

CHAPTER 5 - DOC LEASED SPACE

- 5.0 PURPOSE AND SCOPE
- 5.1 AUTHORITIES, CONDITIONS AND LIMITATIONS
 - 5.1.1 GSA Leasing Authority
 - 5.1.2 GSA Delegation of Leasing Authority
 - 5.1.3 DOC Leasing Authority
- 5.2 ROLES AND RESPONSIBILITIES
 - 5.2.1 Real Property Contracting Officer (RPCO)
- 5.3 PROSPECTUS LEVEL LEASING ACTIONS
- 5.4 DOC POLICIES
 - 5.4.1 General
 - 5.4.2 Prohibited Actions of Employees and Operating Unit Officials
 - 5.4.3 Competition
 - 5.4.4 Approval Process for Other than Full and Open Competition
 - 5.4.5 Construction on Leased Property
 - 5.4.6 Compliance with the Uniform Federal Accessibility Standards (UFAS), 41 CFR 101-19.6 "Accommodations for the Physically Handicapped"
 - 5.4.7 Deviations from 41 CFR 102-2.60-2.110
 - 5.4.8 Energy Efficiency
 - 5.4.9 Efficient Space Utilization
 - 5.4.10 Flood Plain Avoidance
 - 5.4.11 Gifts of Space or Free Space
 - 5.4.12 Lease Acquisition Protests, Disputes, and Appeals
 - 5.4.13 Historic Preference and Historic Preservation
 - 5.4.14 Location of Facilities
 - 5.4.15 Safety, Health, and Environmental Management
 - 5.4.16 Lease-Purchase Analysis
 - 5.4.17 Requirements for Housing and Lodging:
 - 5.4.18 Socioeconomic Considerations
 - 5.4.19 Supplemental RPOO Policies and Procedures

CHAPTER 5 - DOC LEASED SPACE

5.5 PROCEDURES

- 5.5.1 GSA Procedures
- 5.5.2 DOC Procedures

5.6 LEASE ADMINISTRATION, MANAGEMENT, AND FILES

- 5.6.1 Lease Administration
- 5.6.2 Designation of a Contracting Officer Representative
- 5.6.3 Lease Management
- 5.6.4 Lease Files

CHAPTER 5 - DOC LEASED SPACE

5.0 Purpose and Scope

This Chapter covers the authorities, roles and responsibilities, policies, procedures, administration and management of the Department of Commerce (DOC) leasing program.

5.1 Authorities, Conditions and Limitations

5.1.1 GSA Leasing Authority

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)), as amended, authorizes the Administrator of General Services to acquire leasehold interests in real property for use by Federal agencies. The authority is limited to leases for buildings and improvements that bind the Government for periods not exceeding 20 years. (48 CFR 570.103(a))

The Administrator of General Services may delegate and may authorize successive redelegations of the real property authority vested in the Administrator to any Federal Agency (41 CFR 102-72.10).

See 41 CFR 102-72.30 for types of delegations related to real estate leasing.

5.1.2 GSA Delegation of Leasing Authority

- (a) Effective October 14, 1996, the Administrator of General Services 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. (41 CFR 102-72.30(b) and GSA Bulletin FPMR D-239)
 - (1) This delegation includes certain conditions and limitations that Federal agencies must meet when conducting the procurement themselves, such as

CHAPTER 5 - DOC LEASED SPACE

training in lease contracting and reporting data to GSA. See 5.1.3(b) of this Manual.

(2) This delegation does not alter the existing categorical and special space delegations in 41 CFR 102-73.

(b) The delegation of GSA's leasing authority is accompanied by the authority to provide for the operation, maintenance, and custody of buildings and land under direct lease. See Facility Mgt. Delegations in 41 CFR 102-72.40 and 50.

5.1.3 DOC Leasing Authority

The authority to conduct direct leasing activities has been delegated to the Secretary of the Department of Commerce (Secretary).

(a) Redelegation of DOC Leasing Authority: The Secretary has redelegated all leasing authorities to the Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA). The CFO/ASA has redelegated leasing authority within DOC to the following individuals:

- O Administrator, NOAA (for use by the Administrative Support Centers (ASCs))
- O Director, Bureau of the Census (for the Decennial Census program)
- O Director, Office of Administrative Services (OAS). The Director, OAS, may redelegate authority to *execute* lease contracts by warranting qualified personnel as Real Property Contracting Officers (RPCOs).

The Director, OAS, may also redelegate authority to *manage and administer* leases by warranting qualified personnel as Administrative Contracting Officers (ACOs). Both of these types of warrants are granted only to qualified personnel as defined in DOC's "Real Property Warrant Program Handbook," which is incorporated herein by this reference.

CHAPTER 5 - DOC LEASED SPACE

- (b) Conditions and Limitations of Leasing Authority: The conditions and limitations of the DOC's delegated leasing authority include, but are not limited to, the following:
- (1) Survey of Government-Controlled Space - Leases of privately owned land and building space may be considered when needs cannot be satisfactorily met in Government-controlled space, and certain conditions apply (See Section 5.5, Procedures).
 - (2) United States Postal Service (USPS) Space - After considering the availability of GSA-controlled space, available space in buildings under the control of the USPS must be considered. (41 CFR 102-73.20)
 - (3) Relocation of Government Employees - The relocation of Government employees from Government-controlled space may take place only after prior written approval is received from the appropriate GSA ARA/PBS stating that suitable Government-controlled space is not available.
 - (4) GSA Community Housing Plans - Lease procurement actions must be compatible with the GSA community housing plans for new Federal construction. GSA will advise DOC of any limiting factors (for example, length of lease term) in order to be consistent with any community housing plans.
 - (5) Authorized Officials - The authority to lease space can be exercised only by those employees who have been warranted as Real Property Contracting Officers.
 - (6) Restrictions - No restrictions apply on size, cost, or type of space required, except as otherwise identified in this chapter. This delegation does not authorize DOC to conduct leasing activities for other agencies.
 - (7) Lease Terms - Lease terms may be up to 5 years with the exception of leases for unimproved, vacant land. Leases for unimproved, vacant land may not exceed one fiscal year. See 41 CFR 102-73.85 for additional information.

CHAPTER 5 - DOC LEASED SPACE

- (8) Prospectus Level Leases - If the annual rental for the lease contract, excluding services and utilities, exceeds the annually adjusted threshold established in accordance with 40 U.S.C. 601-619, a prospectus must be approved by the Congressional Committees pursuant to the Public Buildings Act of 1959, 40 U.S.C. 3301-3315, prior to initiating leasing activities. In this circumstance GSA will prepare the prospectus in consultation with DOC. See Section 5.3 of this Manual.
- (9) Acquisition and Utilization of Space - Leased space must be acquired and utilized in accordance with all applicable laws and regulations, and executive orders, including, but not limited to, the Competition in Contracting Act (CICA), Federal Property Management Regulations (FPMR), Federal Acquisition Regulations (FAR), Federal Management Regulations (FMR), Executive Order 12072, Executive Order 13006, Davis Bacon Act, and the General Services Administration Acquisition Regulations (GSAR).
- (10) Basis for Award - DOC must acquire leases on the most favorable basis to the Government, with due consideration to maintenance and operational efficiency, and at charges consistent with prevailing market rates for comparable facilities in the community. (41 CFR 102-73.30)
- (11) Lease Execution and Administration - DOC RPCOs will be responsible for executing the lease, paying the rent and administering the leases on the Government's behalf to the extent provided in the certificate of appointment as a contracting officer. (48 CFR 570.103(b))
- (12) Notice to GSA of Expiring Leases - GSA must be notified 2 (two) years before a lease expires. GSA will review the Government-controlled space inventory and community plans and determine once again if suitable space is or will be available. If no suitable space is available, GSA will notify DOC as described above, and DOC may again decide to use GSA or lease space under delegated authority.

CHAPTER 5 - DOC LEASED SPACE

- (13) Performance Reports - Periodic lease performance reports must be provided to GSA.
- (14) Vacant Land - In those cases where agency special purpose space delegations include the authority to acquire unimproved land, the land may be leased only on a fiscal year basis (41 CFR 102-73).
- (15) Existing Delegations - This delegation does not change any existing delegations to DOC.

5.2 Roles and Responsibilities

General and specific roles and responsibilities concerning the leasing of real property are described below and in various sections of this Chapter. General roles and responsibilities for DOC real property acquisition and management are also included in Chapter 2 of this Manual.

5.2.1 Real Property Contracting Officer (RPCO)

(a) General Roles and Responsibilities:

- (1) All DOC direct lease contracts must be executed by warranted Real Property Contracting Officers (RPCOs). All actions taken by the RPCO must be conducted within the scope of their appointment and the authorities, responsibilities, and limitations included in the DOC "Real Property Warrant Program Handbook".
- (2) The RPCO is responsible for taking DOC Operating Units' (OUs) requests for space to the appropriate market, also known as the delineated area, and negotiating the best possible deal for the Government through competitive procedures.
- (3) By virtue of their warrant, RPCOs have the authority to oversee lease performance by the Lessor, to make binding changes or modifications to the lease, and to take measures to protect the Government's interests.

CHAPTER 5 - DOC LEASED SPACE

- (4) The RPCO must negotiate and execute the lease based upon and in compliance with all applicable laws, regulations and policies as well as incorporating sound personal judgment and knowledge gained from past experience.
- (5) The RPCO's standard of conduct must promote and protect the public trust and must avoid even the appearance of conflict of interest or other impropriety.
- (6) The RPCO must conduct all actions in a fair and reasonable manner and in the best interests of the Government.
- (7) The RPCO must ensure that the lease file contains all justifications and background information for all major decisions and all documentation required by the GSAR.
- (8) Anti-Deficiency Act, 31 U.S.C. 1301 and 1341: The RPCO must have written certification from the OU program officials requiring the leased facilities stating that sufficient funding is lawfully available, or will be made available subject to appropriations, to cover the rental and related costs stated in a lease prior to execution on behalf of the Government.

5.3 Prospectus Level Leasing Actions

The Public Buildings Act of 1959, as amended, 40 U.S.C. 601-619, establishes a prospectus threshold, applicable to Federal agencies operating under, or subject to, the authorities of the Administrator of General Services, for the construction, alteration, purchase, and acquisition of any building to be used as a public building, and establishes a prospectus threshold to lease any space for use for public purposes. (41 CFR 102-73.95)

- a. Direct Congressional Oversight - The prospectus approval process plays an important role in the budget preparation and planning process and these projects require Congressional approval. The Administrator of General Services is responsible for submitting

CHAPTER 5 - DOC LEASED SPACE

prospectuses to Congress for consideration by the Senate and the House of Representatives.

- b. Prospectus: Is the statement of the proposed project. It includes a description, location, estimated maximum cost and comprehensive plan for providing space for Government operations and employees in the locality of the proposed project. A statement must be provided by the Administrator that suitable space owned by the Government is not available and that suitable rental space is not available at a price commensurate with that to be afforded through the proposed action. The Administrator must also provide a statement of rents and other costs currently being paid by the Government for Federal agencies to be housed in the proposed project.
- c. Prospectus Level: The Administrator can adjust the prospectus level annually to reflect a percentage increase or decrease in construction costs during the preceding calendar year. The prospectus level may be verified by contacting the Office of Portfolio Management, Public Building Service, GSA, Washington, DC.
- d. Chief Financial Office/Assistant Secretary for Administration (CFO/ASA) Approval: As stated in Chapter 2, Section 2.3.1(b), the CFO/ASA must approve all proposals for leases, or requests for assignment of space from GSA, which have an average annual net rent over the firm term of the lease at or above the current prospectus level. As prospectus level actions exceed the stated threshold for CFO/ASA approval, OU Heads must request and receive CFO/ASA approval prior to the formal submission of the request for space to GSA.
- e. Prospectus Contact Information - DOC must provide the following information to the appropriate GSA staff: name and telephone number of the DOC individual to coordinate with GSA in preparing the prospectus; project description; schedule; cost estimate; input for present value analysis; and a housing plan.

5.4 DOC Policies

CHAPTER 5 - DOC LEASED SPACE

5.4.1 General

DOC RPCOs must comply with applicable GSA policies and procedures on the leasing and management of real property included in 41 CFR 102-71 through 102-82, and 48 CFR Chapter 5, which are incorporated herein by this reference. Exceptions to the requirements of the GSAR may be approved on a case-by-case basis as described in this Chapter.

Real property may be acquired by lease when the following conditions are met:

- (a) The real property is required or is essential for the conduct of an existing, new or expanded program of the DOC.
- (b) DOC made every reasonable effort to utilize Government-controlled space that meets or can be economically altered to meet DOC's requirements.
- (c) There is no Government-controlled real property available that can meet the space requirements.
- (d) Leased facilities are not to be considered a permanent solution to space needs. Continuing efforts to locate suitable Government-owned space that can accommodate programs occupying leased space are necessary to ensure maximum use of Government-owned facilities. Real Property Operations Office's (RPOOs) must periodically review the inventory of available DOC and other Government-owned space for the purpose of relocating programs from leased space.
- (e) Funds are available for the payment of acquisition costs, rental costs and other charges prior to the execution of the lease.
- (f) To the maximum extent possible, the lease is awarded only after discussions and negotiations are conducted with all offerors meeting the minimum requirements within the delineated area.

5.4.2 Prohibited Actions of Employees and Operating Unit Officials

CHAPTER 5 - DOC LEASED SPACE

Unless authorized in writing by the RPCO, officials or employees of DOC must at no time, either directly or indirectly, contact lessors, offerors, or potential offerors for the purpose of making oral or written representations, commitments, or agreements with respect to terms, occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services. This prohibition includes the period before or after a request for space is submitted to the RPCO and after a lease is executed.

5.4.3 Competition

Contracts for leasehold interests in real property must be awarded through the use of competitive procedures as required by the Competition in Contracting Act (CICA), unless the use of other than full and open competition is permitted. 41 U.S.C. 253(c).

5.4.4 Approval Process for Other than Full and Open Competition

The acquisition of space through other than full and open competition must be held to a minimum. The justification, authorities, and signed approvals authorizing the use of other than full and open competition must be included in the lease file. The official requesting the acquisition of a lease without competition must provide a written justification, including the identification of the statutory authority for conducting other than full and open competition, to the RPCO or other authority in accordance with the approval process described below:

- (a) Less than \$100,000 - For leases with a total consideration for the firm term of the lease up to but not exceeding \$100,000, the RPCO must approve.
- (b) \$100,000 - \$1,000,000 - For leases with a total consideration for the firm term of the lease of \$100,000 or above, but not exceeding \$1,000,000, the RPCO, the head of the Facilities and Logistics Division (or equivalent at Census) and the Senior Contracting Unit Competition Advocate must approve.

CHAPTER 5 - DOC LEASED SPACE

- (c) \$1,000,000 - \$10,000,000 - For leases with a total consideration for the firm term of the lease of \$1,000,000 or above, but not exceeding \$10,000,000, the RPCO, the head of the Facilities and Logistics Division (or equivalent at Census), the Senior Contracting Unit Competition Advocate at the ASC, and the Director, NOAA-OA (or the Senior Competition Advocate at Census) must approve.
- (d) Above \$10,000,000 - For leases with a total consideration of \$10,000,000 or above, the officials in (a) through (c) above; the DOC Senior Procurement Executive; and the Director, Office of Acquisition Management, must approve. NOTE: Use the total cost estimate of the firm term of the lease, plus the cost of any renewal options, in determining the necessary approvals.

5.4.5 Construction on Leased Property

OUs must avoid construction of permanent or valuable improvements on leased real property unless authorized by statute or approved in writing by the OU Head, or designee, and the Office of General Counsel as indicated in this paragraph. Proposals to construct improvements on leased real property must be reviewed by the DOC Office of General Counsel for sufficiency of Government interest in the real property to protect the Government investment in the cost of improvements prior to awarding a contract for construction. For additional information, see 48 CFR 570.105-2, "Two-phase design-build selection procedure".

5.4.6 Compliance with the Uniform Federal Accessibility Standards (UFAS), 41 CFR 101-19.6 "Accommodations for the Physically Handicapped"

- (a) 41 CFR 101-19.6 provides the standards for design, construction, lease, and alteration of buildings for accessibility by physically handicapped persons. Except as provided in 41 CFR 101-19.604, every building must be designed, constructed, or altered to meet the minimum requirements of the "Uniform Federal Accessibility Standards" (UFAS). In addition to compliance with 41 CFR 101-19.6, it is also strongly recommended that RPOOs make every effort to meet the more stringent "Minimum

CHAPTER 5 - DOC LEASED SPACE

Guidelines and Requirements for Accessible Design" applicable to leased facilities issued by the Architectural and Transportation Barriers Compliance Board (ATBCB). The ATBCB guidelines are published in 36 CFR 1190.34.

- (b) Exceptions: The following DOC exceptions are in addition to those cited in 41 CFR 101-19.604:
- (1) If the space is necessary for officials servicing natural or human-made disasters on an emergency basis;
 - (2) If the space is used on an intermittent basis;
 - (3) Mechanical rooms and other spaces which normally are not frequented by the public or employees with disabilities (41 CFR 101-19.6, Appendix A, 4.1.6.(g)). Included are storage space, balloon inflation buildings, piers, equipment sites on towers, bridge abutments, rooftops and mechanical, electrical, electronic, and radio equipment rooms and similar sites. For facilities which have mixed-use space, such as an office/warehouse, the office portions, including toilet rooms and doors, if any, must meet the requirements in 41 CFR 101-19.6.
- (c) Waivers or Modifications: The applicability of the Uniformed Federal Accessibility Standards (UFAS) in 41 CFR 101.6 may be modified or waived on a case-by-case basis. The Administrator of General Services has delegated GSA's authority to modify or waive accessibility standards to the Secretary. The Secretary's authority for the management of real property has been delegated to the CFO/ASA. If fully accessible space is not feasible, a waiver of the applicable accessibility standard must be approved by the CFO/ASA. The tenant OU Head must submit a fully documented and supported request for a waiver and receive approval of the waiver from the CFO/ASA prior to lease execution. Waivers should only be requested as a "last resort."

CHAPTER 5 - DOC LEASED SPACE

- (d) Record keeping: Lease files must be documented in accordance with 41 CFR 101-19.606.
- (e) Reporting: Annually, DOC must submit to the Administrator of General Services reports covering all projects subject to 41 CFR 101-19.6 for which lease contracts have been awarded. Also, the Administrator requests an annual report of all waivers of accessibility standards approved by DOC. (41 CFR 101-19.607)
- (f) Section 504 of the Rehabilitation Act: The DOC implementation regulations on compliance with Section 504 of the Rehabilitation Act of 1973 are 15 CFR 8b and 8c. Questions on compliance and complaints involving Section 504 are to be directed to the DOC Office of Civil Rights.

CHAPTER 5 - DOC LEASED SPACE

5.4.7 Deviations from 41 CFR 102-2.60-2.110

As a condition of GSA's delegated authority to conduct direct leasing actions, DOC is required to follow the leasing acquisition guidelines included in the CFR. Upon approval as provided herein, individual and class deviations from the CFR may be approved on a case-by-case basis when unique circumstances arise. DOC Bureaus must consult informally with appropriate GSA program personnel and formally request a deviation, if consultations indicate that a deviation is permissible. (See 41 CFR 102-2.80 for more information).

Deviations from the CFR may not be used to circumvent a statutory requirement. For further information on deviations see 41 CFR 102-2.70 and 75.

5.4.8 Energy Efficiency

In leasing buildings, appropriate preference must be given to buildings that use solar heating and cooling equipment, consistent with the Energy Policy and Conservation Act (EPACT) (42 U.S.C. 6201 et seq.). Also, Executive Order 12902 requires that appropriate consideration be given to building efficiencies in the leasing process. Preference may be given in rating the lease offers based on energy performance standards applicable to Federal buildings found in 10 CFR 435 and which are life cycle cost-effective over the term of the lease.

5.4.9 Efficient Space Utilization

Before submitting a request for additional space, an OU must establish that existing space is effectively utilized and additional space cannot be made available by internal moves and configurations.

5.4.10 Flood Plain Avoidance

In accordance with Executive Orders 11988 - "Floodplain Management", and 11990 - "Protection of Wetlands", avoid leasing space in buildings located within 100-year flood plains unless there is no practical alternative outside of the flood plain. Efforts to locate any practical

CHAPTER 5 - DOC LEASED SPACE

alternatives should be documented in the lease file. Further guidance in this regard is provided in Department Administrative Order (DAO) 216-11.

5.4.11 Gifts of Space or Free Space

When space is offered to DOC under DAO 203-9, the space must meet all of the statutory, regulatory and DOC requirements for space except the requirements for competition. Also, prior to acceptance of the space offered to DOC under DAO 203-9, the CFO/ASA must review and approve the acceptance of the gift.

5.4.12 Lease Acquisition Protests, Disputes, and Appeals

- (a) Protests of the Government's actions concerning leasing activity may occur before or after award of the lease. The timing of receipt of a protest dictates the action required. The DOC point of contact for protests is the DOC Assistant General Counsel (AGC) for Finance and Litigation.
- (b) Types of Protests - Protests may be filed with any of the following:
 - (1) RPCO
 - (2) DOC's Protest Decision Authority (Procurement Executive)
 - (3) General Accounting Office (GAO)
 - (4) General Services Administration Board of Contract Appeals (GSBCA)
- (c) The AGC furnishes all necessary correspondence concerning protests and appeals to the GAO or GSBCA.

5.4.13 Historic Preference and Historic Preservation

- (a) Historic Preference: In accordance with Section 110(a) of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470h-2(a)), DOC must utilize historic properties whenever practical. This means that

CHAPTER 5 - DOC LEASED SPACE

the RPCO may add special weight to a selection factor for historic structures in the lease award source selection plan. (41 CFR 102-73.45 and 73.50 and 102-79.90)

- (b) Historic Preservation: Any leasing action involving construction or alteration of a facility listed, or eligible for listing, on the National Register of Historic Places must be undertaken in compliance with Section 110(a) of the National Historic Preservation Act of 1966, as amended, and DOC policies and procedures on historic preservation.

5.4.14 Location of Facilities

In accordance with 41 CFR 102-79.90, when leasing space, DOC must first consider historic properties within historic districts (41 CFR 102-73.45).

5.4.15 Safety, Health, and Environmental Management

The basic safety and environmental management policies for real property, including agency responsibilities concerning asbestos, radon, indoor air quality, lead, hazardous materials and wastes, underground storage tanks, and fire prevention and fire protection engineering, are identified in 41 CFR 102-80.

It is DOC policy to provide safe and healthful workplaces for all DOC employees, its contractors and the visiting public; to implement operating procedures and practices that will result in safe working conditions and efficient operations; to protect DOC/Federal real and personal property and the environment; and to ensure the continuity of the programs and missions of the DOC. Additional DOC policy in this area is included in the DOC "Occupational Safety and Health Manual (DOC-OSHM)," which is incorporated herein by this reference.

5.4.16 Lease-Purchase Analysis

Office of Management and Budget Circular No. A-94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs," as revised, issued on October 29, 1992,

CHAPTER 5 - DOC LEASED SPACE

includes expanded guidance for lease-purchase analysis. Compliance with A-94 is required when the completed capital asset (including buildings, facilities, installations, land and/or equipment) or group of related assets under consideration for lease has a total fair market value exceeding \$1 million. If the capital asset meets the criteria in the circular, a copy of the lease-purchase analysis must be maintained in the RPOO files.

5.4.17 Requirements for Housing and Lodging:

- (a) Short-term (One Year or Less): Requirements for short-term (generally one year or less) housing and lodging may be met through a lease, by the RPOO, or through the procurement process, as appropriate.
- (b) Long-term (Exceeding One Year): Requirements for long-term (generally exceeding one year) housing and lodging are generally met through a lease acquisition. OUs must make a request for this type of space to the RPOO and include all necessary information required by the RPCO, including a cost-benefit analysis.

5.4.18 Socioeconomic Considerations

All DOC leasing activities must be performed in accordance with the socioeconomic considerations set forth in 41 CFR 101-18.106.

5.4.19 Supplemental RPOO Policies and Procedures

When more detailed policies and procedures are deemed necessary for the efficient management of RPOO leasing programs, supplemental policies and procedures may be developed. Supplemental policies and procedures must be in concert with DOC policies and procedures contained in this Manual. Therefore, RPOOs must submit proposed supplemental policies and procedures for leasing to the Director, OAS, for review and clearance prior to implementation.

5.5 Procedures

5.5.1 GSA Procedures

GSA procedures for the acquisition of space by lease are included in 48 CFR 570, "Acquiring Leasehold Interests in

CHAPTER 5 - DOC LEASED SPACE

Real Property", and 48 CFR 552.270-1, "Instructions to Offerors - Acquisition of Leasehold Interests in Real Property". As a condition of GSA's delegated leasing authority, DOC is required to follow these procedures. In certain cases, deviation from these procedures becomes necessary because of the differences between the GSA and DOC leasing programs and because of DOC's unique mission responsibilities. Section 5.4 of this Manual describes the process for the approval of waivers from certain non-statutory requirements. The deviation approval process should only be used as a last resort and when, in the professional judgement of the RPCO, no other compliance route is practical in order to meet DOC program mission requirements.

5.5.2 DOC Procedures

The majority of DOC's direct leasing activities are conducted by the RPCOs of NOAA's Administrative Support Centers (ASCs) and the Bureau of the Census, Administrative and Customer Services Division. NOAA has developed the Desk Guide for Real Property Acquisition (NOAA Desk Guide) and the Bureau of the Census has developed the Office Leasing Handbook (Census Handbook). Both of these publications include procedures for the acquisition of space by lease.

The following procedures are intended to amplify, reiterate or provide DOC procedures which generally parallel the procedures used by GSA and in the CFR. Some of the procedures, however, have been modified to meet DOC leasing requirements. Where there is a conflict between the policies or procedures of the ASC's Desk Guide, the Census Handbook, or other OU policies and procedures, the policies and procedures included in this Manual must take precedence.

- (a) Procedures in the CFR: Certain procedures found in 41 CFR 102-71 - 102-82 and 48 CFR 552 and 570 apply to the acquisition of real property by lease. Deviations from the provisions of the CFR may be approved as indicated in Section 5.4 of Manual.
- (b) Real Property Contracting Officers (RPCOs): RPCOs, acting within the scope of their warrants, are the exclusive DOC agents to enter into leases on behalf of DOC in compliance with the DOC "Real Property Warrant Program" guidelines and other DOC policies and procedures. Additionally, the RPCO

CHAPTER 5 - DOC LEASED SPACE

must perform, or have performed, all administrative actions necessary for effective contracting.

- (c) **Determination of Requirements:** The requirements for space or facilities to meet authorized program needs are determined by the OU Head. Such requirements are subject to the OU's space reduction plan, the availability of funding for rent and related expenses, and DOC and other Governmental regulations, policies and orders. The method of meeting the OU facilities requirements is the responsibility of the RPCO, in cooperation with OU program officials.
- (d) **Competition:** Provisions of the Competition in Contracting Act (CICA) require full and open competition in Government contracting, including the acquisition of space, through the use of competitive procedures. It is the duty of the RPCO to be an advocate for competition in all leasing actions to meet the intent of this statute.
- (e) **Leasing Unimproved Land:** The requirements for competition apply to all lease acquisitions of real property except unimproved land. However, if more than one parcel of unimproved land suitable to meet requirements is available, or in cases of lease/build acquisitions, competitive procedures are recommended. In such cases, the requirement for land should be advertised to assure that all potential properties are surveyed at the beginning of the lease acquisition process before funds are expended in connection with any particular property.
- (f) **Location of Facilities and the Delineated Area:**
 - (1) **Delineated Area:** OU program managers are responsible for determining the delineated area, or geographic location, where facilities are required. The choice of the delineated area must be based on the OU's program mission with consideration for all applicable laws and regulations. The OU program manager must provide written justification for the delineated area, if requested by the RPCO.
 - (2) **Review of Delineated Area for Competition:** For acquisition of general purpose office space, the RPCO must conduct a market survey of the delineated area to ensure that competition is available. If competition is not available, then, at the request of the RPCO, the

CHAPTER 5 - DOC LEASED SPACE

OU program manager must expand the delineated area to include competition or the OU must submit additional justification. At the discretion of the RPCO, the OU program manager may be required to execute a DOC Form CD-492, "Justification for Other than Full and Open Competition", or equivalent, which identifies the statutory authority and FAR Provisions used as justification for use of other than full and open competition.

- (3) Decision Factors: Decision-making factors related to program mission that may be addressed in the OU program manager's justification of the delineated area include:
- a. Geographic service area;
 - b. Travel time required to reach outlying field offices or inspection sites;
 - c. Reduced travel time for employees or business representatives;
 - d. Reduced transportation costs;
 - e. Program needs that require close proximity to the location of courts, offices, laboratories, educational institutions, or other agencies;
 - f. Personnel hiring and retention as it relates to accomplishing program mission;
 - g. Proximity to other amenities such as eating facilities and public transportation;
 - h. Environmental impact;
 - i. Program client accessibility; and
 - j. Desirability of single unit offices over split locations near one another.
- (g) Protests of the Delineated Area: In the event a delineated area is protested, the RPCO will notify the OU program official who signed the request for space. The OU official, in coordination with OU counsel, must compose a statement of fact and legal position that is responsive to

CHAPTER 5 - DOC LEASED SPACE

the protest and submit it to the RPCO. The signed statement of fact and legal position must be submitted to the RPCO within five working days of notice to the OU. It should, at a minimum, identify the delineated area, state why the chosen delineated area satisfies the OU's minimum requirements to the exclusion of other geographic areas, and contain a legal analysis supporting the choice of the delineated area. In addition to the above, the RPCO must follow the CFR and DOC policies and procedures on bid protests.

- (h) Operating Unit Requests for Space: After making a determination that space is needed for an authorized DOC program, the OU Head, or the OU official with delegated authority, must submit a written request for space, including detailed requirements and the delineated geographic area, to the appropriate RPOO. Each request for space must be signed by the appropriate OU program official, and must either be prepared on Standard Form 81/81A or an ASC Space Requirements Questionnaire. Additionally, the OU official must certify that sufficient funding is lawfully available to cover the rent and other acquisition costs, and must supply additional information concerning the program and/or space requirements as may be requested by the RPCO.
- (i) Initial Action by the Real Property Contracting Officer (RPCO): Upon receipt of a request for space and a statement of requirements, the RPCO must review the submission for compliance with applicable DOC and other Governmental provisions, authorities and policies. The RPCO must then check the availability of suitable DOC, GSA and other Government-controlled space.

If DOC, GSA or other Government-controlled space is available that will meet the OU's program requirements and is within the delineated area, the RPCO will notify the appropriate OU program officials of this availability. If the OU program officials refuse Government-controlled space, which, in the judgement of the RPCO, meets the program's space requirements and is within the delineated area of consideration, the OU program officials must provide the RPCO with written justification for rejection of the space.

CHAPTER 5 - DOC LEASED SPACE

After conducting and documenting the survey of Government-controlled space, the RPCO may begin the leasing process in compliance with applicable policies and procedures contained in the CFR and this Manual.

- (j) Advertising: Requirements for blocks of space of 10,000 square feet or more must be publicized in local newspapers and/or periodicals, and/or the Commerce Business Daily (CBD) through the GSA Electronic Posting System (EPS), unless exempt under the 48 CFR 505.202. Advertising for requirements of space less than 10,000 square feet is optional, at the discretion of the RPCO. The acquisition of a leasehold interest in a building to be constructed or a preselected site must be advertised in the CBD through EPS.
- (k) Market Survey and On-site Inspection: Generally, a market survey and on-site inspection of available properties should be conducted for all space acquisitions and renewals. However, if the RPCO determines that a survey with on-site inspections is either unnecessary or inappropriate under the circumstances, this requirement may be waived and a survey may be conducted by telephone. The results of surveys and inspections or the reasons for waiving this procedure must be maintained in the lease file. (48 CFR 570.203-1 and 570.301)
- (l) Solicitation for Offers: The Solicitation for Offers (SFO) describes the space requirements, forms the basis for offers and negotiations, identifies the offer evaluation factors, and becomes part of the lease. The SFO must conform to the applicable requirements defined in 48 CFR 570.303. Also, the SFO must include the necessary provisions and clauses as defined in 48 CFR 552.
- (m) Negotiations and the DOC Code of Employee Conduct: Following a complete evaluation of each offer, discussions should be held with each offeror regarding their proposal. A written record of all negotiations must be prepared and maintained in the lease file. Information or time extensions given to one offeror must also be provided to all offerors. RPCOs and employees operating under their instructions must comply with the DOC Code of Employee Conduct in all negotiations and dealings with the public. (48 CFR 570.105 and 570.203-4 and 570.307)

CHAPTER 5 - DOC LEASED SPACE

- (n) Lease Forms: Either GSA Standard Forms, as amended, or RPOO-developed narrative lease forms may be used, provided that such forms comply with Government requirements and contain the language and terms stated on the GSA Standard Forms. (48 CFR 570.7)
- (o) Fire Protection, Occupational Protection, Health and Environmental Safety:
 - (1) All offers must include a "Fire Protection and Life Safety Evaluation" of no more than two years old from the offer due date, completed by a Certified Fire Protection Engineer. In the event deficiencies are identified, the offeror must agree to bring the offered space into full compliance with all applicable criteria at the offeror's sole cost and expense prior to the Government's acceptance of the offered space under the terms of any prospective lease agreement. (Standard SFO paragraph 1.15)
 - (2) Below-grade space to be occupied by the Government, and all areas in a building referred to as "hazardous areas" in the National Fire Protection Association Standard 101 (Life Safety Code), or any successor standard thereto, must be protected by an automatic sprinkler system or an equivalent level of safety.
 - (3) If offered space is six stories or more above grade, additional fire and life safety requirements may apply. Therefore, the offeror must advise the RPCO in its offer whether or not the offered space, or any part thereof, is on or above the sixth floor of the offered building. (Standard SFO 7.3)
 - (4) Questions about the safety or environmental acceptability of any offered space should be referred to the appropriate DOC or OU Safety Officer for further review.
- (p) Occupancy Permits - Offerors must be advised that a valid occupancy permit will be required at the time the space is inspected for acceptance. The permit will serve as evidence of conformance with local codes and ordinances. If the local jurisdiction does not issue occupancy permits, then the Offerors must consult with the RPCO to determine if other documentation may be needed. If the

CHAPTER 5 - DOC LEASED SPACE

space offered is below grade or three or more floors above grade, the Offerors must complete and sign the GSA Checklist regardless of the availability of a valid occupancy permit.

- (q) Radon in Air - If the leased space planned for occupancy is on the second floor above grade or lower, prior to occupancy the Lessor must test the space in accordance with 41 CFR 102-80.20.

- (r) Real Estate Agents and Representatives of Lessors: At the discretion of the RPCO, persons who represent themselves as agents for landowners, developers and offerors, such as real estate agents, attorneys, bankers, relatives, etc., may be required to provide a landowner's agency agreement or other evidence which authorizes the agent or representative to negotiate, execute bids, or make other representations of the landowner, developer or offeror in dealings with the Government.

- (s) Title Evidence: At the discretion of the RPCO, in lease acquisitions involving high cost rentals or alterations, the lessor may be required to submit an up-to-date certificate of title or other certified evidence, which includes information on all encumbrances to the real property involved, prior to the award of the lease. The purpose of this requirement is to verify ownership and financial responsibility concerning the real property involved.

- (t) Rental Payments: Leases should include periodic payments, usually monthly, in arrears. Generally, payments in advance of services rendered are prohibited by 31 U.S.C. 3324. An exception is advance payments to state and local governments. 39 Comp. Gen. 285 (1959); 57 Comp. Gen. 399 (1978).

- (u) Gift or Nominal Rental Lease: Where space is to be obtained as a gift or at nominal rental, the policies and procedures for direct leasing, with the exception of competition, must be used. If the space is to be accepted under DAO 203-9, the proposed gift must be approved by the CFO/ASA.

CHAPTER 5 - DOC LEASED SPACE

5.6 Lease Administration, Management, and Files

5.6.1 Lease Administration

- (a) It is the responsibility of the RPCO to administer all executed leases to ensure that lessors fully comply with the provisions of the lease and furnish all required services, utilities and maintenance. Lease administration functions may be delegated to other employees, such as administrative contracting officers (ACO), contracting officer representatives (COR), or realty specialists.
- (b) Administrative functions that may be delegated to other employees include interpreting and enforcing lease provisions; negotiating and documenting lease changes; authorizing rental payments and rental deductions; administering operating and real estate tax escalation clauses; settling disputes; contracting for alterations; and taking other actions necessary to ensure that the lessor properly maintains the leased space and DOC receives the full benefits provided under the lease.

5.6.2 Designation of a Contracting Officer Representative (COR)

At the discretion of the RPCO, CORs may be appointed for DOC leases that cannot be effectively administered and managed by the RPOO. As a guideline, CORs should be appointed for all leased locations (including delegated GSA leases) housing DOC employees when the annual rental is more than a nominal amount, the space is 5,000 square feet or more, and the space is fully serviced. Upon request by the RPCO, OU program managers must designate an individual to serve as a COR and assist the RPCO in closely monitoring the lessor's performance.

Generally, and at the discretion of the RPCO, if the Government is responsible for the provision of building services or utilities, then there is no requirement for a COR responsible to the RPCO for the lease.

- (a) Letter of Designation: The RPCO will issue a letter of designation and necessary guidance and instructions to the COR and will include a copy of the lease, all

CHAPTER 5 - DOC LEASED SPACE

amendments, and floor plan(s). The RPCO will also inform the lessor in writing of the COR's designation.

- (b) **Maintaining Contact:** The RPCO and the COR will be responsible for maintaining contact with each other through periodic telephone calls, on-site visits and an annual review of the lease enforcement files.

5.6.3 Lease Management

The RPCO or the designee are responsible for effectively managing the lease, including, but not limited to, the following:

- (a) Day-to-day monitoring of the lessor's provision of building services, utilities and maintenance as required by the terms of the lease;
- (b) Conducting periodic inspections to ensure that the lessor fully complies with the terms of the lease;
- (c) Documenting and notifying the lessor of any instances of his/her failure to provide any of the building services, utilities and/or maintenance required by the lease;
- (d) Investigating tenant complaints and following up with the lessor to make sure that they have been promptly resolved;
- (e) Maintaining a complete file on all inspections and communications with the lessor; and
- (f) Documenting and referring to the DOC real property contracting officer for appropriate action any matters which cannot be resolved. (This function may be performed by an occupant of the building or by a facility management specialist/realty specialist.)

5.6.4 Lease Files

Refer to FAR Subpart 4.8, "Government Contract Files", for general requirements for establishing, maintaining, and disposing of contract files.

CHAPTER 5 - DOC LEASED SPACE

- (a) Establishment of Lease Files: The head of each RPOO must establish a file for each lease that it executes or administers.
- (b) Content of Lease Files: The following are examples of the records which, if applicable, should be maintained in lease files. These records should be kept readily accessible and in proper order:
 - (1) SF-81, "Request for Space," or equivalent, or statement of continuing need, complete with any space requirement worksheets and/or special requirements
 - (2) Justification for and approval of space requests and related documents, if required
 - (3) Certification of availability of funds
 - (4) Copy of the prospectus and notification of prospectus approval, if required
 - (5) The approval of the CFO/ASA if the average annual net rental is at or above \$500,000
 - (6) Copy of advertisement and advertisement order, if necessary
 - (7) Documentation of market survey
 - (8) Copy of the SFO and any changes to the SFO
 - (9) Copies of all offers from prospective lessors, together with supporting documents
 - (10) Abstract of offers
 - (11) Record of negotiations
 - (12) Cost and pricing data, if required
 - (13) Appraisal documents, if required
 - (14) Documentation of the prospective lessor's financial responsibility, when required

CHAPTER 5 - DOC LEASED SPACE

- (15) Documentation in support of inspection and verification of meeting the UFAS or, if not in compliance with the UFAS, the approved waiver of the UFAS
 - (16) Form CD-492, "Justification for Other Than Full and Open Competition," or equivalent, approved by the RPCO and higher authority, when required
 - (17) Documentation of lease award and notification to unsuccessful offerors
 - (18) OU approval of the lease award, if required by the RPCO
 - (19) Certification of inspection of the premises
 - (20) The original signed lease document, all lease modifications, and documentation supporting all modifications
 - (21) Approved deviations from any of the steps or documentation requirements of the lease process required by the CFR
 - (22) Approvals and disapprovals of requests for waivers or deviations from contract requirements
 - (23) Evidence of disclosure of mistakes
 - (24) Documentation of any protests
 - (25) Lease administration and lease management documents, including the letter designating the COR and notification of the lessor, if applicable
 - (26) Any appropriate documents concerning DOC lease payments.
- (c) Lease File Closeout:
- (1) All lease files should be closed at the expiration of the lease term unless they are renewed, superseded, succeeded or otherwise extended.

CHAPTER 5 - DOC LEASED SPACE

- (2) Prior to closing out a lease file, the RPCO must ensure that all actions required on the lease have been completed.
- (3) The RPOO must coordinate with the appropriate DOC budget office to ensure that payments terminate at the expiration of the lease.
- (d) Disposal of Lease Files: The RPOO must store and dispose of closed lease files as prescribed in FAR Section 4.805.