

Real Property

TO: Heads of Federal Agencies

SUBJECT: Revised Implementation Requirements for Delegations of Lease Acquisition Authority.

1. Purpose:

This bulletin re-emphasizes and modifies certain procedures associated with the use of the delegation of General Purpose leasing authority provided by GSA in 1996 as part of the leasing program called "Can't Beat GSA Leasing," and two other longstanding delegations for Categorical and agency-specific Special Purpose space as currently provided in 41 CFR part 102-73.

2. Expiration:

This bulletin cancels and replaces Federal Management Regulation (FMR) Bulletin 2008-B1, Delegations of Lease Acquisition Authority - Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations, which was published in the Federal Register on November 19, 2007. It contains information of a continuing nature and will remain in effect until canceled.

3. Background:

(a) By letter of September 25, 1996, the GSA Administrator delegated 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. Lease procurements using this delegation must be compatible with the GSA community housing plans for new Federal construction or any suitable space that will become available in GSA-controlled federally owned or leased space. GSA will advise the agency about any limiting factors (e.g., length of term), so that the lease will be consistent with any community housing plans. The 1996 delegation of authority does not alter the space delegation authorities in part 102-73 of the FMR, which pertain to "Categorical Space Delegations" and "Special Purpose Space Delegations." None of the GSA delegations provide authorization for agencies to conduct procurements on behalf of or to collect rent from other agencies or private entities.

(b) GSA Bulletin FPMR D-239, published in the Federal Register on October 16, 1996, announced a new GSA leasing program called "Can't Beat GSA Leasing" and the delegation of lease acquisition

authority issued by the Administrator of General Services to the heads of all Federal agencies in his letter of September 25, 1996. GSA Bulletin FPMR D-239, Supplement 1, published in the Federal Register on December 18, 1996, issued supporting information for the delegation. GSA Bulletin FMR 2005-B1, published in the Federal Register on May 25, 2005, revised and re-emphasized certain procedures associated with the delegation of General Purpose and Special Purpose leasing authority.

(c) On August 24, 2007, the Government Accountability Office and the GSA Office of Inspector General issued a report recommending that GSA provide centralized management and oversight of all lease delegation activities to ensure that all federal agencies procuring leased space under delegated authority follow the conditions, restrictions and reporting requirements specified in the delegation of authority. In response to the audit recommendations, GSA centralized its management and oversight of all GSA-authorized lease delegations and, on November 19, 2007, issued FMR Bulletin 2008-B1, which limited General Purpose delegations of lease authority to no more than

19,999 rentable square feet of space and implemented management controls commensurate with the risks at that threshold. In addition, FMR Bulletin 2008-B1 established new requirements for agencies requesting authorization to use the General Purpose and Special Purpose delegation authority and established revised reporting requirements, including the submission of documents to GSA at various points in the lease acquisition process, and required agencies to have in place an organizational structure to support the delegation, ensure compliance with all applicable laws, regulations and GSA directives governing the lease acquisition and administer the lease. FMR Bulletin 2008-B1 also addressed requirements for another longstanding delegation for Categorical space, as provided in 41 CFR part 102-73.

(d) Executive Order No. 13327, "Federal Real Property Asset Management" (69 FR 5897), dated February 4, 2004, promotes the efficient and economical use of Federal real property resources. Among other things, the Executive Order requires Federal agencies to establish performance measures addressing the cost, value, and efficiency of all acquisitions, within the scope of an overall agency

asset management plan. Agencies using any of the three GSA lease delegations ((1) General Purpose, (2) Categorical [41 CFR 102-73.145] and (3) Special Purpose [41 CFR 102-73.160]) are expected to apply these measures to their acquisitions.

(e) Executive Order No. 13576, "Delivering Efficient, Effective, and Accountable Government," dated June 13, 2011, directs agencies to identify areas of program overlap and duplication within and across agencies, and propose consolidations and reductions to address those inefficiencies. All agencies performing lease acquisition tasks within a data system under a delegated lease must use the GSA lease procurement data system if it is made available to the delegated agencies.

4. General Conditions for the Use of all Leasing Delegations

(a) Relocation of Government employees from GSA-controlled federally owned or leased space may not take place unless prior written confirmation has been received from the GSA Assistant Commissioner for the Office of Leasing, Public Buildings Service, or his or her successor or designee, that suitable

Government-controlled owned or vacant leased space cannot be provided for them. See 41 CFR 102-73.10. Federal agencies will not be granted a delegation of leasing authority if suitable Government-controlled owned or vacant leased space is available.

(b) The average net annual rent (gross annual rent excluding services and utilities) of any lease action executed under these delegations must be below the threshold applicable to GSA's submission of a lease prospectus to its Congressional oversight committees under 40 U.S.C. 3307. The prospectus threshold may be adjusted annually in accordance with 40 U.S.C. 3307(h). The current threshold for each fiscal year can be accessed by entering GSA's website at <http://gsa.gov/portal/content/101522>.

(c) The authority to lease granted by the delegations may only be exercised by a warranted realty contracting officer fully meeting the experience and training requirements of the Contracting Officer Warrant Program, as specified in section 501.603 of the General Services Administration Acquisition Manual (GSAM) and further revised by GSA Acquisition Letter V-06-06,

Supplement Number 1, dated September 3, 2008, and Supplement Number 5, dated May 30, 2013, as these requirements may be revised from time to time.

(d) Agencies using the GSA leasing delegations are responsible for compliance with all laws, executive orders, regulations, and Office of Management and Budget (OMB) Circulars governing warranted GSA realty contracting officers. GSA retains the right to assess, at any time, both the integrity of each individual lease action as well as the capability of an agency to perform all aspects of the delegated leasing activities, and, if necessary, to revoke an agency's delegation in whole or in part. Improper use of any delegation may result in revocation of the delegation and denial of future delegation requests.

(e) Federal agencies must acquire and use the space in accordance with all applicable laws, executive orders, regulations, and OMB Circulars that apply to Federal space acquisition activities. Attachment 1 is a non-exhaustive list of laws, regulations, executive orders, and OMB Circulars governing the space acquisition process. This list may be revised from time to time. As discussed in greater detail

in OMB Circular A-11, all leases must be scored prior to execution and must be budgeted in accordance with OMB's scorekeeping rules.

(f) Agencies are responsible for maintaining the capacity to support all delegated leasing activities, including a warranted realty contracting officer, legal review and oversight, construction and inspection management, cost estimation, lease management and administration, and program oversight. All supporting positions must possess the education and experience required for their respective fields of expertise as described on the U.S. Office of Personnel Management website for Professional and Scientific Positions at <http://www.opm.gov/qualifications/standards/group-stds/GS-PROF.asp>. GSA may request copies of professional licenses, certifications and designations at any time to verify the organizational structure is staffed with qualified personnel to support all leasing functions.

(g) Prior to submitting a lease delegation application to GSA, the requesting agency must conduct an assessment of its needs to establish technical requirements and the amount of space

necessary to meet mission requirements.

Additionally, agencies must conduct an analysis of current market trends and acquire space at charges consistent with prevailing market rates for comparable facilities in the community.

Accountability for all leasing activities must be coordinated through the requesting agency's Senior Real Property Officer and Chief Financial Officer.

(h) As a condition for the use of GSA leasing delegation authorizations, agencies must make their pre-award and post-award lease files available for audit by GSA Office of Inspector General personnel or other GSA personnel or authorized agents as determined by the GSA Assistant Commissioner, Office of Leasing, or his or her successor or designee. An agency's delegation of leasing authority may be suspended until the agency has either made its lease files available for inspection or responded, to GSA's satisfaction, to all audit report recommendations and suggested corrective actions, or both.

(i) Agencies using the General Purpose delegation must submit a lease delegation request through the GSA Delegation Data System no less than 18 months in

advance of lease expiration if there is a continuing need for the space and the agency wishes to obtain a new delegation to satisfy its space requirement. GSA will evaluate available vacant space and long-term housing plans and notify the agency, in writing, if compatible vacant space is available, and, if so, the delegation request will be denied.

(j) Agencies must manage their delegated lease inventory to avoid occupancy beyond the approved delegated lease term. A lease in holdover is in violation of the lease delegation authority and improper use of any delegation may result in revocation of the delegation and denial of future delegation requests.

(k) The GSA Pricing Desk Guide, Backfill Occupancies, section 2.2.3, applies to an agency moving from a delegated lease to GSA vacant space. An agency is responsible for funding its own physical move and telecommunication costs at the beginning and end of its occupancy term.

(l) An agency that does not wish to obtain a new delegation of leasing authority must give GSA at least 18 months notice in advance of the lease expiration date. The agency notice must include a

complete Agency Space Requirements package to enable GSA to develop a procurement schedule and, if necessary, recommend a lease extension term, if an extension of the delegated lease will be necessary to afford GSA adequate time to procure a long-term replacement lease. The agency with delegated authority will be responsible for extending the lease after receiving a new delegation of leasing authority from GSA. The delegation of leasing authority for the lease extension must be approved by the GSA Assistant Commissioner for the Office of Leasing, Public Buildings Service, or his or her successor or designee, prior to the execution of any such extension.

(m) Agencies are not authorized to use the General Purpose delegation to enter into leases in excess of 19,999 usable square feet of space. In addition, agencies are prohibited from using the General Purpose leasing delegation to enter into a Supplemental Lease Agreement to expand the amount of space currently under lease, if such an expansion will cause the agency to lease a total of more than 19,999 usable square feet of General Purpose space at the leased premises.

5. Additional Delegation Requirements

(a) Pre-authorization submittal requirements from requesting agency for all General Purpose lease delegations. Prior to instituting any new, succeeding, superseding, replacement, extension, or expansion lease action under the General Purpose delegation, the head of the Federal agency, or his or her designee, must electronically submit a request to the GSA Delegation Data System for authorization to use the General Purpose lease delegation authority. To obtain access to the GSA Delegation Data System, the Federal agency must electronically transmit a completed GSA Delegation Data System access approval form (available from the "Lease Delegations" webpage at www.gsa.gov) to delegate@gsa.gov. After obtaining system access, the requesting agency must electronically submit the following information to the GSA Delegation Data System:

1. A detailed narrative, including cost estimates, explaining why the granting of the request is in the best interests of the Government and how the agency's use of the delegated authority is cost-effective for the

Government;

2. The name of the warranted realty contracting officer who will be conducting the procurement, along with a copy of the Lease Contracting Warrant, a certification of experience and copies of the lease training certificates of completion. The Contracting Officer must fully meet the experience and training requirements of the Contracting Officer Warrant Program, as specified in GSAM section 501.603 and further revised by GSA Acquisition Letter V-06-06, Supplement Number 1, dated September 3, 2008, and Supplement Number 5, dated May 30, 2013, as these requirements may be revised from time to time;

3. An acquisition plan for the procurement in accordance with the requirements specified in GSAM subpart 507.1 - Acquisition Plans;

4. Justification for the delineated area in accordance with applicable laws and executive orders, including the Rural Development Act of 1972, as amended (7 U.S.C. 2204b-1), Executive Order 12072, Executive Order 13006, and Executive Order 13514;

5. A floodplain check in accordance with

Executive Order 11988, "Floodplain Management;"

6. An organizational structure and staffing plan to support the delegation that identifies trained and experienced warranted contracting staff, post-occupancy lease administration staff, real estate legal support, and technical staff to ensure compliance with all applicable laws, regulations and GSA directives governing lease acquisitions and administration of lease contracts;

7. A plan for meeting or exceeding GSA's performance measure for the cost of leased space relative to industry market rates. GSA's performance measures can be found on OMB's web site at

<http://www.whitehouse.gov/omb/expectmore/detail/10001157.2005.html>;

8. The total amount of required space, any special requirements and any associated parking requirements; and

9. A certification that the proposed space action is consistent with the OMB "Freeze the Footprint" policy.

GSA will decide whether the requesting agency's

exercise of the delegation is in the Government's best interest. Prior to granting the agency's request for a leasing delegation, GSA will consider the following factors: compatibility with the GSA community housing plan and GSA activities in the specific market, adequacy of the organizational structure and staffing proposed for the delegation, demonstrated ability of the requesting agency to meet or exceed GSA's Public Buildings Service published performance measures for cost of leased space, whether the requesting agency has complied with all applicable laws, executive orders, regulations, OMB Circulars, and reporting requirements under previously authorized delegations, and whether the granting of the requested delegation of leasing authority is cost-effective for the Government. Failure to demonstrate compliance with any of the enumerated factors will be a basis for denying the agency's request. No delegation will be granted solely for the purpose of accelerated delivery, and no delegation will be granted for space acquisitions totaling more than 19,999 usable square feet of General Purpose space.

The requesting agency may exercise the authority for a General Purpose space lease delegation only after the GSA Assistant Commissioner for the Office of Leasing, Public Buildings Service, or his or her successor, notifies the

requesting agency, in writing, that suitable GSA-controlled Federally owned or leased space is not available to meet the requesting agency's space need and it is in the best interest of the Government to authorize the agency to conduct the lease procurement. If the agency subsequently decides not to exercise the requested authority or its requirements change, the agency must promptly notify, in writing, the GSA Assistant Commissioner for the Office of Leasing, Public Buildings Service, or his or her successor.

(b) Agencies using the longstanding delegation for Categorical [41 CFR 102-73.145] and Special Purpose [41 CFR 102-73.160] must create a record for the delegation in the GSA Delegation Data System. The data entered in the GSA Delegation Data System must include:

1. Name and address of the requesting agency;
2. Lease location physical address, city and state;
3. The delegated authority applicable to the procurement;
4. A detailed narrative of the procurement action, including type of space and intended use, size of space in usable square feet or acreage, lease term, including renewal options, and estimated rental rate;
5. The name of the warranted realty contracting

officer conducting the procurement; and

6. The rental rate negotiated in the lease.

GSA will perform an annual review of Categorical and Special Purpose delegations reported in the GSA Delegation Data System. GSA will consider the following factors in the annual review:

- i. The agency and whether the type of space qualifies as Categorical or Special Purpose in accordance with 41 CFR 102-73.145 and 102-73.160, respectively;
- ii. Suitable Government-controlled owned or vacant leased space cannot be provided;
- iii. The average net annual rent for the lease action executed under the delegation is below the threshold applicable to GSA's submission of a lease prospectus to its Congressional oversight committees under 40 U.S.C. 3307; and
- iv. The organizational structure and warranted contracting staff are in place to support the procurement.

(c) Additional General Purpose post-award submittal requirements from the requesting agency.

For all leases, the agency must submit electronically

to the GSA Delegation Data System, within 30 days after lease award, the following documents or evidence of compliance:

1. The fully executed lease document and all attachments;
2. The Request for Lease Proposal (RLP) and any modifications issued during the procurement;
3. The RLP ad posted on FEDBIZOPPS or in a local publication;
4. If a sole source contract over the simplified lease acquisition threshold of \$150,000 average annual rent, a Justification for Other Than Full and Open Competition in accordance with section 6.303 of the Federal Acquisition Regulation (FAR);
5. If a sole source contract under the simplified lease acquisition threshold of \$150,000 average annual rent, lease file documentation explaining the lack of competition may be submitted in lieu of a Justification for Other Than Full and Open Competition in accordance with GSAM section 570.203-2;
6. The market survey data identifying properties considered in connection with the space need, including historic buildings considered in

accordance with Executive Order 13006;

7. Documentation of compliance with the National Environmental Policy Act of 1969, as amended (NEPA), in accordance with 40 CFR 1508.9 and the GSA Public Buildings Service's NEPA Desk Guide, which can be found at <http://www.gsa.gov/portal/content/101194>;

8. Documentation that vending facilities will be provided in accordance with the Randolph-Sheppard Act;

9. The final scoring evaluation in accordance with OMB Circular A-11 (2012), Criteria and Scoring Ramifications for Operating and Capital Leases, as the Circular may be revised from time to time;

10. The Price Negotiation Memorandum, prepared in accordance with GSAM section 570.307 and section 15.406-3 of the FAR;

11. Documentation that the building is in compliance with all applicable fire and life safety requirements (GSA Form 12000 or a Certificate of Occupancy);

12. Documentation that the building is in compliance with the seismic requirements of the RLP (seismic certification and representation or exemptions);

13. Documentation of compliance with the floodplain

management requirements of Executive Order 11988;

14. Copy of the Post-Award Synopsis posted in FEDBIZOPPS;

15. The small business subcontracting plan, if required, in accordance with section 19.702 of the FAR;

16. Documentation that the Excluded Parties List (also known as the Debarred Bidders List) was checked;

17. The pre-occupancy final inspection report verifying measurement of the demised space as shown on a computer-aided design floorplan, correction of deficiencies and punch-list items;

18. A Funds Availability Statement signed prior to lease award by a budget official with the requesting agency; and

19. Documentation that the negotiated rental rate is within the prevailing market rental rate for the class of building leased in the delegated action. The documentation may include information from organizations such as SIOR, Black's Guide, Torto-Wheaton, or Co-Star. If the negotiated rental rate exceeds the market range, provide information as to why the market rate was exceeded.

After review of the post-award documents, GSA may request additional information to determine whether the procurement was performed in accordance with all applicable laws, executive orders, regulations, and OMB Circulars that apply to Federal space acquisition activities. To determine whether the delegation was in the Government's best interest, GSA will evaluate whether the delegation was cost-effective for the Government in the acquisition and delivery of the space. In evaluating cost-effectiveness, GSA will consider the negotiated rental rate in comparison to the prevailing market rental rate for a similar class of building and other factors as GSA deems appropriate, including overhead costs, personnel costs, support contract costs, travel costs, accounting costs, and reporting costs. The agency must provide, upon request by GSA, detailed acquisition costs.

6. Federal Real Property Profile Reporting Requirements for General Purpose, Categorical and Special Purpose Leasing Delegations.

(a) In accordance with Executive Order 13327, Federal agencies are required to submit data for assets in their real property inventory to the Federal Real Property Profile (FRPP). Agencies are required to report data on all leased assets acquired under a delegation from GSA.

The FRPP data elements that must be submitted for each leased asset include:

1. Agency/Bureau Name;
2. Size;
3. Location; and
4. Type of Space.

Agencies also will have to indicate whether the leased asset was acquired through a General Purpose (Provider of Choice), Categorical or Special Purpose space delegation. A complete list of the FRPP data elements and definitions can be found in the Federal Real Property Council's Guidance for Real Property Inventory Reporting, a copy of which can be obtained at <http://www.gsa.gov/datadictionary>. FRPP data concerning GSA lease delegation actions may be provided to the GSA Public Buildings Service upon prior approval of the Federal Real Property Council.

(b) GSA also reserves the right to request additional information on agencies' delegated lease activities based on the data submitted to the FRPP. For each location reported in the FRPP data system as General Purpose (Provider of Choice), Special Purpose and Categorical delegation, the agency is required to create a record in the GSA Delegation Data System. GSA will perform an annual reconciliation of data between the FRPP data

system and the GSA Delegation Data System. Failure of an agency to timely or fully provide this additional information may result in GSA's revocation of the delegation to that agency.

ATTACHMENT 1

The listing below of laws, regulations, executive orders, and OMB Circulars affecting leasing may have applicability thresholds or other factors that impact applicability, and agency Contracting Officers must determine the individual applicability of each. These laws, executive orders, regulations, and OMB Circulars, each as may be amended from time to time, include the following:

1. Anti-Kickback Act of 1986 (41 U.S.C. 8701-8704);
2. Assignment of Claims Act of 1940 (31 U.S.C. 3727);
3. Balanced Budget Act of 1997 (2 U.S.C. 900 et seq.);
4. Competition in Contracting Act of 1984 (41 U.S.C. 3101 et seq.);
5. Contract Disputes Act of 1978 (41 U.S.C. 7101-7108);
6. Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 3701-3708);
7. Copeland Act of 1934 (18 U.S.C. 874; 40 U.S.C. 3145(a));
8. Covenant Against Contingent Fees (41 U.S.C.

- 3901(a));
9. Davis-Bacon Act of 1931 (40 U.S.C. 3141-3148);
 10. Drug-Free Workplace Act of 1988 (41 U.S.C. 8101-8106);
 11. Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701-7706);
 12. Energy Independence and Security Act of 2007, Pub. L. 110-140, Dec. 19, 2007, 435, 121 Stat. 1615 (42 U.S.C. 17091);
 13. Energy Policy Act of 1992 (42 U.S.C. 8253);
 14. Examination of Records (41 U.S.C. 4706);
 15. Leasing Authority (40 U.S.C. 585);
 16. Fire Administration Authorization Act of 1992 (15 U.S.C. 2227);
 17. Intergovernmental Cooperation Act of 1968 (40 U.S.C. 901-905);
 18. National Historic Preservation Act of 1966 (16 U.S.C. 470-470w-6);
 19. Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678);
 20. Officials Not to Benefit (41 U.S.C. 6306);
 21. Prohibitions on Use of Appropriated Funds to Influence Federal Contracting (31 U.S.C. 1352);
 22. Prompt Payment Act (31 U.S.C. 3901-3907);

23. Prospectus Authority (40 U.S.C. 3307);
24. Randolph-Sheppard Act (20 U.S.C. 107 et seq.);
25. Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157);
26. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
27. Small Business Act (15 U.S.C. 631 et seq.);
28. Rural Development Act of 1972, as amended (7 U.S.C. 2204b-1);
29. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651-4655);
30. Resource Conservation and Recovery Act of 1976 (42 U.S.C. 690);
31. Executive Order No. 11375, "Equal Employment Opportunity" (Oct. 13, 1967, 32 FR 14303);
32. Executive Order No. 11988, "Floodplain Management" (May 24, 1977, 42 FR 26951);
33. Executive Order No. 11990, "Protection of Wetlands" (May 24, 1977, 42 FR 26961);
34. Executive Order No. 12072, "Federal Space Management" (Aug. 16, 1978, 43 FR 36869);
35. Executive Order No. 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" (Jan. 5, 1990, 55 FR 835);

36. Executive Order No. 13006, "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities" (May 1, 1996, 61 FR 26071);
37. Executive Order No. 13423, "Strengthening Federal Environmental, Energy and Transportation Management" (January 26, 2007, 72 FR 3919);
38. Executive Order No. 13327, "Federal Real Property Asset Management" (Feb. 4, 2004, 69 FR 5897);
39. Executive Order No. 13514, "Federal Leadership in Environmental, Energy, and Economic Performance" (Oct. 5, 2009, 74 FR 52117);
40. Executive Order No. 13576, "Delivering Efficient, Effective, and Accountable Government" (Jun. 13, 2011, 76 FR 35297);
41. Executive Order No. 12941, "Seismic Safety of Existing Federally Owned or Leased Buildings" (Dec. 5, 1994, 59 FR 62545);
42. Comprehensive Procurement Guideline For Products Containing Recovered Materials (40 CFR chapter I, part 247);
43. OMB Circular A-11 (Capital Lease Scoring);
44. OMB Memorandum M-12-12, "Promoting Efficient Spending to Support Agency Operations" (May 11, 2012), and OMB Management Procedures Memorandum No. 2013-02,

"Implementation of OMB Memorandum M-12-12 Section 3:
Freeze the Footprint" (March 14, 2013);

45. Federal Management Regulation (41 CFR chapter
102); and

46. General Services Administration Acquisition
Manual, including the General Services Administration
Acquisition Regulation (48 CFR chapter 5).