual prospectus thresholds can be found at the following website:

<http://www.gsa.gov>.

### **3. Award Process**

A. An award in writing shall be made to the responsible offeror whose proposal is most advantageous to the Government, considering price and other factors included in the SFO.

- B. Award should be made in writing within the timeframe specified in the SFO. If an offer cannot be made within that time, the RPLO should request in writing from each offeror an extension of the acceptance period through a specific date.
- C. Unsuccessful offerors must be notified simultaneously in writing of the award.
- D. All proposals received in response to a SFO may be rejected if the HRPLA determines that action is in the public interest. This authority may be redelegated.
- E. When there is an ambiguity in a contract, the courts will rule against the party (the Government) that wrote the contract. Therefore, in preparing the award letter or lease, it is essential that the entire lease, including all attachments, is consistent in reflecting the negotiated agreement. Also, if any SFO paragraph is modified, it must be annotated and initialed. The lessor and RPLO must initial each page of the lease, including all attachments. Only the final offer, if complete, will be incorporated in the lease.

#### **4. Preparation of Contract**

The lease agreement is prepared on the Standard Form 2 (SF-2), U.S. Government Lease for Real Property. If the RPLO is using the Simplified Leasing Procedures, then GSA Form 3626, U. S Government Lease for Real Property (Short Form).

#### **5. Protests to GAO**

The bid protest provisions of CICA provide the Comptroller General with authority to decide a protest concerning an alleged violation of a procurement statute or regulation.

##### **A. Pre-award protest**

A lease may not be awarded while the protest is pending unless the HRPLA determines in writing that urgent and compelling circumstances which significantly affect interests of the United States, will not permit waiting for the decision of the Comptroller General and the Comptroller General is advised of that finding. This finding may be made only if award is to occur within 30 days.

##### **B. Post-award protest**

If notice of protest is received within 10 calendar days after award, the RPLO will be required to issue a “stopwork” order unless the HRPLA makes a written finding that performance of the contract is in the best interest of the Government or urgent and compelling circumstances which significantly affect interests of the United States, will not permit waiting for the decision of the Comptroller General and the Comptroller General is advised of that finding.

**C. Termination of the lease is recommended**

If the Comptroller General ultimately recommends termination of the lease (whether or not work has been stopped), the HRPLA must decide whether to terminate the lease.

United States  
Department of Agriculture  
**SUPPLEMENTAL LEASE AGREEMENT**

SUPPLEMENTAL AGREEMENT

DATE

NO.

TO LEASE NO.

ADDRESS OF PREMISES

THIS AGREEMENT, made and entered into this date by and between

whose address is

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective \_\_\_\_\_, as follows:

All other terms and conditions of the lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR

BY \_\_\_\_\_

(Signature)

\_\_\_\_\_ (Title)

IN PRESENCE OF

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Address)

UNITED STATES OF AMERICA

BY \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Official Title)

## **CHAPTER IX. PROCEDURE AFTER LEASE IS SIGNED**

### **1. DESIGN INTENT**

#### **A. Lease Contents**

The lease will contain timeframes for submission of approved design intent layouts and the lessor's submission of working drawings for approval by the RPLO. Since USDA's occupancy depends upon the lessor's completion of the space, it is important to monitor these submissions to assure that the timeframes are met. Missing these dates could cause many complications, including liquidated damages and paying rent before the space is ready.

#### **B. Sequence of Events**

The sequence of events should be as follows:

- USDA submits approved design intent to the lessor within the specified timeframe stated in the lease.
- Lessor prepares working drawings and submits them to USDA prior to beginning construction.
- USDA reviews drawings and final fire safety report.
- RPLO approves final layouts and sends them to lessor by letter. The letter should instruct lessor not to proceed with any above standard items without specific written approval from the RPLO. Paint colors and carpet selections are negotiated and will be included with final plans.
- RPLO negotiates above standard items and formalizes price by supplemental agreement for a lump sum amount, after justifying by an independent estimate.

#### **C. Electrical and Telephone Outlet Layouts**

The RPLO accepts or rejects only layouts for partitioning and placement of electrical and telephone outlets. They do not sign off on lighting, mechanical, electrical or plumbing plans.

#### **D. Inspection Before Acceptance**

The complete work, both standard and above standard, must be inspected by the Government before acceptance.

## **2. ALTERATIONS AND GENERAL CONDITIONS**

### **A. Alterations or Other Construction Work**

The lease or a separate agreement should cover the responsibilities of the lessor in performing alterations or other construction work necessary to prepare the space for occupancy. The agreement should contain at least the following obligations:

- The lessor is responsible for inspecting the site to determine the quantity of work involved, comparing the specifications with the work, and keeping informed on all conditions affecting the work.
- If the contract allows any work after occupancy, the lessor must schedule the work to minimize any interference with the activities of the occupants; the lessor should ascertain the hours that are best for this purpose when preparing the offer.
- The lessor is responsible for fire and accident prevention, which may include restricting or directing flow of pedestrians or vehicles around work areas, using appropriate safety equipment, providing proper waste containers, and keeping paint containers sealed when not in use.
- The lessor will furnish all supplies, materials, and equipment for performance of the work, which shall be of a quality conforming with applicable Federal standards.
- The lessor will comply with all applicable laws, ordinances, and regulations (Federal, State, County, or other) including those covering alien employees.
- The lessor must indemnify the Government against any and all liability claims for injury, death, or property damage arising out of the work performance that may result in whole or part from negligent acts or omissions of the lessors.

### **B. Periodic Inspection by RPLO**

Periodic inspection by the RPLO or USDA representative, should be made during the progress of the work. Early visits may require only a walk through but later visits should be more detailed as the work nears completion. The inspector should check the construction against copies of the final approved layouts and note any items that are missing, such as outlets, outlet covers, doors, locks, window coverings, etc.

## **3. ACCEPTANCE DATE**

### **A. Commencement of Payment and Anniversary of Lease**

Note that the acceptance date establishes the commencement of the payment of rent and

the anniversary date of the lease. Smaller blocks of space are accepted in their entirety on a single date, usually the day following the final acceptance of the space--the day scheduled for the move-in.

## **B. Composite Date**

If the lease involves a large amount of space, with a phased completion, acceptance and move-in, it may be necessary to set a composite date for commencement of rent. This can be done in two steps:

1. Divide total annual rental for all segments of twelve to get the average monthly rental.
2. Divide total actual rent paid through the day before rental is to commence on the last increment of space, by the average monthly rental from step 1. This will give you the correct number of months, or fraction thereof, to count back from the specific date used. (Composite dates should be avoided if possible. It is preferable to wait for a single move-in date if operations permit.)

## **C. Payment**

The Prompt Payment Act, (31 U.S.C. 3901 et. seq.) requires that payments be made by an established payment due date. 31 U.S.C 3901 further requires that the following clause appear in all solicitations and contracts for leases for real property. "Payment under this contract will be due on the 5th workday of the month following that in which payment accrued." The Prompt Payment Act allows for a 15-day grace period following the due date to effect payment. If payment is not made by the contract due date or within the subsequent grace period, interest will be computed and added to the amount due.

The RPLO should establish the lease commencement date based on the results of the final inspection. If an executed lease document already exists, a supplemental lease agreement establishing the commencement date should be prepared and forwarded to the lessor. In other cases, the lease document with the appropriate term should be prepared and forwarded to the lessor for signature.

The RPLO should forward a copy of the signed lease and all required agency forms to the agency's finance office for payment. The requirements of the Prompt Payment Act on the initial and subsequent payments should be noted by the leasing activity and the payment center.

All payments must be made by electronic transfer.

## **4. ACCEPTANCE INSPECTION**

### **A. Who Should Participate**

If possible, the acceptance inspection should be made jointly by the RPLO or his designee, the buildings manager, or his representative, the lessor, and personnel qualified to inspect specialty features, if available.

## **B. Inspection Checklist**

Having a lease inspection checklist will be helpful, prepared in advance, covering all of the details to be checked. The list can be divided into sections such as General, Architectural Finishes, Fire and Safety, Toilet Facilities, Accessibility Features, etc.

On the checklist, make general notes on the overall condition of the building systems, such as exterior, HVAC, elevators, restrooms, walls, ceilings, floors, etc.

Check the placement of partitions, doors, outlets, and other fixtures against the locations called for in the approved tenants' layouts.

Verify the measurements of dividing walls, restrooms or other structures that might affect the usable space that has been built since the initial survey inspection. The space must be physically measured.

## **C. Deficiency List**

From the inspection, prepare a deficiency list of items that must be corrected. Specify in the list:

- Items that must be corrected before occupancy: Those that are vital to the operation, threaten safety, or whose correction after occupancy would cause undue disruption to the operation.
- Items whose correction can be deferred until after occupancy: For each deferred item, set a deadline for correction and make it part of the lease -- then follow-up to make sure the work is accomplished by the date set. Be sure to document the file.

Chapter IX Attachments, has a sample "Certificate of Acceptance for Leased Property" with an attached "Condition Report".

## **5. MISTAKES AFTER AWARD**

If a mistake in a lessor's offer is noted after an award, the mistake may be corrected by contract amendment, if the essential requirements of the SFO are not changed and if correcting the mistake will be advantageous to the Government. The RPLO may rescind the award or reform the contract to remove or correct the mistaken items if this will not increase the price above the next lowest offer. The RPLO should coordinate each proposed amendment with the appropriate legal counsel for comments. The RPLO should provide to Counsel, at a minimum, proposed determination on the lease file. For guidance see FAR 14.406-4 and GSAR 514.4.

## **6. POST AWARD PUBLICIZING**

The RPLO is required to publish a synopsis in the Commerce Business Daily (CBD) of all awards when the value of the lease (including all options) exceeds \$500,000 and the lease contains subcontracting opportunities. The requirement does not apply to lease modifications/alterations made within the scope of the lease which have no subcontracting opportunities. The CBD should be forwarded at a minimum, the following information:

- (a) Lease of real property
- (b) Net usable square footage
- (c) Location
- (d) Initial term and term of options
- (e) Lease number, award date, and SFO number
- (f) Name and address of lessor
- (g) Annual rental

CERTIFICATE OF ACCEPTANCE  
FOR LEASED PROPERTY

This report covering the premises located at:

and consisting of \_\_\_\_\_ typewritten pages has been examined and represents a true condition of the property herein described:

Deficiencies noted herein, except those items listed below, are recorded for the protection of the Government when termination of the lease covering the premises is necessary. Those items listed below are to be corrected by the lessor within five(5) working days unless otherwise specified. All other conditions so noted are minor and in no way render the premises unsuitable for Government occupancy.

DEFICIENCIES TO BE CORRECTED:

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Lessor or Lessor's  
Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Government's  
Representative

Page \_\_\_\_ Of \_\_\_\_

CONDITION REPORT

---

---

Lease No.

---

Date

---

Date of Possession

---

Installation and Location

---

Lessor

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Address of Premises

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Description of Leased Premises (General description including size, type of construction, age, and general condition and state of repair.)

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INTERIOR

|  |  | Room No.  |
|--|--|-----------|
|  |  | Floor No. |
| ITEM                                     | DESCRIPTION<br>(INCLUDE MATERIAL & FINISH) | CONDITION |
| FLOOR                                    |  |           |
| BASEBOARDS                               |  |           |
| WALLS                                    |  |           |
| CEILING                                  |  |           |
| TRIM                                     |  |           |
| WINDOWS                                  |  |           |
| DOORS                                    |  |           |
| LIGHT FIXTURES                           |  |           |
| SECURITY                                 |  |           |
| SAFETY (FIRE ALARM,<br>SPRINKLERS, ETC.) |  |           |
| MISC.                                    |  |           |

INTERIOR

|  |  | Room No.  |
|--|--|-----------|
|  |  | Floor No. |
| ITEM                                     | DESCRIPTION<br>(INCLUDE MATERIAL & FINISH) | CONDITION |
| FLOOR                                    |  |           |
| BASEBOARDS                               |  |           |
| WALLS                                    |  |           |
| CEILING                                  |  |           |
| TRIM                                     |  |           |
| WINDOWS                                  |  |           |
| DOORS                                    |  |           |
| LIGHT FIXTURES                           |  |           |
| SECURITY                                 |  |           |
| SAFETY (FIRE ALARM,<br>SPRINKLERS, ETC.) |  |           |
| MISC.                                    |  |           |

REMARKS

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GENERAL

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EXTERIOR

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INTERIOR

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## **CHAPTER X. SPECIAL PROCEDURES WHEN CONTRACTING FOR CONTINUED OCCUPANCY IN LEASED SPACE**

### **1. Renewal Options.**

A renewal option is a unilateral right to the original lease contract by which, at a specified time or times, the Government may elect to extend the term of the lease for a specified period. Unpriced options and unevaluated options are considered new acquisitions and, therefore, must be handled as either new acquisitions or succeeding leases.

**A. Evaluated Options.** The RPLO must advise the lessor in writing that the Government will exercise an option, within the timeframe specified in the lease. The RPLO may exercise renewal options only after determining that:

- Funds are available
- The space covered by the option fulfills an existing Government need
- Exercising the option is the most advantageous method of fulfilling the Government's space requirements, price and other factors considered

The RPLO, after considering price and other factors, makes the determination on the basis of a market survey which focuses on the prevailing rental rates of comparable space. The results of the market survey are documented. The options may be exercised if the market survey indicates that the option price is better than prices available in the market or that the option is the most advantageous offer. Relocation costs are also considered in determining the most advantageous offer.

A market survey is required.

**B. Unpriced Options and Unevaluated Options.** Follow the procedures for new competitive acquisitions or the procedures for succeeding leases.

### **2. Succeeding Leases**

A succeeding lease for the continued occupancy of space in a building may be entered into when a cost benefit analysis has been conducted and the results indicate that an award to an offeror other than the present lessor would result in substantial relocation and duplication costs to the Government that are not expected to be recovered through competition.

**A. Advertising.** Advertising is not required for blocks of space under 10,000 square feet. If the RPLO chooses to advertise, the published notice or flyer should normally indicate that (i) the Government's lease is expiring, (ii) describe the agency's needs in terms of type and alternative space, if economically advantageous, (iii) advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate, and (iv) tell interested parties whom to contact if they are interested in providing space to the Government.

**B. Market survey.** Inspect all available locations or offered space that appears to meet, or is capable of meeting, the minimum requirements regarding quantity, quality, availability and probable cost. Use (GSA Form 3627), Lease Market Survey Form to document the survey findings. The form should document reasons that space is unacceptable and identify interested parties that should receive the SFO.

**C. Competition Determination.**

- (1) If no potentially acceptable locations are identified through the notice or the market survey, the RPLO may prepare a justification to negotiate directly with the present lessor. The justification must be prepared and approved and should fully document the efforts to locate alternative sources.
- (2) If potentially acceptable locations are identified through the advertisement or market surveys and relocation costs (including estimated moving costs, telecommunication costs, and the estimated cost of alterations, amortized over the firm term of the lease) are not significant enough to preclude recovery of such costs through competition, the RPLO may proceed to develop the SFO and negotiate with all interested parties.
- (3) If potentially acceptable locations are identified through the advertisement or market survey and substantial relocation costs are involved, the RPLO conducts a cost/benefit analysis to determine whether the duplication of costs to the Government could be recovered through competition. The cost/benefit analysis must give consideration to the prices of other potentially available properties, relocation costs, and other appropriate considerations. The prices for other potentially available properties must be established by requesting the prospective offeror to provide an informational quotation for standard space for comparison purposes. The prices quoted for standard space will be adjusted by the Government for special requirements. A SFO is not required for the purpose of obtaining the information quotation. The RPLO provides a general description of the Government's needs when requesting informational quotations. If oral quotations are provided, the record must be documented to reflect the following information, as a minimum: the name and address of the firm solicited, the name of the firm's representative providing the quote, the price(s) quoted, the description of the space and services for which the quote is provided, the name of the Government employee soliciting the quotation, and the date of the conversation. The informational quotations shall be compared to the present lessor's price and adjusted to reflect the anticipated price for a succeeding lease.

Based on the results of the cost benefit analyses, the RPLO will:

- (a) prepare a justification for approval to support the determination to negotiate with the present lessor for continued occupancy because it is likely that an award to any other offeror would result in substantial duplication of cost to the Government that would not be expected to be recovered through competition, or

(b) develop the SFO and negotiate with all interested parties.

**3. Expansion Space (within the scope)**

Expansion space within the scope of the lease (an increase of up to 10 percent of the amount of space covered by the existing lease is generally considered within the scope) may be acquired by modification of the lease. Use Supplemental Lease Agreement Form AD-276. The original lease term may not be extended when acquiring expansion space.

**4. Expansion Space (outside the scope)**

When the expansion space needs are outside the general scope, a market survey is conducted to determine whether suitable locations are available.

A. If alternate locations are available, a cost benefit/analysis is performed to determine whether it is in the Government's, best interest to relocate. This analysis should include:

- (1) cost of alternate space compared to expanding at the existing location,
- (2) the cost of moving,
- (3) the cost of duplicating existing improvements,
- (4) the cost of the unexpired portion of the firm term lease (unless termination is possible, in which case the actual cost of such action should be used).

B. If no suitable space is available and the cost of the space exceeds \$50,000,

Note: When dealing with existing cost escalators in acquiring expansion space you should identify the current lease's rate for the operating expenses and negotiate a rate that is the same as or less than that for the additional space.

**5. Superseding Leases**

When needed changes (such as expansion and/or alterations) to the space are so numerous, detailed or would otherwise substantially change the present lease, consideration should be given to the execution of a superseding lease. A market survey must be conducted to ensure that no other suitable space, meeting your requirements, is available. Justification statements must be prepared and approved before negotiating a superseding lease if the amount of the lease over the term (including renewal options) exceeds \$50,000.

## 6. Lease Extensions

Lease extensions provide for continued occupancy on a short-term basis (usually not to exceed one year). A market survey is required to document that the price for the extension is fair and reasonable. In justification cite 41 U.S.C. 253 (c) (1) "only one responsible source" for required approvals for extensions exceeding \$50,000. This authority may be used to extend the term of a lease by supplemental lease agreements in situations such as the following:

- When the agency occupying the leased space is scheduled to move into other GSA controlled space, or other USDA controlled space, but unexpected delays are encountered in acquiring the new space.
- When unexpected delays that are outside of the RPLO's control (e.g. protests, etc.) are encountered in acquiring the replacement space.
- When various agencies (e.g. NRCS, RD, FSA, etc.) occupying leased space are being consolidated and it is necessary to extend the term of one or more leases to establish a common expiration date.

## 7. Space for Short-Term Use

An agency may lease space for short-term use not to exceed 180 days, (such as conferences and meetings, judicial proceedings, and emergency situations). Agencies shall make efforts to utilize Government-owned or leased space before initiating a lease action. Such efforts shall be documented. The acquisition of short-term space requires competition. A market survey, agency specifications, negotiations and awards are required.

When the Government is conveyed a right of exclusive possession for a definite period of time by a landlord, a lease contract SF-2, U.S. Government Lease for Real Property, should be used. All other transactions can be handled with a purchase order or U.S. Government purchase card.

## 8. Lease Alterations

Although the Government generally has a contractual right to alter the leased space, normally most alterations are acquired through a modification to the lease because they fall within the general scope of the lease and it is in the Government's interest to acquire the alterations from the lessor. As the need for alterations arises during the term of a lease contract, the RPLO must examine each project and make a determination as to whether the alterations are within the general scope of the lease and may be acquired through a modification to the lease. The primary test is whether the work should be regarded as a fairly and reasonably inseparable part of the lease requirement originally contracted. If the alterations are outside the general scope, the RPLO must make a decision to acquire the alterations through a separate contract or through a Supplemental Lease Agreement with the lessor.

**A. Alterations by the Lessor**

- (1) The justification and approval requirements must be complied with before negotiating directly with the lessor for any alteration project exceeding \$100,000 which is outside the general scope of the lease contract.
- (2) Before negotiating directly with the lessor for any alteration project of \$100,000 or less, which is outside the general scope of the lease, the RPLO should document, in writing, the reasons for the absence of competition.
- (3) Procedure
  - (a) Prepare a scope of work statement for the alteration project to include plans and specifications.
  - (b) An independent Government estimate must be prepared for all alteration projects.
  - (c) Provide the lessor with a scope of work, including any plans and specifications, and request the submittal of a proposal. The proposal should be requested to be submitted in such detail that a cost or price analysis can be made.
  - (d) Analyze the costs of the project as compared to the independent estimate.
  - (e) Negotiate price -- the Government's alterations may enhance the value of the lessor's property. The objective is to provide a good deal for both parties.
  - (f) Award may be procured using AD Form 276, Supplemental Lease Agreement. The agreement should indicate whether progress payments or a lump sum will be made and provide for retainage, when appropriate. Purchase orders can be issued for projects \$50,000 or less, provided a reference is made to the lease.
  - (g) Final payment for alterations cannot be made until the work is inspected and certified by a qualified Government employee or independent Government contractor as being completed in a satisfactory manner.
  - (h) The requirements for submission of certified cost or pricing data outlined in FAR 15.8042 apply to alteration projects over \$100,000. The procedural requirements at FAR 15.804-6 must be followed when requesting cost and pricing data.
  - (i) All lease alterations that are estimated to exceed one half of the current prospectus level, regardless of whether the payment for the alterations is in a lump sum or amortized into the rent must have congressional approval prior to award. Any lease alteration project estimated to exceed this amount should be forwarded to OPPM for transmittal by GSA to the House and Senate Committees on Public Works.

Note: The RPLO should have the lessor sign a waiver of restoration for all lease alterations performed by the lessor.

**B. Alterations by the Government.**

When the Government elects to exercise its rights to make the alterations rather than contract directly with the lessor, the work may be performed by Federal employees or may be contracted out using all of the standard contracting procedures that would apply to a construction contract as if the work was to be performed on Federal property. If the Government decides to contract for the work, the lessor as well as all other prospective contractors, should be invited to submit an offer for the project.

**9. Termination**

Termination of a lease may be made by allowing it to expire, by exercising termination rights, or by negotiations. These are in addition to termination due to default, fire or destruction.

Termination of a lease by permitting its expiration may be accomplished either by withholding a notice of renewal or by allowing the lease to expire. Regardless of which, the lessor should be notified of the Government's intent no less than 30 days in advance.

When leased space becomes unoccupied and there is no prospect for assignment and the Government has no right of immediate termination, negotiations are initiated to affect a release of the unoccupied space. If cancellation cannot be negotiated, efforts are made for a reduction in service and utility charges for the remainder of the term. Vacant property must be offered to GSA for possible assignment to other agencies (see FMR 102-75-70 for exceptions to this notification policy). If terms and conditions permit, and there is no Federal tenant available, agencies can attempt to outlease or sublease the vacant space. Agencies cannot attempt to make a profit from the outlease. Any funds collected over and above the rent already established in the parent lease must be turned over to the general Treasury funds. (See attached memorandum from OGC dated March 20, 2002 for further clarification).

**10. Restoration**

Restoration is the physical replacement or repair of the premises at the termination of the Government's occupancy to the same condition existing at the commencement of such occupancy, except for reasonable, and ordinary wear and tear. Changes made to the space during occupancy are subject to restoration by the Government if not waived by the lessor at the time of installation. The RPLO should have the lessor sign a waiver of restoration for all lease alterations performed by the lessor.

The waiver signed and dated by the lessor should read, "the lessor waives restoration for any work done under this contract."



United States  
Department of  
Agriculture

Office of the  
General  
Counsel

MAR 21 2002

MEMORANDUM FOR DENISE R. HAYES  
CHIEF  
PROPERTY MANAGEMENT DIVISION  
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

FROM: Kenneth E. Cohen   
Assistant General Counsel  
General Law Division

SUBJECT: Agency Authority to Sublease Property When Exercising the Leasing  
Authority Delegated by the Administrator of General Services

This memorandum responds to your August 25, 2000, memorandum requesting legal advice regarding whether an agency exercising the leasing authority delegated by the General Services Administration ("GSA") may enter a sublease. As background information, you attached to your memorandum a memorandum to you from the Forest Service Director of Acquisition Management in which the Director questioned whether this authority exists and whether the Administrator of General Services must approve an "outlease." You also attached to your memorandum several pieces of correspondence between the Portland, Oregon, office of the Office of the General Counsel and the Pacific Northwest Regional Office of the Forest Service regarding both subleasing and the applicability to the Forest Service of a 1996 Comptroller General decision regarding the use of funds received from a sublessee by the Securities and Exchange Commission.

In your memorandum to me, you asked that I address three questions: (1) whether an agency exercising the leasing authority delegated by the Administrator of General Services may enter into a sublease agreement for excess space covering the remaining term of a lease; (2) if an agency may enter a sublease agreement, may the agency retain the money generated by the sublease; and (3) if an agency may enter a sublease agreement, what restrictions should be included in the sublease.

#### Summary

An agency exercising the leasing authority delegated by the Administrator of General Services via the September 25, 1996, leasing delegation may enter into a sublease agreement for space that GSA has determined is "surplus." Such a sublease must comply with all applicable requirements

set forth in the Federal Property Management Regulations (“FPMR”) and the Federal Management Regulation (“FMR”), including those provisions discussed in section III. of this memorandum that detail conditions and terms for subleases.

If an agency enters a sublease agreement pursuant to the delegated leasing authority, the agency may credit that portion of the amount paid by the sublessee that represents the “actual operating and maintenance costs” of providing the subleased space to the appropriation initially charged for these costs. If the agency receives payments from a sublessee in excess of these costs, the agency must deposit the excess amount in the Treasury as miscellaneous receipts.

### Discussion

#### I. Whether an agency exercising the leasing authority delegated by the Administrator may enter into a sublease agreement for excess space<sup>1</sup> covering the remaining term of a lease

Title 40, section 490(h) of the United States Code, which was enacted as part of the Federal Property and Administrative Services Act, 40 U.S.C. § 251 *et seq.*, sets forth the authority of the Administrator to lease building space. It provides, in relevant part:

The Administrator is authorized to enter into lease agreements with any person, copartnership, corporation, or other public or private entity, which do not bind the Government for periods in excess of twenty years for each such lease agreement, on such terms as he deems to be in the interest of the United States and necessary for the accommodation of Federal agencies in buildings and improvements which are in existence or to be erected by the lessor for such purposes and to assign and reassign space therein to Federal agencies.

40 U.S.C. § 490(h)(1).

This section also indicates that the Administrator has the authority to enter into subleases of building space. It states that, “[i]f the unexpired portion of any lease of space to the Government is determined by the Administrator to be surplus property and the property is thereafter disposed

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<sup>1</sup>The Federal Property and Administrative Services Act, 40 U.S.C. § 251 *et seq.*, which sets forth many of the requirements pertaining to the use of Federal property, defines “excess property” as “any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.” 40 U.S.C. § 472(e) (emphasis added). The Act defines “surplus property,” which is discussed later in this memorandum, as “any excess property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator.” *Id.* § 472(g) (emphasis added). Thus, as discussed herein, upon a determination by the Administrator that no Federal agency requires certain excess property in order to fulfill its responsibilities, the “excess property” becomes “surplus property.”

of by sublease by the Administrator,” the Administrator may deposit rental payments received as a result of the sublease in a special account and may use these funds to pay for services provided to the sublessee and for other expenses. 40 U.S.C. § 490(h)(2).

Via a delegation dated September 25, 1996, and effective as of October 14 of that year, the Administrator delegated to the heads of all Federal agencies his authority pursuant to 40 U.S.C. § 490(h) “to perform all functions related to the leasing of general purpose space for a term of up to 20 years regardless of geographic location.” The delegation states that Federal agencies must use the space in accordance with all applicable laws and regulations, including the FPMR.<sup>2</sup> Although the delegation does not state expressly that Federal agencies exercising this delegated authority may sublease unneeded building space, authority to enter subleases is implicit within the authority to “perform all functions related to the leasing of general purpose space.” The regulations governing the use of Federal property that the Administrator has issued clarify that this authority to enter subleases has been delegated to Federal agencies.

Two sets of regulations issued by the Administrator pursuant to the Federal Property and Administrative Services Act govern the management and use of Federal property- the FPMR and the FMR.<sup>3</sup> 41 CFR §§ 101-1.105 and 102-2.15. The FMR is the successor to the FPMR. It contains updated regulatory policy and requirements that had been included in the FPMR. *Id.* § 102-2.5. As parts of the FMR are issued, some parts of the FPMR are being eliminated, while other parts of the FPMR are being revised to include a cross-reference to related parts of the FMR. *See* 66 Fed. Reg. 5,358 (2001). If the policy statements in the FMR conflict with any policy statements in the FPMR, the FMR statements are controlling. 41 CFR §§ 101-47.000 and 102-71.15.

The real property policies and requirements in both the FPMR and the FMR apply to all executive<sup>4</sup> agencies. 41 CFR §§ 101-1.106 and 102-2.20. The FMR specifically states that the

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<sup>2</sup>41 C.F.R. § 102-72.30(b) notes that the Administrator “has issued a standing delegation of authority (under a program known as “Can’t Beat GSA Leasing”) to the heads of all Federal agencies to accomplish all functions relating to leasing of general purpose space for terms of up to 20 years regardless of geographic location” and that this delegation is subject to agencies meeting certain conditions when conducting a procurement.

<sup>3</sup>The FPMR appears in title 41, part 101 of the Code of Federal Regulations, and the FMR appears in title 41, part 102. Thus, provisions including “41 CFR § 101” in their citations should be understood to be provisions of the FPMR, and provisions including “41 CFR § 102” in their citations should be understood to be provisions of the FMR.

<sup>4</sup>The FMR distinguishes between “executive agencies,” which it defines as “executive department[s] or independent establishment[s] in the executive branch of the Government,” and “Federal agencies,” which includes executive agencies plus establishments in the legislative and judicial branches. 41 CFR § 102-2.20.

real property policies of GSA apply to all agencies “operating under, or subject to, the authorities of the Administrator.” *Id.* § 102-71.5.

The FMR provides that agencies “may grant rights for non-Federal interim use of excess property reported to GSA, when it is determined that such excess property is not required for the needs of any Federal agency.” 41 CFR § 102-75.30. The reporting requirements for Federal property are based on the statutory requirements set forth in 40 U.S.C. § 483, which require that agencies “continuously survey property under [their] control to determine which is excess property, and promptly report such property to the Administrator” and that agencies “transfer or dispose of such property as promptly as possible in accordance with authority delegated and regulations prescribed by the Administrator.” 40 U.S.C. § 483(b). The FMR and the FPMR implement 40 U.S.C. § 483 by requiring an agency to report all excess real property to GSA.

41 CFR §§ 101-47.202-1(b) and 102-75.25(c).<sup>5</sup> Property that an agency uses pursuant to a lease generally must be reported to GSA if the agency does not need the property and considers it “excess.” *See id.* § 101-47.202-4(b) and (c).<sup>6</sup>

GSA screens excess real property reported by agencies for use by other Federal agencies. 41 CFR § 101-47.203-5. If GSA does not identify a Federal use for the excess property, GSA may determine that the property is “surplus” to the needs of the Government. *Id.* § 102-75.35. *See also id.* § 101-47.204-1.

40 U.S.C. § 484 provides that “[a]ny executive agency designated or authorized by the Administrator to dispose of surplus property may do so by sale, exchange, lease, permit, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Administrator deems proper.” 40 U.S.C. § 484(c). For leases held by the Government of non-Government-owned property, the FPMR designates the “holding agency,” which means the agency accountable for the property, as the agency responsible for disposing of

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<sup>5</sup>Reporting requirements are discussed in detail in the FPMR. *See, e.g.*, 40 CFR §§ 101-47.202-2 and 101-47.202-3. The Agriculture Property Management Regulations (“AGPMR”) also discuss reporting requirements specific to Department agencies. *See, e.g.*, AGPMR §§ 104-47.202-1, 104-47.202-2, and 104-47.202-3.

<sup>6</sup>The FPMR excepts from the reporting requirements leased property where the lease is subject to termination by the owner of the premises within nine months, where the remaining term of the lease provides for less than nine months of occupancy, where the lease precludes transfer to or use by a third party, and where the lease provides for office, storage, or related space of not more than 2,500 square feet. 41 CFR § 101-47.202-4(b) and (c). Other FPMR provisions provide that disposal of leased property excepted from the reporting requirements shall take place “in a manner consistent with the [screening, transfer, and use] provisions” discussed above. 41 CFR § 101-47.203-4. *See also id.* §§ 101-47.203-7(e), and 101-47.204-2.

the property. 41 CFR § 101-47.302-2(a)(1).<sup>7</sup> See also *id.* §§ 101-47.103-6, 101-47.103-7, and 101-47.302-1 and AGPMR § 104-47.302-2.

Both the FPMR and the FMR provide that agencies may dispose of surplus property by “grant[ing] rights for non-Federal interim use” of the property. 41 CFR §§ 101-47.203-9 and 102-75.30. The FMR expressly provides that agencies may use a sublease or “outlease” to arrange for such interim use of surplus property by non-Federal entities. It states:

Executive agencies may outlease surplus real property for non-Federal interim use, pending its disposition, when both of the following conditions exist:

(a) The lease or permit does not exceed one year and is revocable with not more than a 30-day notice by the disposal agency; and

(b) The use and occupancy will not interfere with, delay, or impede the disposal of the property.

*Id.* § 102-75.45. See also *id.* § 102-79.50 (“Where there is no Federal agency space need, Executive agencies must make every effort to maximize the productive use of vacant space through out-granting (for example, outlease, permit, license) to non-Federal entities to the extent authorized by law.”) The FPMR contains a similar provision expressly allowing a holding agency to grant a lease for non-Federal interim use of surplus property. *Id.* § 101-47.312. The FPMR provision contains the same two conditions on such an outlease as the FMR provision. It also provides that “[t]he lease or permit shall be for a money consideration and shall be on such other terms and conditions as are deemed appropriate to properly protect the interest of the United States.” *Id.*<sup>8</sup>

Thus, an agency exercising the leasing authority delegated to it by the Administrator via the September 25, 1996, delegation may enter into a sublease or outlease of space that GSA has determined is “surplus.” Such a sublease or outlease is subject to the disposal and other property management requirements set forth in the FPMR and the FMR.

Both the FPMR and the FMR limit the base rental period of a sublease to one year. If the remaining term of a lease of space that GSA has determined is surplus exceeds one year, and the agency wishes to sublease the space for the entirety of the remaining term, the agency may enter

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<sup>7</sup>There is an exception to the general rule that the holding agency is designated as the disposal agency for circumstances in which either GSA or the holding agency determines that “the Government’s interest will be best served by the disposal of such real estate interests together with other [excess] property owned or controlled by the Government.” 41 CFR § 101-47.302-2(a)(1).

<sup>8</sup>The FPMR contains additional regulations regarding the specific steps an agency should take to dispose of surplus property. See generally 41 CFR part 101-47, subpart 101-47.3.

into a sublease agreement that provides for a base rental period of one year, with options to renew the sublease thereafter.

II. Whether an agency that enters a sublease agreement pursuant to the delegated leasing authority may retain the money generated by the sublease

31 U.S.C. § 3302 states:

Except as provided in section 3718(b) of this title<sup>9</sup>, an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.

31 U.S.C. § 3302(b). The Comptroller General has interpreted this provision to mean that “agencies ordinarily are required to deposit monies they receive for the use of the United States in the general fund of the Treasury as miscellaneous receipts.” Matter of: Federal Emergency Management Agency- Disposition of Monetary Award Under False Claims Act, B-230250, 1990 U.S. Comp. Gen. LEXIS 426, at \* 3 (1990).

The Comptroller General has recognized two exceptions to this general rule. The first exception is that, “if specifically authorized by statute, an agency can retain monies it collects for deposit into an appropriation account or fund for subsequent obligation and expenditure.” Federal Emergency Management Agency, 1990 U.S. Comp. Gen. LEXIS 426, at \* 4. The second exception is for “repayments” to appropriations, whether classified as “reimbursements” or “refunds.” Matter of: International Natural Rubber Organization- Return of United States Contribution, B-207994, 1982 U.S. Comp. Gen. LEXIS 119, at \* 6 (1982). “Reimbursements” are defined as “sums received as a result of commodities sold or services furnished either to the public or to another Government account, which are authorized by law to be credited directly to a specific appropriation,” and “refunds” are defined as “amounts collected from outside sources for payments, payments made in error, overpayments or adjustments for previous amounts disbursed.”<sup>10</sup> Id. at \*6-7.

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<sup>9</sup>31 U.S.C. § 3718(b) discusses contracts with private counsel for legal services related to the collection of debts owed to the United States and is not relevant here. *See* 31 U.S.C. § 3718(b).

<sup>10</sup>You attached to your memorandum several pieces of correspondence between a field office of the Office of the General Counsel and a regional office of the Forest Service regarding the applicability to the Forest Service of a 1996 Comptroller General decision, Matter of: Securities and Exchange Commission- Reduction of Obligation of Appropriated Funds Due to a Sublease, B-265727, 1996 U.S. Comp. Gen. LEXIS 374 (1996). In that decision, the Comptroller General considered whether the Securities and Exchange Commission (“SEC”) could treat the amount by which a sublessee’s payments reduced SEC lease payments as a

Here, 40 U.S.C. § 490 provides, in relevant part, that:

Any executive agency, other than the General Services Administration, which provides to anyone space and services . . . is authorized to charge the occupant for such space and services at rates approved by the Administrator. Moneys derived by such executive agency from such rates or fees shall be credited to the appropriation or fund initially charged for providing the service, except that amounts which are in excess of actual operating and maintenance costs of providing the service shall be credited to miscellaneous receipts unless otherwise authorized by law.

40 U.S.C. § 490(k). This section constitutes an exception to the “miscellaneous receipts” rule set forth in 31 U.S.C. § 3302. It provides statutory authorization for an agency that enters a sublease pursuant to the delegated leasing authority to retain that portion of the money received from the sublessee that represents the “actual operating and maintenance costs” of providing the subleased space. The agency may use this amount to reimburse the appropriation that bore the costs of providing the space. However, if the agency receives payments from a sublessee in excess of the actual operating and maintenance costs of providing the subleased space, the agency must deposit the excess amount in the Treasury as miscellaneous receipts.

41 CFR § 102-85.135, which GSA published in the Federal Register as an interim rule that is part of the FMR and which was effective as of May 8, 2001, provides guidance in implementing 40 U.S.C. § 490. It states:

Any executive agency other than GSA providing space and services is authorized to charge the occupant for the space and services at rates approved by the Administrator of General Services and the Director of the Office of Management and Budget. If space and services are of the type provided by the Administrator of General Services, the executive agency providing the space and services must credit the monies derived from any fees or charges to the appropriation or fund

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“refund,” and retain that amount, instead of depositing that amount in the miscellaneous receipts account in the Treasury. The Comptroller General determined that the amount did not constitute a refund and that the SEC lacked statutory authority to retain the funds. The Comptroller General stated that the SEC must deposit the amount of the sublessee’s payments in the Treasury as miscellaneous receipts. *Id.* \* 6-11.

As discussed above, 40 U.S.C. § 490(k) provides statutory authority for a Department agency to retain that portion of the money received from a sublessee that represents the “actual operating and maintenance costs” of providing subleased space and to use that amount to reimburse the appropriation that initially paid those costs. Thus, this Comptroller General decision should not be construed as barring a Department agency from retaining at least a portion of any funds received from a sublessee.

initially charged for providing the space or services, as described in Subsection 201(k) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(k)).

41 CFR § 102-85.135.

Thus, consistent with 40 U.S.C. § 490 and 41 CFR § 102-85.135, a Department agency that enters a sublease agreement pursuant to the delegated leasing authority may retain a portion of the money generated by the sublease. The Administrator as well as the Director of the Office of Management and Budget must approve the rate the agency charges for the space, and the agency may credit that portion of the amount paid by the sublessee which represents the "actual operating and maintenance costs" of providing the subleased space to the appropriation initially charged for these costs. The agency must deposit any amount in excess of these costs in the Treasury as miscellaneous receipts.

### III. Restrictions that should be included in a sublease agreement when an agency subleases space pursuant to the delegated leasing authority

Both the FPMR and the FMR suggest restrictions that should be included in a sublease agreement when an agency subleases space pursuant to the delegated leasing authority. As discussed above, the FMR states:

Executive agencies may outlease surplus real property for non-Federal interim use, pending its disposition, when both of the following conditions exist:

- (a) The lease or permit does not exceed one year and is revocable with not more than a 30-day notice by the disposal agency; and
- (b) The use and occupancy will not interfere with, delay, or impede the disposal of the property.

41 CFR § 102-75.45. The corresponding FPMR provision contains these two conditions on subleases and also states that "[t]he lease or permit shall be for a money consideration and shall be on such other terms and conditions as are deemed appropriate to properly protect the interest of the United States." *Id.* § 101-47.312.

In accordance with these provisions, and as discussed in section I. of this memorandum, a sublease agreement should specify a base term of not more than one year. In addition, the sublease agreement should provide that the sublease is revocable by the agency with no more than 30 days notice to the sublessee and that the sublessee may not use the subleased property in a manner that interferes with any other Government efforts to dispose of the property. The sublease agreement also should state that the tenant will provide monetary payment for the

subleased property,<sup>11</sup> and the sublease agreement should include any other provisions that the agency considers necessary to protect the interests of the United States.

If you have any questions regarding this matter, please contact Annejanette Kloeb Heckman of my staff on (202) 720-6035.

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<sup>11</sup>Although the sublease must provide that the sublessee will provide monetary payment, it may be possible, in some limited circumstances, for an agency to accept non-monetary payment for subleased property pursuant to 40 U.S.C. § 485, which states:

Any executive agency entitled to receive cash under any contract covering the lease, sale or other disposition of surplus property may in its discretion accept, in lieu of cash, any property determined by the President to be strategic or critical material at the prevailing market price thereof at the time the cash payment or payments became or become due.

40 U.S.C. § 485(f).

## **CHAPTER XI. LEASE ADMINISTRATION**

When the leased premises have been sold, the following is required: evidence of the transfer of title (the best evidence is a certified copy of the deed), letter from successor-lessor assuming, approving and adopting the lease and agreeing to be bound by its terms, and a letter from the prior lessor waiving all rights under the lease against the Government, except unpaid rents through a specified date.

When the leased premises are transferred by death of the lessor, a copy of the letters of administration where there is no will, showing the new lessor(s), is required. Upon final settlement of the estate, the rental will be paid to the new owners.

Any change of ownership should be reflected on a Supplemental Lease Agreement, AD Form 276, which is executed by the Government and the new lessor.

Note: Legal actions involving the disposition of the premises occupied by the Government do not nullify the Government's lease contract. Responsibility rests with the lessor's successor. See GSA Form 3517B Item Number 3.

### **1. CHANGE OF OWNERSHIP**

#### **A. Stop Payment of Rent**

If a change in ownership of the lease premises occurs during the term of the lease, stopping payments of rent is essential until all questions concerning the change can be resolved.

#### **B. Request Full Information**

Upon receiving notice of an ownership change, the RPLO should send a letter to the old and/or new owner requesting full information on the new owner and an assignment of the lease.

- A sample letter and enclosure entitled Lease Assumption Agreement appears at the end of this section. It is the responsibility of the old and new owners to complete this or a similar form and return it to the RPLO.
- If the change in ownership is the result of the death of an individual owner, a copy of the will or letters of administration showing the new owner is required.

#### **C. Use Careful Wording and Consult with Counsel**

It is important that the lease assignment and assumption agreement be worded to insure that the original owner/lessor is not released from responsibility for obligations under the lease. Legal counsel should check the wording of the document before sending it to the lessors for signature.

## 2. **RENTAL DEDUCTIONS**

### A. **Cure Letter**

If the lessor fails to correct a performance deficiency after an oral request (which should be documented), it may be necessary for the Government to exercise its right to correct the deficiency and deduct the cost of the correction from the rental payment. Prior to doing this, the RPLO should send a “cure” letter to the lessor, notifying the lessor of the failure to correct and setting a date for inspection to see whether or not the work has been completed. The letter should state that unless the correction is made by the date, the Government will exercise its right, pursuant to Paragraph 15 of the General Clauses of the lease, to correct the deficiency and deduct the cost from the rental payments. The letter should be sent by certified mail, return receipt requested. (Sample letter attached).

### B. **Deduction Letter**

If the “cure” letter does not result in a correction, the Government will make the correction and deduct the cost from the rent. RPLO should send a “deduction” letter to the lessor, informing them of the work done and the cost that will be deducted. The letter also advises the lessor of appeal rights. This letter should also be sent by certified mail, return receipt requested. (Sample letter attached).

### C. **Emergency Situations**

If the correction need creates an emergency, in which lives or Government property are endangered, the “cure” letter can be omitted and the Government can have the necessary work done and send a “deduction” letter as soon as the lessor fails to take action after an oral request. In this event, the oral request should be fully documented and the opening paragraphs of the “deduction” letter should be modified to include:

- An explanation of why the performance failure constituted an emergency requiring immediate corrective action.
- A summary of the verbal requests made to lessor or unsuccessful attempts to contact lessor to make the request.

## 3. **RENTAL ADJUSTMENTS**

Adjustments in rental payments for any reason must be based on a provision of the lease or a supplemental agreement that describes the conditions under which an adjustment can be made and how the adjustment is to be calculated. In every case, be sure to follow the procedure agreed to in the lease provision exactly.

### A. **Increase in Operating Costs**

One of the most common adjustments in rental is an increase to allow the lessor to

maintain net income in the face of increased operating costs, such as cleaning service, supplies, utilities, and maintenance. This adjustment is based on an escalation clause in the lease. The clause will also provide for a corresponding decrease in rental if operating expenses should decrease.

**(1) Consumer Price Index Used**

The escalation clause in a lease uses the Consumer Price Index figure published by the U.S. Department of Labor to determine the change in the cost of living index that will trigger a rental increase or decrease. The percentage of change in the index is applied to the base operating costs to determine the new rental payment. The base operating costs must be established prior to award and be stated in the lease; they include all services and utilities furnished by the lessor.

**(2) Adjustment Effective on Anniversary Date**

Rental payment adjustments under the escalation clause will be effective on the anniversary date of the lease, beginning with the second year of the lease and for each year thereafter.

**(3) Adjustments for Operating Costs**

The rental adjustments for operating costs will be based on the index figure published for the month prior to the lease commencement as compared to the index published for the month prior to the anniversary date. For example, for a lease that commenced in July 2004, you would compare the index published for June 2004 with the index published for June 2005, June 2006, etc., to determine the percentage change. The new adjustment rental rate will be effective on the anniversary date of the lease and will be reflected in the next monthly payment.

**B. Tax Adjustments**

If there is a tax adjustment clause in the lease, the Government will pay additional rent for its share of tax increases or have the rent reduced by its share of any tax decreases.

The Government's share of any tax change will be based on the percentage of rental building space that it occupies. This percentage should be established prior to award to preclude disagreements; it represents the ratio between the square feet occupied by the Government to the total rentable square feet in the building.

The adjustment will be calculated on the difference between taxes paid for the calendar year in which the lease commences (base year) and the current year. The share will be paid in a lump-sum that becomes due on the first work day of the month after tax receipts for both years are presented or on the anniversary date of the lease, whichever is later. In any event, be sure to use the most recent date for calculating change.

### **C. Assignment of Rents**

During the term of the lease, the lessor may ask the right to receive rental payments under the lease to a third person or to a financial institution. The assignment of this right does not affect the obligations of the lessor under the lease or change the relationship of the parties except the purely administrative change in the location and/or name of the payee. The assignment is made for the convenience of the lessor and should impose no additional burden or expense on the Government.

The Government should not make any change in the method, place, or recipient of rental payments until the lessor has executed a written assignment authorizing and directing the Government to make rental payments to the designated person or entity, in lieu of making payments to the lessor. Be sure that the assignment is executed by a properly authorized officer if the lessor is a corporation and that the payee's name and the location of the payments are clear and unambiguous. If there is any confusion about these matters, withhold payments until it is clarified.

## **4. DISPUTES**

### **A. Poor Performance or Non-Performance**

Disputes that arise under the lease regarding performance or non-performance by either party are resolved according to the procedures set forth in the Disputes Clause of the lease. These procedures are prescribed by the Contracts Disputes Act of 1978 (41 USC 601-613). The clause basically requires that claims be in writing and the RPLO render a written decision that is final unless the contractor appeals or files a suit.

### **B. No Oral Commitments Can Be Honored**

In attempting to resolve any dispute, remember that no oral commitments made during discussions of the dispute or during any stage of the lease negotiations can be honored. Only those terms contained in a written agreement are binding on either party.

**SAMPLE CURE LETTER  
CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Date  
Lessor's Name  
Lessor's Address  
Dear \_\_\_\_\_:

This is in reference to deficiencies in the property leased from you by (name of agency) in the building located at address , under lease number \_\_\_\_\_ . The deficiencies are:

(1)  
Paragraph \_\_\_\_\_ of the lease requires  
\_\_\_\_\_.

(2)  
Paragraph \_\_\_\_\_ of the lease requires  
\_\_\_\_\_.

(Name and Title) verbally notified (you or your staff) on Date that these deficiencies must be remedied. The necessary work has not been performed/completed to date.

It is my determination that if you have not taken action to correct deficiencies by September 15, 2004, the Government will exercise its right to correct the deficiencies and deduct the cost from rental payments, pursuant to Paragraph 15 of the General Provisions of the lease. The premises will be reinspected immediately after September 15, 1999, to determine if the work has been completed.

No extensions will be granted from the September 15,2004 deadline unless I receive adequate justification, and an acceptable completion target date from you by close of business September 14, 2004. If you file an extension request, you must:

1. Obtain a receipt for the request either by mailing it "Certified Mail-Return Receipt Requested" or by having it hand delivered to me.
2. Have my WRITTEN approval of the extended completion deadline in hand before commencing work.

Proceeding with the work after the deadline without taking the above precautions, will result in your liability for expenses the Government incurs preparing for the work.

Any questions regarding the above, may be referred to me on (555) 555-5555.

Sincerely,

Real Property Leasing Officer

**SAMPLE RENTAL DEDUCTION LETTER**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Date  
Lessor's Name  
Lessor's Address

Dear \_\_\_\_\_:

By letter of \_\_\_\_\_ (copy attached), you were advised that unless you took action to correct deficiencies in the space leased by (agency) at Building Name and Address Lease number by September 15, 1999, the Government would exercise its right to correct the deficiencies and deduct the cost from rental payments, pursuant to Paragraph 15 of the General Provisions of the lease.

The premises were inspected on September 16, 2004, and the deficiency had not been corrected. I have taken the necessary action at a total cost of \$\_\_\_\_\_. A breakdown of these costs is attached. Therefore, I have authorized the deduction of that amount from a future rental check.

**This is a final decision of the Contracting Officer:**

Under the Contract Disputes Act of 1978, this decision of the Contracting Officer shall be final and conclusive unless appealed or action is brought in the U.S. Claims Court as indicated herein. This decision may be appealed to the Services Administration's Board of Contract Appeals, Washington, D.C. 20405. If you decide to make such an appeal, you must or otherwise furnish written notice thereof to the Board of Contract Appeals within ninety (90) days from the date you receive this decision. A copy thereof shall be furnished to the Contracting Officer from whose decision the appeal is taken. The Notice of Appeal, which is to be signed by you as the contractor or by an attorney acting on your behalf and which must be in letter form, should indicate that an appeal is intended, should refer to this decision and should identify the contract and item by number. The Notice of Appeal should include a statement of the reasons why the decision is considered to be erroneous. In lieu of appealing to the cognizant Board of Contract Appeals, you may bring action directly to the U.S. Claims Court, within twelve (12) months of the date you receive this decision.

You are advised that you may, at your sole election, proceed under the small claims procedure where the amount of dispute resulting from the final decision is \$10,000 or less. In like manner and at your sole election, an accelerated procedure is available before the Board of Contract Appeals where the amount in dispute resulting from the final decision is \$50,000 or less.

Sincerely,

Real Property Leasing Officer  
Attachments

**TRANSMITTAL LETTER TO OLD/NEW LESSOR**

Name  
Address

With reference to Lease No. \_\_\_\_\_

for \_\_\_\_\_ (Address) \_\_\_\_\_, we have been advised of the impending sale of the \_\_\_\_\_ property. Enclose is a form which sets forth the information required from both the present and new owner.

The Government will make the necessary changes in contract and payment records after all of the information and documentation is submitted. It is therefore important to respond expeditiously for a prompt change in destination of rental checks.

Sincerely,

Real Property Leasing Officer

enclosures

LEASE ASSUMPTION AGREEMENT

THIS AGREEMENT entered into by and between \_\_\_\_\_  
\_\_\_\_\_ Hereinafter called "Transferor",

\_\_\_\_\_ hereinafter called "Transferee", and the United State of America, acting by and through the Secretary of Agriculture, hereinafter called the "Government",

WITNESSETH:

WHEREAS, the Transferor and the Government have heretofore entered into a certain lease, Number \_\_\_\_\_, Dated \_\_\_\_\_, as amended by the following: supplemental Agreement No. \_\_\_\_\_, dated \_\_\_\_\_, etc., whereby the Transferor leases to the Government certain real property more particularly described as follows:

which lease as amended is hereinafer referred to as the "Lease"; and

WHEREAS, the Transferor has sold the leased property to the Transferee and has assigned to the Transferee all the Transferor's rights under the Lease; and

WHEREAS, the Transferee has assumed all the Transferor's obligations under the Lease; and

WHEREAS, evidence of the transfer of the property and the assignment have been furnished to the Government.

NOW, therefore, in consideration of the promises, the parties hereto mutually agree as follows:

1. The Transferor hereby confirms said assignment, conveyance and transfer to the Transferee, and does hereby release and discharge the Government form, and does hereby waive, and claims, demands and rights against the Government which it now has or may hereafter have in connection with the lease.

2. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the Lease. The Transferee further assumes all obligations and liabilities of, and all claims and demands against the Transferor under the Lease, in all respects as if the Transferee were the original party to the Lease.

3. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the Lease with the same force and effect as if the action had been taken by the Transferee.

4. The Government hereby recognizes the Transferee as the Transferor's successor in interest in and to the Lease. The Transferee hereby becomes entitled to all rights, title, and interest of the Transferor in and to the Lease in all respects as if the Transferee were the original party to the Lease. The term "lessor" as used in the Lease shall be deemed to refer to the Transferee rather than the Transferor.

5. Except as expressly provided therein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

6. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Government to the Transferor and all other

action heretofore taken by the Government, pursuant to its obligations under the Lease, shall be deemed to have discharged *pro tanto* the Government's obligations under the Lease. All payments and reimbursements made by the Government after the effective date of this Agreement in the name of or to the Transferor shall have the same force and effects as if made to said Transferee and shall constitute a complete discharge of the Government's obligations under the Lease to the extent of the amounts so paid or reimbursed.

7. The Transferor hereby guarantees payment of all liabilities and the performance of all obligations which the Transferee (1) assumes under this Agreement, or (2) may hereafter undertake under the Lease as they may hereafter be amended or modified; and the Transferor hereby waives notice of and consents to any such amendments or modifications.

8. Except as herein modified, the Lease shall remain in full force and effect:

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement effective \_\_\_\_\_.

Payee's  
Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number:

\_\_\_\_\_

Social Security or Employee  
ID Number:

\_\_\_\_\_

UNITED STATES OF AMERICA  
Agency

By \_\_\_\_\_

\_\_\_\_\_  
(Signature) TRANSFEROR

\_\_\_\_\_  
(Signature) TRANSFEREE

\_\_\_\_\_  
\_\_\_\_\_

## NEW OWNER INFORMATION SHEET

1. (a) Attach certified copy of Deed transferring title and/or a fully signed and certified copy of agreement of sale.  
(b) In the vent of change of ownership due to death of owner, please submit a copy of the will or letters of administration.
2. (a) If a partnership, list all partners, general partners, limited partners, and addresses.  
(b) If a corporation, list all corporation officers, titles, and addresses (attach a copy of corporate resolution authorizing ownership and designating who may act or sign on behalf of the corporation).

3. IRS Identification Number: \_\_\_\_\_

4. Name of Payee and address for rental payments:

5. Manager or day-to-day contact person.

Name:

Address:

Phone Number:

\_\_\_\_\_  
Authorized Signature (Owner)

\_\_\_\_\_  
Date

## **CHAPTER XII. SIMPLIFIED LEASE PROCEDURES**

### **1. BACKGROUND**

The Federal Acquisition Streamlining Act of 1994 contains provisions that permit streamlined procedures for leasing actions. Under this Act, and in accordance with the implementing guidance provided by the GSAR Change 65:

- The small purchase threshold for leasing is increased from \$25,000 total contract value to a Simplified Lease Acquisition Threshold (SLAT) of \$100,000 annual rental;
- The threshold for application of 11 clauses is raised from \$100,000 annual rental, and over 30 GSAR clauses and provisions are made more flexible;
- The threshold for cost or pricing data is raised from \$100,000 to \$500,000 with an adjustment every 5 years;
- 
- Competition for leases that do not exceed SLAT is redefined; and
- The contracting officer is permitted to approve acquisitions in situations where there is other than "competition to the maximum extent practicable."

The simplified process is intended to be less formal than the standard lease acquisition with much of it handled by telephone or during on-site visits. The type of specifications the RPLO must use in the process will depend upon the complexity of the acquisition, ranging from minimum specifications for small amounts of generic office space to detailed specifications for special purpose facilities such as laboratories or for lease construction.

By memorandum to all of its leasing activities dated January 17, 1997, GSA issued an Acquisition Letter (PER-97-02) addressing a number of changes to its Solicitation for Offers (SFO) and related forms resulting from streamlining efforts and policy modifications. The SFO includes revised safety and environmental requirements, BOMA Usable square footage measurement in lieu of Occupiable, revised accessibility standards, a mandatory seismic safety requirement, an optional energy savings paragraph, and changes to reflect the implementation of GSA's "Can't Beat GSA Leasing" program. Greater flexibility is now allowed with regard to the use of the standard or simplified SFO and variations in form usage are permitted within statutory and regulatory limitations.

### **2. APPLICATION OF THE SIMPLIFIED PROCESS**

When a lease is not expected to exceed the SLAT, the following conditions apply:

- At least three sources must be solicited in securing competition to the maximum extent practicable. When the contracting officer determines that circumstances exist which support other than maximum competition, they must document the file with the reasons for their conclusion.

- Sources not solicited which express an interest in the leasing action must be considered if they meet the requirements.
- When there are repeated leasing actions in the same market, full competition must be sought each time from as many sources as available.

**Newspaper Advertisements** - Newspaper advertisements are required if the square footage exceeds 10,000 square feet. Other circumstances where publicizing is not required are described in the FAR 5.202 and the GSAR 505.202.

**Current Market Information** - Current market information must be obtained and documented for all leasing actions. However, on-site inspection of available properties during the market survey is no longer mandatory because of the detailed information and data that is accessible from available sources such as GSA, local government, private sector real estate agents and brokers, multiple listing services, etc., to identify locations that will meet the Government's minimum requirements. If use of a form is necessary for a particular leasing action, the GSA Form 3627, Market Survey, may be used to document leases less than 10,000 square feet.

**Independent Government Estimates** - Independent Government estimates are not required for above standard, lump sum alterations in competitive lease actions where the alterations are included in the price evaluation of offers, or for unit costs for adjustments, if market data are available to determine that unit costs are fair and reasonable.

### **Negotiation Objectives/Price Negotiation Record**

- RPLO's should develop specific written negotiation objectives involving a minimum and maximum position prior to negotiations. These negotiation objectives should be developed based on current market information, appraisal data (if available), and the technical knowledge of the RPLO. These negotiation objectives should be included as part of the lease file.
- A record of price negotiations must be maintained for the file; however, a formal Price Negotiation Memorandum is not required. The written record should include brief discussion of the negotiation objectives, a succinct abstract of offers, the results of the negotiations, the rationale for the award decision, and informal attachments as required.
- Negotiations may be recorded on GSA Form 3628, Lease Action Summary.

### **Pre-Award Documentation**

- Appraisals are not required for leases that use the simplified process. However, the RPLO must use market data (cost or price analysis) to evaluate the price and document the file to demonstrate that the proposed contract rental represents a fair market price. In addition, in cases with a total contract value more than \$500,000 where there is not competition or market data to support an exemption to the

requirement to obtain cost or pricing data, the RPLO may decide to obtain an appraisal in order to support an exemption instead of obtaining cost or pricing data.

### **Continuing Space Requirements**

- Succeeding and Superseding Leases and Lease Extensions. When the cost of a succeeding lease for the continued occupancy of space in a building, superseding lease, or extension does not exceed the simplified lease acquisition threshold, the RPLO may use simplified acquisition procedures and document the reasons for the absence of competition in the file.
- Expansion. When an expansion requirement is determined to be within the general scope of the lease, the space may be acquired through a modification to the lease without further justification.

### **Forms**

Forms used for the simplified lease process are:

- GSA Form 3626, U. S. Government Lease for Real Property (Short Form) Includes pertinent Federal Acquisition Streamlining Act language.
- GSA Form 3517 (A), General Clauses (Short Form) – Reflects revised thresholds.
- GSA Form 3518 (A), Representations and Certifications (Short Form).



General Services Administration  
Public Buildings Service  
Washington, DC 20405

JAN 17 1997

PER-97-02

MEMORANDUM FOR ALL REAL PROPERTY LEASING ACTIVITIES  
(PER DISTRIBUTION LIST)

FROM:

*For Alan E. Wilson*  
HILARY PEOPLES  
ASSISTANT COMMISSIONER FOR  
PROPERTY ACQUISITION AND REALTY SERVICES - PE

SUBJECT:

Revised SFO, Lease Forms, and Procedures for  
Can't Beat GSA Leasing

1. Purpose. This acquisition letter issues a revised Standard solicitation for offers (SFO), lease forms, and guidance on use of the SFO and forms. The SFO includes, among other items, the latest safety and environmental requirements as issued by acquisition letter PER-96-04, BOMA Usable square feet in lieu of occupiable square feet, new accessibility standards, a mandatory seismic safety paragraph for all seismic zones, an optional energy savings paragraph, and revisions for Can't Beat GSA Leasing. This letter also eliminates the requirement for procurement integrity certifications in accordance with the Clinger-Cohen Act of 1996 (Public Law 104-106).
2. Background.
  - a. GSA began using Standard SFOs and GSA Forms 3516, 3517, and 3518 for leases over 10,000 square feet and Small Lease SFOs and related forms for leases up to 10,000 square feet in 1984. We have used Expedited Leases since 1991. Acquisition letter PER 95-03, *Simplified Procedures for Acquisition of Leasehold Interests in Real Property*, implemented the Federal Acquisition Streamlining Act of 1994 and authorized use of Simplified procedures for leases up to \$100,000 net annual rental, which covers over 60 percent of GSA's leasing actions. Accordingly, Lease Lab regions have recommended that regions have greater authority to choose the size of solicitation and forms that are used in each lease contract, including the incorporation of provisions and clauses by reference. This letter provides that flexibility.
  - b. The Americans With Disabilities Act and the Americans With Disabilities Act Accessibility Guidelines (ADAAG) apply to state and local Governments and the private sector. The Uniform Federal Accessibility Standards (UFAS) are applicable to the Federal Government. The ADAAG and UFAS are compatible in most of their requirements; however, UFAS is slightly more restrictive than the ADAAG in some areas and vice versa. When GSA seeks to lease space constructed to meet the ADAAG in the private market and the SFO requires compliance with the UFAS, this can create confusion for potential offerors. Therefore, we have revised SFO paragraphs to require compliance with both the ADAAG and UFAS.
  - c. The Earthquake Hazards Reduction Act of 1977, as amended by Public Law 101-614, required the President to adopt "standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards...."



Accordingly, on December 1, 1994, the President issued Executive Order 12941, *Seismic Safety of Existing Federally Owned or Leased Buildings*, and adopted the *Standards of Seismic Safety for Existing Federally Owned or Leased Buildings* which were published by the National Institute of Standards and Technology as NISTIR 5382. Those standards and latest national code improvements have made it necessary to revise SFO language and include consideration of seismic safety in all leases over 10,000 square feet.

- d. GSA Form 2991, *Market Survey*, is out of date and no longer needed.
  - e. GSA Form 3627, *Market Survey*; GSA Form 3628, *Lease Action Summary*; and GSA Form 1364, *Proposal To Lease Space*, required minor changes to conform to Can't Beat GSA Leasing procedures.
  - f. Executive Order 12902, *Energy Efficiency and Water Conservation at Federal Facilities*, of March 8, 1994, requires GSA to adopt "a model provision on energy efficiency ... for inclusion in new leasing contracts." This acquisition letter includes that model provision.
  - g. On December 13, 1996, the Administrator issued an increase from \$25,000 to \$100,000 in the authority for agencies to contract for reimbursable space alterations. That change is reflected in the SFO paragraph *Alterations \$100,000 or Less*.
3. Effective Date/Expiration Date. This acquisition letter is effective for all SFOs created after the date of issuance, and will expire in 1 year unless otherwise extended or canceled.
  4. Cancellation. PQRP-94-05, *Standard and Small Lease Solicitation For Offers (SFO) and SFO Forms*; PER-96-01, *Revised Leasing Forms*; and GSA Form 2991, *Market Survey*, are cancelled.
  5. Coverage. All real property leasing activities.
  6. Instructions/Procedures. Business practices are attached. The following is a summary of attachments:
    - a. Attachment 1 - Business Practices - Issuance and Use of Revised SFOs and Lease Forms.
    - b. Attachment 2 - Minimum Requirements Standard SFO.
    - c. Attachment 3 - GSA Form 3516, *Solicitation Provisions*.
    - d. Attachment 4 - GSA Form 3517, *General Clauses*.
    - e. Attachment 5 - GSA Form 3517A, *General Clauses (Short Form)*.
    - f. Attachment 6 - GSA Form 3518, *Representations and Certifications*.
    - g. Attachment 7 - GSA Form 3518A, *Representations and Certifications (Short Form)*.
    - h. Attachment 8 - SFO *Accessibility, Accessibility and Seismic Safety, Seismic Safety for New Construction*, and *Energy Cost Savings* paragraphs.

Attachments

**BUSINESS PRACTICES  
ISSUANCE AND USE OF REVISED SFOs AND LEASE FORMS**

1. Revised SFO and GSA Forms.
  - a. This acquisition letter issues Simplified and Standard SFOs and forms; however, regional and case-by-case SFO and form variations are authorized within statutory and regulatory limitations.
  - b. The primary versions of GSA Forms 3516, *Solicitation Provisions*, (Attachment 3) and 3517, *General Clauses*, (Attachment 4) now incorporate provisions and clauses by reference. The forms state that the full text is available from the contracting officer upon request or may be found on the Internet at <http://www.gsa.gov/pbs/pe/standcla/standcla.htm>. Alternatively, the contracting officer may determine that the solicitation should be issued initially with full text. Full text versions of these forms are numbered 3516A and 3517B and are not attached, but are being issued in electronic format.
2. Standard SFO. A minimum requirements Standard SFO has been developed and is attached as Attachment 2. That SFO is taken from the full text of the Standard SFO. The full text of the Standard SFO and forms are not attached, but this office will issue them electronically to GSA real estate activities. They are available in electronic format for other Federal agencies and interested parties by contacting [gary.roberts@gsa.gov](mailto:gary.roberts@gsa.gov). The Small Lease SFO will no longer be maintained; however, many of the paragraphs from that SFO have been added to the Standard SFO.
3. Use of Lease Forms and SFOs. The requirements for use of lease forms and SFOs are designed so that contracting officers may determine the level of detail that is necessary in each acquisition to reasonably assure that 1) the Government receives the correct type, amount, and quality of space and 2) the Government's interests are protected during the term of the lease.
  - a. Leases Equal To or Less Than \$100,000 Net Annual Rent.
    - (i) Realty Specialists should use Simplified procedures, GSA Forms 3626, 3517A, 3518A, and supplemental requirements (as necessary) for leases which do not exceed this threshold. (GSA Forms 3626 was issued by PER-96-04.)
    - (ii) Realty Specialists may use Standard Form 2 and a Standard SFO when more detail is needed. Realty Specialists may use GSA Form 3516 if the information on that form is not provided to offerors in another fashion. However, Realty Specialists may not use GSA Forms 3517 and 3518, as they contain clauses and provisions not required for Simplified acquisitions.
  - b. Leases Greater Than \$100,000 Net Annual Rent.
    - (i) Realty Specialists must use the clauses and provisions on GSA Forms 3516, 3517, and 3518, although use of the forms themselves is at the contracting officer's discretion.

(ii) Standard Form 2 and the Standard SFO are recommended, but not required. Realty Specialists may use GSA Form 3626 in lieu of the SF 2; however, it must be supplemented with the minimum safety and environmental requirements from the Standard SFO. Realty Specialists may not use GSA Forms 3517A and 3518A, because they do not contain all of the provisions and clauses required by law for leases exceeding the Simplified threshold. The contracting officer may, however, determine that it is appropriate to delete or modify any of the GSAR real estate clauses numbered 1 - 21 on the Form 3517.

4. SFO Revisions.

- a. Incorporated fire safety and environmental revisions as issued by PER-96-04, *Safety and Environmental Procedures in Lease Acquisition*.
- b. Deleted the 5-page *Handicapped Accessibility* paragraph and the related subpar. (c) of *Toilet Rooms*. Accessibility requirements are incorporated by reference in a paragraph entitled *Accessibility*. This paragraph requires compliance with the Americans With Disabilities Act Accessibility Guidelines and the Uniform Federal Accessibility Standards, whichever are more stringent for the particular architectural feature.
- c. Replaced all references to "occupiable" square feet with "BOMA Usable" and defined "BOMA Usable." (Attachment 8) Clauses affected include the GSAR clauses 552.270-4, *Historic Preference* and 552.270-25, *Adjustment for Vacant Premises*.
- d. Deleted "firm" from "firm term" in 552.270-25, *Adjustment for Vacant Premises*, to allow for adjustments after the firm term has expired.
- e. Added to the *How To Offer* paragraph a requirement for the offeror to submit an estimated construction cost and financing rate for buildout.
- f. Edited *Location: Inside or Outside City Center* for consistency on parking and transportation.
- g. Updated the *Accessibility*, *Accessibility and Seismic Safety*, and *Seismic Safety for New Construction* paragraphs and modified the first two to recognize that award may be made based on initial offers and that approval of waivers of accessibility requirements has been delegated from the Administrator to the Commissioner (Attachment 8). *Accessibility and Seismic Safety* is now required for all leases over 10,000 square feet in all seismic zones.
- h. Added provisions of the old *Award Factors: General* paragraph to the *Negotiations* paragraph.
- i. Modified *Negotiations*, *Accessibility*, *Accessibility and Seismic Safety*, *Other Factors*, and *Award Based on Price* to recognize the possibility of award based upon initial offers.
- j. Updated *Plans With Offer* and *CAD As-Built Floor Plans* to reflect the latest CAD technology.
- k. Deleted dates on referenced GSAR clauses in *Alterations \$100,000 or Less* and *Overtime Usage* to assure continued reference to current versions of clauses.

- l. Modified *Award* to delete specific reference to GSA Forms 3517 and 3518 and to recognize that the lease may include the GSA Form 3626.
  - m. Deleted the word "where" to improve clarity in the second line of *Labor Standards*.
  - n. Changed the text and title of *Alterations \$25,000 or Less* to *Alterations \$100,000 or Less* to reflect the issuance of FPMR Amendment D-95 dated December 13, 1996.
  - o. Revised *Common Area Factor* to require submission of factors "when applicable."
  - p. Removed references to *certifications* from *Building Systems*, *Acoustical Requirements*, *Utilities: Separate From Rental*, and *Floors and Floor Load*.
  - q. Removed language from the first subparagraph of *Elevators* which duplicated provisions in the *Normal Hours* and *Overtime Usage* paragraphs.
  - r. Modified *Overtime Usage* to clarify what uses the Government may make of the space without overtime payment.
  - s. Modified *Utilities* and *Utilities: Separate From Rental* to provide for choice of either paragraph without the other.
  - t. Modified *Janitorial Services* to require "Control of pests as appropriate, using Integrated Pest Management techniques."
  - u. Added short versions of several clauses from the Small Lease SFO.
  - v. Added the optional paragraph, *Energy Cost Savings*, for use in leases with a firm term of 5 years or more which exceed the simplified lease acquisition threshold (Attachment 8).
  - w. Updated *Miscellaneous Labor Clauses* to incorporate the latest versions of 52.222-4 and 52.222-6.
5. GSA Form 3516, General Provisions, Revisions. (Attachment 3) Revised both the 3516 incorporation by reference version and the 3516A full text version of the forms as follows:
    - a. Deleted *Appraisal*, *Requirement for Radon Certification*, *Requirement for Certificate of Procurement Integrity*, and *Requirement for Recycling Representation*.
    - b. Substituted *Service of Protest (AUG 1996)* for the old provision.
  6. GSA Form 3517, General Clauses, Revisions. (Attachment 4) Revised both the 3517 incorporation by reference version and the 3517B full text version of the forms as follows:
    - a. Incorporated the latest FAR and GSAR versions of several clauses.
    - b. Deleted *Requirement for Certificate of Procurement Integrity-Modification*.
    - c. Deleted *Asbestos and Hazardous Waste Management*, in accordance with PER-96-04.

- d. Added the *Drug-Free Workplace* clause in place of the certification deleted from GSA Form 3518.
- e. Replaced references to “occupiable” square feet with “BOMA Usable” in the following GSAR clauses -
  - (i) 552.270-21, *Changes*,
  - (ii) 552.270-28, *Default in Delivery - Time Extensions*, and
  - (iii) 552.270-31, *Payment*.
- 7. GSA Form 3517A, General Clauses (Short Form), Revisions. (Attachment 5) Deleted *Requirement for Certificate of Procurement Integrity-Modification*.
- 8. GSA Form 3518, Representations and Certifications, Revisions. (Attachment 6) Revised as follows:
  - a. Deleted *Asbestos Representation and Certification For Past or Present Hazardous Waste Operations* in accordance with PER-96-04, *Safety and Environmental Procedures in Lease Acquisition*.
  - b. Deleted *Certification Regarding A Drug-Free Workplace*, and updated *Small Business Program Representations*.
- 8. GSA Form 3518A, Representations and Certifications (Short Form), Revisions. (Attachment 7) Updated *Small Business Representation*.
- 9. GSA Form 3627, Market Survey, Revisions. Revised to replace reference to occupiable with BOMA Usable. This optional form is not attached, but is being issued in electronic format.
- 9. GSA Form 3628, Lease Action Summary. Revised to replace reference to occupiable with BOMA Usable and to recognize that we accept an SF 81 or a “request.” This optional form is not attached, but is being issued in electronic format.
- 10. GSA Form 1364, Proposal To Lease Space. Revised to replace reference to occupiable with BOMA Usable and to recognize that general clauses and representations and certifications are not required to be on a GSA form. This optional form is not attached, but is being issued in electronic format.

# SOLICITATION FOR OFFERS

THE GENERAL SERVICES ADMINISTRATION

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NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

The information collection requirements contained in this Solicitation/Contract, that are not required by the regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

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- (e) If no offer is received which meets the minimum accessibility requirements described above, offers will not be considered unless a waiver of accessibility requirements is requested by the Contracting Officer and granted by the GSA Public Buildings Service Commissioner.

**2.2. OTHER FACTORS (JAN 1997)**

The lease will be awarded to the Offeror whose offer will be most advantageous to the Government, price and other award factors which follow considered.

The combination of factors below are \_\_\_\_\_

The following award factor(s),

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**3.0 MISCELLANEOUS**

**3.1. RENTABLE SPACE (JUN 1994)**

Rentable space is the area for which a tenant is charged rent. It is determined by the building owner and may vary by city or by building within the same city. The rentable space may include a share of building support/common areas such as elevator lobbies, building corridors, and floor service areas. Floor service areas typically include restrooms, janitor rooms, telephone closets, electrical closets, and mechanical rooms. The rentable space generally does not include vertical building penetrations and their enclosing walls, such as stairs, elevator shafts and vertical ducts.

**3.2. BOMA USABLE SQUARE FEET (JAN 1997)**

- (a) For the purposes of this solicitation, the Government recognizes the BOMA (Building Owners and Managers Association) International standard (ANSI/BOMA Z65.1-1996) definition for Office Area, which means "the area where a tenant normally houses personnel and/or furniture, for which a measurement is to be computed."
- (b) BOMA Usable Square Feet shall be computed by measuring the area enclosed by the finished surface of the room side of corridors (corridors in place as well as those required by local codes and ordinances to provide an acceptable level of safety and/or to provide access to essential building elements) and other permanent walls, the dominant portion (see Z65.1) of building exterior walls, and the center of tenant-separating partitions. Where alcoves, recessed entrances, or similar deviation from the corridor are present, BOMA Usable Square Feet shall be computed as if the deviation were not present.

**3.3. COMMON AREA FACTOR (JAN 1997)**

If applicable, Offerors shall provide the Common Area Factor (a conversion factor(s) determined by the building owner and applied by the owner to the BOMA Usable Square Feet to determine the rentable square feet for the offered space).

**4.0 GENERAL ARCHITECTURAL**

**4.1. ACCESSIBILITY (JAN 1997)**

The building and the leased space shall be accessible to the handicapped in accordance with the Americans With Disabilities Act Accessibility Guidelines (36 CFR Part 36, App. A) and the Uniform Federal Accessibility Standards (41 CFR 101-19.6, App. A). Where standards conflict, the more stringent shall apply.

**5.0 ARCHITECTURAL FINISHES**

**5.1. BUILDING FINISHES**

Building finishes shall be for first class, modern space.

**6.0 MECHANICAL, ELECTRICAL, PLUMBING**

**6.1. HVAC (JUL 1994)**

Temperatures shall conform to local commercial equivalent temperature levels and operating practices in order to maximize tenant satisfaction. These temperatures must be maintained throughout the leased premises and service areas, regardless of outside temperatures, during the hours of operation specified in the lease.

**6.2. VENTILATION (OCT 1996)**

During working hours in periods of heating and cooling, ventilation shall be provided in accordance with ASHRAE Standard 62, Ventilation for Acceptable Indoor Air Quality.

**6.3. ELECTRICAL: GENERAL (JAN 1997)**

The Lessor shall be responsible for meeting the applicable requirements of local codes and ordinances. When codes conflict, the more stringent standard shall apply.

**6.4. ELEVATORS (JAN 1997)**

- (a) The Lessor shall provide suitable passenger and freight elevator service to all GSA-leased space not having ground level access.
- (b) **CODE:**  
Elevators shall conform to the current editions of the American National Standard A17.1, Safety Code for Elevators and Escalators, except that elevator cabs are not required to have a visual or audible signal to notify passengers during automatic recall. The elevator shall be inspected and maintained in accordance with the current requirements of the American National Standard A17.2, Inspector's Manual for Elevators.

**7.0 SERVICES, UTILITIES, MAINTENANCE**

**7.1. SERVICES, UTILITIES, MAINTENANCE: GENERAL**

Services, utilities, and maintenance shall be provided by the Lessor as part of the rental consideration. The Lessor must have a building superintendent or a locally designated representative available to promptly correct deficiencies.

**7.2. NORMAL HOURS**

Services, utilities, and maintenance will be provided daily, extending \_\_\_\_\_ except Saturdays, Sundays, and Federal holidays.

**7.3. OVERTIME USAGE (JAN 1997)**

- (a) The Government shall have access to the leased space at all times without additional payment, including the use, during other than normal hours, of necessary services and utilities such as elevators, toilets, lights, and electric power.
- (b) Reimbursement to the Lessor for overtime heating or cooling will be at the hourly rate established in the contract.

**7.4. UTILITIES**

The Lessor shall ensure that utilities necessary for operation are provided and all associated costs are included as a part of the established rental rate.

**7.5. JANITORIAL SERVICES (JAN 1997)**

The Lessor shall provide janitorial services for the leased space, public areas, entrances, and all other common areas and provide replacement of supplies.

**6. MAINTENANCE AND TESTING OF SYSTEMS (OCT 1996)**

- (a) The Lessor is responsible for the total maintenance and repair of the leased premises. Such maintenance and repairs include site and private access roads. All equipment and systems shall be maintained to provide reliable, energy efficient service without unusual interruption, disturbing noises, exposure to fire or safety hazards, uncomfortable drafts, excessive air velocities, or unusual emissions of dirt. The Lessor's maintenance responsibility includes initial supply and replacement of all supplies, materials, and equipment necessary for such maintenance. Maintenance, testing, and inspection of appropriate equipment and systems must be done in accordance with applicable codes, and inspection certificates must be displayed as appropriate. Copies of all records in this regard shall be forwarded to the Field Office Manager or a designated representative.
- (b) Without any additional charge, the Government reserves the right to require documentation of proper operations or testing prior to occupancy of such systems as fire alarm, sprinkler, emergency generator, etc. to ensure proper operation. These tests shall be witnessed by a representative of the Contracting Officer.

**8.0 SAFETY AND ENVIRONMENTAL MANAGEMENT**

**8.1. OCCUPANCY PERMIT (OCT 1996)**

The Lessor shall provide a valid Occupancy Permit for the intended use of the Government and shall maintain and operate the building in conformance with current local codes and ordinances. If the local jurisdiction does not issue occupancy permits, Offerors should consult the contracting officer to determine if other documentation may be needed.

**8.2. FIRE AND LIFE SAFETY (OCT 1996)**

- (a) Below-grade space to be occupied by Government and all areas in a building referred to as "hazardous areas" in National Fire Protection Association Standard 101, known as the "Life Safety Code," or any successor standard thereto, must be protected by an automatic sprinkler system or an equivalent level of safety.
- (b) If offered space is 3 stories or more above grade, the Lessor shall provide written documentation that the building meets egress and fire alarm requirements as established by NFPA Standard No. 101 or equivalent. However, if 1) offered space is 5 stories or less above grade, 2) the total Government leased space in the building (all leases combined) will be less than 35,000 square feet, and 3) the building is sprinklered, this documentation is not required.
- (c) If offered space is 6 stories or more above grade, additional fire and life safety requirements may apply. Therefore, the offeror must advise GSA in its offer whether or not the offered space, or any part thereof, is on or above the sixth floor of the offered building.



**U.S. GOVERNMENT LEASE FOR REAL PROPERTY  
(Short Form)**

1. LEASE NUMBER

**PART I - SOLICITATION/DESCRIPTION OF REQUIREMENTS (To be completed by Government)**

**A. REQUIREMENTS**

The Government of the United States of America is seeking to lease approximately \_\_\_\_\_ rentable square feet of \_\_\_\_\_ space located in \_\_\_\_\_ for occupancy not later than \_\_\_\_\_ (date) for a term of \_\_\_\_\_. Rentable space must yield a minimum of \_\_\_\_\_ square feet of ANSI/BOMA Office Area (previously Usable) for use by Tenant for personnel, furnishing, and equipment.  
**INITIAL OFFERS ARE DUE ON OR BEFORE CLOSE OF BUSINESS \_\_\_\_\_.**

**B. STANDARD CONDITIONS AND REQUIREMENTS**

The following standard conditions and requirements shall apply to any premises offered for lease to the UNITED STATES OF AMERICA (hereinafter called the GOVERNMENT):

Space offered must be in a quality building of sound and substantial construction, either a new, modern building or one that has undergone restoration or rehabilitation for the intended use.

The Lessor shall provide a valid Occupancy Permit for the intended use of the Government and shall maintain and operate the building in conformance with all applicable current (as of the date of this solicitation) codes and ordinances. Below-grade space to be occupied by the Government and all areas in a building referred to as "hazardous areas" in National Fire Protection Association Standard 101, or any successor standard thereto, must be protected by an automatic sprinkler system or an equivalent level of safety. A minimum of two separate stairways shall be provided for each floor of Government occupancy. Scissor stairs will be counted as one stairway. If offered space is three or more stories above grade, additional egress and fire alarm requirements may apply.

The Building and the leased space shall be accessible to workers with disabilities in accordance with the Americans With Disabilities Act Accessibility Guidelines (36 CFR Part 1191, App. A) and the Uniform Federal Accessibility Standards (Federal Register vol. 49, No. 153, August 7, 1984, reissued as FED. STD. 795, dated April 1, 1988, and amended by Federal Property Management Regulations CFR 41, Subpart 101-19.6, Appendix A, 54 FR 12628, March 28, 1989). Where standards conflict, the more stringent shall apply.

The leased space shall be free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to Environmental Protection Agency guidance shall be implemented. The space shall be free of other hazardous materials according to applicable Federal, State, and local environmental regulations.

Services, utilities, and maintenance will be provided daily, extending from \_\_\_\_\_ a.m. to \_\_\_\_\_ p.m. except Saturday, Sunday, and Federal holidays. The Government shall have access to the leased space at all times, including the use of electrical services, toilets, lights, elevators, and Government office machines without additional payment.

The Lessor shall complete any necessary alterations within \_\_\_\_\_ days after receipt of approved layout drawings.

**2. SERVICES AND UTILITIES (To be provided by Lessor as part of rent)**

|                           |                             |                                       |  |                          |
|---------------------------|-----------------------------|---------------------------------------|--|--------------------------|
| ** HEAT                   | ** TRASH REMOVAL            | ** ELEVATOR SERVICE                   | ** INITIAL & REPLACEMENT LAMPS, TUBES & BALLASTS | ** OTHER (Specify below) |
| ** ELECTRICITY            | ** CHILLED DRINKING WATER   | ** WINDOW WASHING<br>Frequency _____  | ** PAINTING FREQUENCY<br>Space _____             |                          |
| ** POWER (Special Equip.) | ** AIR CONDITIONING         | ** CARPET CLEANING<br>Frequency _____ | ** Public Areas _____                            |                          |
| ** WATER (Hot & Cold)     | ** TOILET SUPPLIES          |                                       |  |                          |
| ** SNOW REMOVAL           | ** JANITORIAL SERV. & SUPP. |                                       |  |                          |

**3. OTHER REQUIREMENTS**

Offerors should also include the following with their offers:

The estimated cost to prepare the space for occupancy by the Government and the offeror's proposed amortization rate for tenant alterations.

**NOTE: All offers are subject to the terms and conditions outlined above, and elsewhere in this solicitation, including the Government's General Clauses and Representations and Certifications.**

**4. BASIS OF AWARD**

- \*\* THE ACCEPTABLE OFFER WITH THE LOWEST PRICE PER SQUARE FOOT, ACCORDING TO THE ANSI/BOMA Z65.1-1996 DEFINITION FOR BOMA USABLE OFFICE AREA, WHICH MEANS "THE AREA WHERE A TENANT NORMALLY HOUSES PERSONNEL AND/OR FURNITURE, FOR WHICH A MEASUREMENT IS TO BE COMPUTED."
- \*\* OFFER MOST ADVANTAGEOUS TO THE GOVERNMENT, WITH THE FOLLOWING EVALUATION FACTORS BEING " SIGNIFICANTLY MORE IMPORTANT THAN PRICE  
" APPROXIMATELY EQUAL TO PRICE " SIGNIFICANTLY LESS IMPORTANT THAN PRICE (Listed in descending order, unless stated otherwise):

**PART II - OFFER (To be completed by Offeror/Owner)**

**A. LOCATION AND DESCRIPTION OF PREMISES OFFERED FOR LEASE BY GOVERNMENT**

|   |                            |  |
|---|----------------------------|--|
| 5. NAME AND ADDRESS OF BUILDING <i>(Include ZIP Code)</i> | 6. LOCATION(S) IN BUILDING |  |
|   | a. FLOOR(S)                | b. ROOM NUMBER(S)  |
|   | c. RENTABLE SQ. FT.        | d. TYPE<br>" GENERAL OFFICE      " OTHER <i>(Specify)</i><br>" WAREHOUSE |

**B. TERM**

To have and to hold, for the term commencing on \_\_\_\_\_ and continuing through \_\_\_\_\_ inclusive. The Government may terminate this lease at any time on or after \_\_\_\_\_, by giving at least \_\_\_\_\_ days notice in writing to the Lessor. No rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

**C. RENTAL**

Rent shall be payable in arrears and will be due on the first workday of each month. When the date for commencement of the lease falls after the 15th day of the month, the initial rental payment shall be due on the first workday of the second month following the commencement date. Rent for a period of less than a month shall be prorated.

|                          |   |
|--------------------------|---|
| 7. AMOUNT OF ANNUAL RENT | 9. MAKE CHECKS PAYABLE TO <i>(Name and address)</i> |
| 8. RATE PER MONTH        |   |

10a. NAME AND ADDRESS OF OWNER *(Include ZIP code. If requested by the Government and the owner is a partnership or joint venture, list all General Partners, using a separate sheet, if necessary.)*

|  |   |   |
|--|---|---|
| 10b. TELEPHONE NUMBER OF OWNER             | 11. TYPE OF INTEREST IN PROPERTY OF PERSON SIGNING<br>" OWNER                      " AUTHORIZED AGENT                      " OTHER <i>(Specify)</i> |   |
| 12. NAME OF OWNER OR AUTHORIZED AGENT      | 13. TITLE OF PERSON SIGNING   |   |
| 14. SIGNATURE OF OWNER OR AUTHORIZED AGENT | 15. DATE  | 16. OFFER REMAINS OPEN UNTIL 4:30 P.M.<br><br><i>(Date)</i> |

**PART III - AWARD (To be completed by Government)**

Your offer is hereby accepted. This award consummates the lease which consists of the following documents: (a) this GSA Form 3626, (b) Representations and Certifications, (c) the Government's General Clauses, and (d) the following changes or additions made or agreed to by you:

**THIS DOCUMENT IS NOT BINDING ON THE GOVERNMENT OF THE UNITED STATES OF AMERICA UNLESS SIGNED BELOW BY AUTHORIZED CONTRACTING OFFICER.**

|   |                                       |           |
|---|---------------------------------------|-----------|
| 17a. NAME OF CONTRACTING OFFICER <i>(Type or Print)</i> | 17b. SIGNATURE OF CONTRACTING OFFICER | 17c. DATE |
|---|---------------------------------------|-----------|

## GLOSSARY

**Acoustical Tile.** Any tile having the inherent property to absorb sound.

**Agriculture Property Management Regulations (AGPMR).** Regulatory material issued by the Department of Agriculture pertaining to the management of records, materials, supply, personal property, and the acquisition, utilization and disposal of space, facilities, and real property.

**Alter.** Repair, remodel, improve, extend, or otherwise change a building.

**ANSI/BOMA Usable.** That portion of the gross area which is available for use by an occupant— personnel or furnishings, including ceiling-high corridors in single tenancy space (which are removable) and space which is available jointly to the various occupants of the building, such as auditoriums, health units, and Government controlled snack bars. ANSI/BOMA usable area does not include that space in the building which is devoted to its operations and maintenance, including craft shops, gear rooms, and buildings supply storage and issue rooms.

**Appraisal.** (1) An estimate and opinion of value by an expert. (2) The act or process of estimating value; usually a written statement of the appraiser's opinion of the value of an adequately described parcel or property as of a specified date. The term includes valuations established by warranted real property leasing officers or Government staff appraisers, as well as by fee or contract appraisers.

**Area Building Support.** That portion of the floor area that does not house the occupant—

personnel or furnishings. It consists of the mechanical, toilet, custodial, and construction area including their enclosing walls, and represents the difference between gross area and usable area.

**Area Circulation.** That portion of the gross area, both horizontal and vertical, which is required for physical access to the space, including lobbies, stairwells, elevator shafts, elevators, and ceiling-high corridors, which cannot be removed or to which the public has restricted access.

**Area Gross.** The sum of all floor areas of a building (including all stories or areas which have floor surfaces and a clear standing headroom of 6 1/2 feet or more), including basement (except unexcavated portions), attics, garages, roofed porches, mezzanines, loading platform, shipping platforms, penthouses, mechanical equipment rooms, floors, lobbies, and corridors. Gross area does not include open courts, light wells, upper portions of rooms, drives, ramps, etc., extending beyond the principal exterior walls of the building, or unroofed areas such as cooling towers and unenclosed portions of ground level or intermediate stories.

**Area, Mechanical.** That portion of the gross area designed to house mechanical equipment including boiler rooms, stacks, cooling towers, machine rooms, wire closets, telephone frame rooms, incinerator rooms, and transformer vaults.

**Area Rentable.** The rentable space is the area for which a tenant is charged rent. It is determined by the building owner and may vary by city or building within the same city or community. The rentable space may include a share of building support/common areas such as elevator lobbies, building corridors, and floor service areas. Floor service areas typically include restrooms, janitor rooms, telephone closets, electrical closets, and mechanical rooms. The rentable space generally does not include vertical building penetrations and their enclosing walls, such as stairs, elevator shafts, and vertical ducts. No deductions shall be made for columns and projections necessary to the building.

**Assessment.** The valuation of property for taxation; also the value so assigned.

**BOMA.** The Building Owners and Managers Association, (BOMA) develops private industry's most accepted standard of floor measurement for office buildings.

**Building Code.** Locally adopted ordinance or regulation, controlling the design, construction, alteration, repair, quality of materials, use and occupancy, and related factors of any building or structure within its jurisdiction.

**Building Code Historic.** A building given preference under the terms of the Public Buildings Cooperative Use Act of 1976 when leased space is acquired using leasing authority delegated by GSA.

**Conversion.** Redesign, remodeling, and conversion of a building from one use to another, i.e., from warehouse to office space.

**Delineated Area.** To describe an area by words, sketch, design or diagram. Generally

used to describe a suitable geographic area in which to lease space or locate a facility.

**Discounting.** Conversion of future costs or future income into its present value. The concept of time value which holds that the present value of a dollar of future costs or income decreases with the amount of time which will elapse before that dollar is paid.

**Drawings, As Built.** Drawings prepared after construction showing actual placement of partitions and other architectural, structural, and mechanical factors.

**Drawings, Shell.** Reproducible scaled drawings showing exterior walls and permanent interior features such as columns, lobbies, and core areas, masonry, partitions, stair wells, elevator shafts, toilets, mechanical areas and wire closets. Commonly used industry term for a complete set of construction drawings which include layout, architectural, plumbing, mechanical and electrical features.

**Energy Savings Performance Contract (ESPC).** ESPC is a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and when appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations. (See E.O. 13123, Section 703.)

**Escalation Clause Leasing.** An agreement in the lease contract to adjust the rent payments in the event of an increase or decrease in costs such as taxes, services, and utilities.

**Federal Acquisition Regulation (FAR).** The primary regulation for use by all Federal executive agencies in their acquisition of supplies and services with appropriated funds. The FAR, together with agency supplemental regulations, replaces the Federal Procurement Replications (FPR) System and others. It provides for coordination simplicity, and uniformity in the Federal acquisition process.

**Federal Management Regulations (FMR).**

The successor to the Federal Property Management Regulations (FPMR). It contains a refined set of policies and regulatory material pertaining to the management of archives and records, defense materials, public buildings and space, supply and procurement, telecommunications and public utilities, transportation, utilization and disposal of property, and other programs and activities of GSA which are applicable to other Federal Property and Administrative Services Act of 1949, 63 Stat. 337, as amended.

**Floor Load.** The weight, stated in pounds per square foot, which may safely be placed upon the floor of a building if uniformly distributed. This is also known as live load. The weight of the building itself, including equipment, such as outlets, machinery, etc., is known as the dead load and is not included as part of the floor load capacity.

**Foot Candle.** A unit of illumination, equivalent to the illumination produced, by a source of 1 candle at a distance of 1 foot. A uniform lighting level of 50 foot candles at work surface height is standard for office space.

**Highest and Best Use.** The most profitable likely use, within the realm of reasonable probability, to which a property can be put or

adapted, and for which there is a current market.

**Layout Block.** The layout block is a preliminary assignment pattern developed for the space and indicated in outline form on a scale plan. The primary purpose is to identify the approximate total space to be assigned, locate the agency and its major components and identify the location of the agency's special requirements.

**Layout, Detailed Space or Agency.** The occupancy pattern developed for the building displaying the approximate location of all partitions, doors, electrical, and telephone outlets, and the designation of all areas requiring special floor loading capability, along with requirements beyond general purpose space.

**Lease, New.** A new lease carries a new lease number and covers space in a building for which there has been no prior Agriculture lease.

**Lease Renewal.** The exercise of an option in the lease to renew its terms and conditions for an additional period.

**Lease, Sublease.** An agreement conveying the right of use and occupancy of a property in which the lessee is the lessor in a pre-existing lease.

**Lease, Succeeding.** A lease secured to cover continued occupancy of premises without a break in continuous tenancy. The succeeding lease carries a new lease number and establishes new terms and conditions.

**Lease, Superseding.** A lease which replaces a prior lease before it expires.

**Lease, Supplemental Agreement.** An amendment to a lease by mutual agreement of the lessor and lessee, changing, adding or deleting one or more of the terms and conditions of the lease or adding or deleting one or more new terms and conditions.

**Lessee.** One who possesses the right to use or occupy a property under a lease agreement.

**Lessor.** One who conveys the right to use and occupy a property under a lease agreement.

**Life Expectancy.** The normal economic life which may be expected of building dating from its completion date. The residual life expectancy is the remaining period of estimated economic life dated from a subsequent time.

**Lobby, Elevator.** A definite space in front or between elevators exclusively to accommodate elevator passengers.

**Lobby, Public.** Space inside the public entrance of a building, affording circulation for the general public to or from other parts of the building.

**Multi-Use.** That type of land use development which entails more than one type of use in a given structure or structures such as retail commercial space and general purpose office type space.

**Obsolescence, Economic.** A condition wherein community and neighborhood factors have a negative influence on the value of the property.

**Obsolescence, Functional.** Impairment of desirability and usefulness brought about by new inventions, design changes, or external

influences which make a property less desirable and valuable for a continued use.

**Offer.** A proposal submitted in response to a Solicitation for Offers to provide property, goods, or services. Leases are awarded under this method of acquisition which requires negotiations with all offerors.

**Outlease.** A lease covering use and occupancy of Government-owned or leased property, in which the Government is the lessor.

**Partitions, Free Standing.** Panels used to divide space, generally surfaced in fabric or plastic laminate and ranging in height from 4-1/2 to 6 feet. Such partitions are capable of standing alone and/or being hanged with others of the same type, and usually have acoustical control properties. Also called **A**ree standing screens, **A**space dividers, **A**privacy panels **A**and **A**coustical screens. **A**

**Partitions, Load Bearing.** (or permanent) Floor to ceiling slab or slab to slab walls which provide structural support to the floor or roof above.

**Partitions, Subdividing.** Floor-to-ceiling walls used to divide space or provide acoustical control, providing no structural support to the building.

**Personal Property.** Generally, movable items; that is, those not permanently affixed to and part of real estate. In deciding whether or not a thing is personal property or real estate, usually there must be considered (1) the manner in which it is annexed; (2) the intention of the party who made the annexation, (that is to attach permanently or to remove at some time); (3) the purpose for which premises are used. Generally, and with exceptions, items remain personal property if

they can be removed without serious injury to either the real estate or to the item itself.

**Real Property.** This refers to the interests, benefits, and right inherent in the ownership of physical real estate. It is the bundle of rights with which the ownership of real estate is endowed. In some states, this term as defined by statute, is synonymous with real estate.

**Recycling Programs.** Are programs that promote cost-effective waste prevention and recycling of reusable materials (e.g., paper, bottles, aluminum cans, toner cartridges, batteries, etc.) at a facility. Recycling programs are required in the acquisition and management of Federally owned and leased space, including contractor operated government owned or leased facilities. These programs must be compatible with State and local recycling requirements. For further information: [www.ofee.gov](http://www.ofee.gov) and [www.gsa.gov/pbs](http://www.gsa.gov/pbs).

**Rent, Gross.** Total periodic rent paid to the lessor under the lease agreement, regardless of inclusion or exclusion of services or utilities.

**Rent, Net.** Bare contract rent exclusive of the reasonable value of services and utilities.

**Rent, Net, Net, Net.** That rental consideration in the terms of a "Triple Net" lease where the lessee must furnish all services and utilities, pay all taxes and insurance, and be responsible for repairs and maintenance.

**Rent, Nominal.** Rental consideration that is paid to a landlord which is equal to or less than the landlord's operating costs.

**Rental vs. Lease.** Rental being **As** is where is. There is no leasehold interest. Example of

this would be a storage shed.

**Repair.** A repair is restoration of a facility to a condition substantially equivalent to its original state and efficiency. The distinction is made that whereas maintenance is preventive, repairs are curative. Routine and incidental replacement of parts constitutes ordinary repairs; extensive replacement of parts constitutes extraordinary repairs.

**Slab.** Any broad, flat relative thin piece of wood, stone, or other solid material. The term has been adopted to describe a floor or foundation of concrete, either on the ground or supported.

**Space, Office (Type).** This space must provide an acceptable environment suitable in its present state for an office operation. This requirement includes, but is not limited to, adequate lighting heating and ventilation, floor covering, finished walls, accessibility, etc. The space may consist of large open area or may be partitioned into rooms. Private corridors, closets, etc., which have been created within office type space through the erection of partitions shall be considered office type space. The determination of whether space is office type is based on as built rather than as used.

**Space Special (Type).** Space which because of architectural features or the installation of fixed (built-in) equipment and, special utilities, necessitate the expenditures of varying additional sums of money to construct, maintain, and/or operate as compared to office and storage space. Special space includes printshops, computer facilities, health units and laboratories.

**Space, Storage (Type).** Space generally constructed with concrete, woodblock unfinished floors, bare block or brick interior walls, unfinished ceiling, and similar construction containing only essential lighting and heating. This type of space includes basements, warehouses, sheds, inside parking areas, attics, unimproved areas of loft buildings and unimproved building cores.

**Studs.** The vertical members of a wall or partition.

**Survey, Market.** A field survey of the areas under consideration for a lease requirement for the purpose of obtaining information on market conditions and the availability of suitable space.

**Turnkey.** Any job or contract in which the contractor agrees to complete the work to a certain specified point and to assume all risk. For leases, a turnkey contract requires the lessor to complete all specified alterations necessary for the Government to occupy the space.

**Value, Fair Market.** The highest price estimated in terms of money which a property will bring if exposed for sale in the open market by a seller who is willing but not obligated to buy with both parties having full knowledge of all the uses to which it is adapted and for which it is capable of being used.

**Value, Fair Rental.** That monetary amount reasonably expected for the right to an agreed use of real property as established by competition in the rental market, or if market data is inadequate or unavailable, that amount which will amortize the value of the remaining investment and provide a fair rate of interest return during the remaining useful

life of the rented property. Also called **Fair Annual Rental**

**Wall, Curtain.** A non bearing enclosed wall of metal, glass, masonry or wood.

**Wareyard.** Open land, commonly used for parking or storage.