



U.S. DEPARTMENT OF  
**ENERGY**

# Leasing Process

## **Process, Thresholds, Clauses and Documentation**

A Browser's Guide to Lease Acquisition, Lease  
Drafting, and Lease File Contents

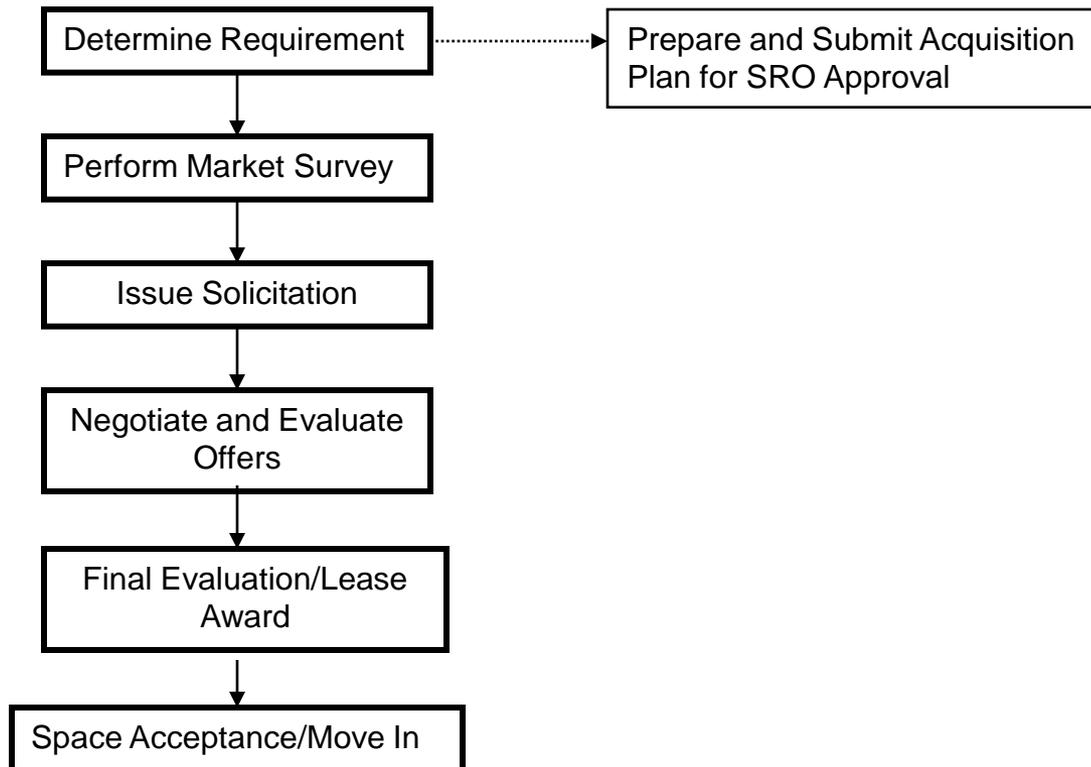
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# Leasing Process





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# Leasing Process

All sites/programs without a Certified Realty Specialist must submit actions to Senior Realty Officer in OEEM for review and approval (DOE O 430.1B, Section 4, paragraph(b)(1) )

Current Thresholds for Approval by CRS are:

CRS I - \$250,000 per real estate transaction (total rental over lease term)

CRS II – Limited only by Departmental Authorities and Policy (i.e. no outgrants of land leases beyond 40 years without HQ approval, any disposal not following Standard Federal practice, or any action requiring Congressional notification requires HQ prior approval)



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Concepts contained in this document contain references to the Federal Real Property Leasing Manual (recently added to the FIMS website)

Additional information and full context may be obtained there. All realty specialists are encouraged to utilize this publication as a source of information on current Federal standard leasing practices

Chapter and page number references pertain to this manual



# Leasing Process

## General Concepts

All leases must be scored in accordance with OMB Circular A-11

- a) This includes contractor leases
- b) First years rent and projected termination costs

Contractor leases must comply with the competitive leasing process in order to be approved. CRS approval is required in order for the rent to be considered an allowable cost



# Leasing Process

## Development of Space Requirements

- Agencies performing their own leasing actions must develop their space requirements in accordance with their Agency standards as reported in the Federal Real Property Profile
- As part of the requirement to acquire leased space, a telecommunications and Security checklist must be prepared as a guide for needed requirements.
- These requirements must be tailored to the market that will provide the space. Reimbursable elements usually develop from specialized requirements that can not be fulfilled by an existing marketplace.



# Leasing Process

## Competition and Market Sourcing

- Use sources of market information
- Advertise for available space above 10,000 square feet
- Refer to page 3-7 for specifics. Examples included at the end of Chapter 3.(page 3-31)

## Conducting the market survey

- Conduct a market survey to find potential sources. Also check with GSA.
- For each building inspected, a market survey form should be completed (See Appendix)
- No negotiations are to take place with potential offerors during the market survey

## Preparing Solicitation For Offers

- The SFO is to be tailored to the market just surveyed
- Lack of multi-year authority and requirements of scoring will most likely necessitate “special” tenant improvements be paid as a lump sum
- Refer to the Real Property Leasing Manual (RPLM) for clauses and formats. Specifically pages 3-12 through 3-27, and 3-35.



# Leasing Process

## Present Value Analysis

- All proposals must be analyzed to determine the “best value” to the Government.
- Price elements of the proposal are analyzed on the basis of their present value.
- Review pages 4-10 through 4-17
- Review Chapter 5 to determine the methods for establishing a “fair and reasonable price.”



# Leasing Process

- SIMPLIFIED LEASE ACQUISITION THRESHOLD (SLAT)
  - \$100,000 average net annual rental (page 4-2)
  - Leaseholds Above SLAT (FAR Parts 14 and 15)
    - Up to 10,000 square feet requires an expanded format from SLAT
    - Leases above 10,000 square feet require use of all clauses and full Solicitation.
  - Negotiated leases are standard in the Government. Sealed bidding is allowed but not realistic for leasing of today's complex office operating environments.
  - Review Chapter 4 for specifics of negotiations.
  - All leases funded either directly or indirectly with federal dollars require compliance with standard federal practices.



## Leasing Process

### Current Lease Inventory (FIMS)

<u>Lease Type</u>	<u>&lt; 5,000 SF</u>	<u>&lt;10,000 SF</u>	<u>&gt;10,000 SF</u>	<u>TOTAL</u>
GSA	11	3	20	20
GSA owned	7	5	7	29
DOE Leased	6	10	18	41
Contractor Leased	<u>120</u>	<u>48</u>	<u>151</u>	<u>319</u>
TOTALS	144	66	196	406
Pct. Total	35%	16%	48%	

.Our leases have increased a net 2% since the same time last year. The largest growth being in leases over 10,000 SF, which reflects an increase of 8.3%.



# Leasing Process

- All negotiations MUST be documented
  - Price Negotiation Memorandum
  - Lease Action Summary (See GSA Form 3628)
- Rental analyses are to be contained in the record of negotiation and broken into sub-components as follows:
  - Base net rental rate
  - Estimated cost of services and utilities agreed to as part of the lease or that will be paid directly (Attach completed GSA Form 1217, Lessor's Annual Cost Statement)
  - Tenant fit up allowance provided by owner
  - Total adjusted rental rate
  - Fair Rental Rate from market analysis or appraisal
  - Additional square foot costs for Government specific tenant fit up requirements



# Leasing Process

- It is the responsibility of the certified realty specialist to assure that the lease is carefully prepared and properly reflects the understanding of the parties.
- Government lease should be written on an SF-2, U.S. Government Lease for Real Property; or an SF3626 (Short Form Lease)
  - Included must be:
    - required clauses (use GSA Form 3517, 3517A, 3517B, or 3517C (refer to page 6-8 for detailed explanation)
    - required certifications and representations (use GSA Form 3518 or 3518A [short form])
    - pertinent portions of the offer
    - pertinent portions of the SFO (Use GSA Form 2516 and SFO)
    - other clauses agreed to with the Lessor



# Leasing Process

## •IMPORTANT LEASE DRAFTING POINT \*

- **Parol Evidence**

- Parol evidence rule provides that where two parties have reduced their agreement to a written contract, all prior negotiations and understandings (whether written or oral) are merged into the contract and thus cannot be considered in interpreting the contract

- A lease reflects the meeting of the minds and no inferences can be made which are not explicitly stated in the lease.

- Another point to remember is that the party drafting the leases generally loses disputes regarding ambiguous points. The point here is to be ***clear*** and ***specific***.



# Leasing Process

- Checklists

- The manual is “loaded” with checklists for all occasions. Research it and become familiar with it.
- Use the checklists for your files - DON'T REINVENT THE WHEEL!!!
- Chapter 8 outlines the process of conducting final inspection
  - It is important to be thorough and accurate
  - Careful work at this phase precludes a great deal of lease administration and restoration effort during the lease and at its conclusion.
  - Read and be very familiar with Chapter 8



# Leasing Process

- Lease File Index Guidance
  - The lease file should be orderly, concise, and reflect the history of the acquisition and occupancy of the space that has been leased
  - Refer to the Lease File Index Guidance (GSA Form 3681A). Follow these steps where appropriate.
  - Remember it is the Certified Realty Specialist's responsibility to ensure the integrity of the competitive process and to document it for posterity (i.e., defending claims and suits, answering FOIA requests, IG and GAO audits, and other interesting topics that arise from time to time.)



# Leasing Process

- APPENDIX 4, GSAR Leasing Clauses and Provisions
  - This is the FAR for real estate
  - It provides the path to a successful and well documented lease acquisition
  - Utilize the forms as they are accepted in both Government and in the private sector,
  - While an M and O Contractor will not utilize the SF 2, U.S. Government for Real Property, it must follow the Government recognized and accepted process.
  - All clauses required by law must be included in M and O contractor leases if the contractor is seeking reimbursement for lease costs as an “allowable expense.”



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## Leasing Process

THE  
END

If you have a question call  
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