

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2008- B1]

Delegations of Lease Acquisition Authority - Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations

AGENCY: General Services Administration.

ACTION: Notice of Bulletin.

SUMMARY: The Government Accountability Office and the General Services Administration Office of Inspector General have reported that some Federal agencies using the delegated leasing authority issued to Federal agencies on September 25, 1996, are not following properly the instructions specified as a condition for use of the leasing delegation. The attached bulletin re-emphasizes and updates the conditions, restrictions and reporting requirements specified in the delegation of authority and its supporting information. This bulletin is in keeping with the spirit of Executive Order 13327, "Federal Real Property Asset Management," to maximize the increased governmentwide emphasis on real property inventory management. The Federal Management Regulation and any associated documents may be accessed at GSA's website at <http://www.gsa.gov/fmr>. Click on FMR Bulletins.

SUPPLEMENTARY INFORMATION: 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 leasing authority.

There have been several instances reported of agencies failing to meet the conditions required for use of the lease delegation:

1. Several agencies have failed to notify GSA prior to conducting a specific leasing action;
2. Semi-annual performance reports on use of the lease delegation are not being submitted to GSA on a regular basis;
3. Some agencies have exceeded the authority of the delegation, which is restricted to below prospectus level actions; and
4. Some agencies have used untrained and non-warranted and, therefore, unauthorized contracting personnel to execute contracts on behalf of the Government.

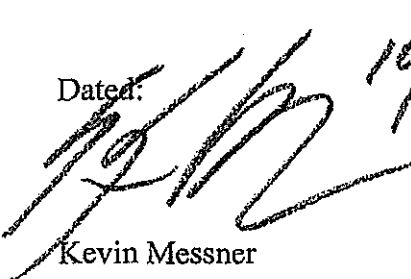
The following bulletin re-emphasizes and updates the conditions, restrictions, and reporting requirements applicable to GSA leasing delegations.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION].

FOR FURTHER INFORMATION CONTACT:

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Dated:



10/5/07

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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 2005-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 May 25, 2005. It contains information of a continuing nature and will remain in effect until canceled.

3. Background.

(a) GSA has the statutory authority for acquiring and providing Federal agencies with space. The General Purpose leasing delegation was an outgrowth of GSA's commitment to streamline its leasing operations. Under this program, GSA provided each Federal agency a simple choice: either engage GSA to acquire the space, or use the delegated leasing authority to perform the space acquisition on its own. This bulletin establishes new requirements for agencies requesting authorization to use the General Purpose and Special Purpose delegation authority and establishes revised reporting requirements, including the submission of documents to GSA at various points in the lease acquisition process, and requires agencies to have in place an organizational structure to address customer issues, correct property deficiencies and enforce all provisions of the lease. This bulletin also addresses requirements for another longstanding delegation for Categorical space, as currently provided in 41 CFR Part 102-73.

(b) Executive Order No. 13327, "Federal Real Property Asset Management" (69 F.R. 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 § 102-73.140] and (3) Special Purpose [41 CFR § 102-73.155]) are expected to apply these measures to their acquisitions.

(c) By letter of September 25, 1996, the 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.

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 GSA that suitable Government-controlled owned or vacant leased space cannot be provided for them. See 41 CFR § 102-73.10.

(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(g). The current threshold for each fiscal year can be accessed by entering GSA's website at <http://www.gsa.gov/annualprospectusthreshold>.

(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 501.603-1 of the General Services Administration Acquisition Manual (GSAM).

(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 added to or amended 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 the use of a warranted realty contracting officer, legal review and oversight, construction and inspection management, cost estimation, lease management and administration, and program oversight. Prior to each leasing action, the agency must conduct an assessment of its needs to establish technical requirements and the amount of space necessary to meet mission requirements. Additionally, agencies are expected to acquire space at charges consistent with prevailing market rates for comparable facilities in the community. Accountability for all leasing activities shall be coordinated through the agency's Senior Real Property Officer.

(g) As a condition for the use of GSA leasing delegation authorizations, agencies are required to make their lease files available for audit by GSA Office of Inspector General personnel or other GSA personnel or authorized agents as determined by the GSA Director, Real Estate Acquisition Division, or his or her successor.

(h) Agencies using the General Purpose delegation are required to provide GSA no less than 18 months advance notice of lease expiration, if there is a continuing need for the space and the agency wishes to use the delegation again to satisfy the requirement.

(i) Effective immediately upon issuance of this bulletin, agencies are no longer authorized to use the General Purpose delegation to enter into leases in excess of 19,999 rentable 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 rentable 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 AND FOR SPECIAL PURPOSE LEASE DELEGATIONS

INVOLVING 2,500 OR MORE SQUARE FEET OF SUCH SPECIAL PURPOSE SPACE.

Prior to instituting any new, succeeding, extension or superseding lease action under the General Purpose delegation or the Special Purpose delegation involving 2,500 or more square feet of such Special Purpose space, the head of a Federal agency or its designee shall submit a request for authorization to use this General or Special Purpose lease delegation authority, in writing, to the GSA Director for Real Estate Acquisition Division, Public Buildings Service, 1800 F Street, N.W., Washington, DC 20405, or his or her successor, to satisfy the agency's need for General or Special Purpose space. The request also may be submitted electronically to delegationrequest@gsa.gov. The requesting agency must submit:

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 conducting the procurement; such individual must fully meet the experience and training requirements of the contracting officer warrant program as specified in section 501.603-1 of the GSAM;
3. An acquisition plan for the procurement in accordance with the requirements specified by Subpart 507.1 - Acquisition Plans of the GSAM. A sample limited acquisition plan is available online at <http://www.gsa.gov/leasingform>;
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 and Executive Order 13006;
5. A floodplain check in accordance with Executive Order 11988, "Floodplain Management;"
6. An organizational structure and staffing plan to support the delegation, identifying 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 measures (lease cost); GSA's performance measures can be found on OMB's website at <http://www.whitehouse.gov/omb/expectmore/detail/10001157.2005.html>; and
8. The total amount of space required, any special requirements, and any associated parking requirements.

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 delegation authorization is cost-effective for the Government. Failure to demonstrate compliance with any of the enumerated factors shall 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 rentable square feet of General Purpose space.

The requesting agency may exercise the authority contained in this delegation only after the GSA Director for the Real Estate Acquisition Division, 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 its space need and GSA authorizes the agency to conduct the lease procurement. If the agency subsequently decides not to exercise the requested authority, it must provide written notice of such to the GSA Director for the Real Estate Acquisition Division, Public Buildings Service, or his or her successor.

(b) ADDITIONAL POST-AWARD SUBMITTAL REQUIREMENTS FROM REQUESTING AGENCY.

If the awarded lease is for an average annual rental in excess of \$100,000, including option periods and excluding the cost of operational services, within thirty days after the lease award, the agency must submit to the GSA Director for the Real Estate Acquisition Division, Public Buildings Service, or his or her successor, the following documents or evidence of compliance:

1. The fully-executed lease document and all attachments;
2. The solicitation for offers (SFO) (and any amendments issued during the procurement);
3. The pre-solicitation ad posted on FEDBIZOPPS or in a local publication;
4. If a sole source contract, a Justification for Other Than Full and Open Competition in accordance with section 6.303 of the Federal Acquisition Regulation (FAR) and sections 502.101 and 504.803 of the GSAM;

5. The market survey data identifying properties considered in connection with the space need, including historic buildings considered in accordance with Executive Order 13006;
6. Documentation of compliance with the National Environmental Policy Act of 1969, as amended, in accordance with 40 CFR § 1508.9 and GSA guidance;
7. Documentation that vending facilities will be provided in accordance with the Randolph-Sheppard Act;
8. The final scoring evaluation in accordance with OMB Circular A-11 (2002), Criteria and Scoring Ramifications for Operating and Capital Leases;
9. The Price Negotiation Memorandum, prepared in accordance with section 570.307 of the GSAM and section 15.406-3 of the FAR;
10. Documentation that the building meets all applicable fire and life safety requirements;
11. The seismic Compliance Certification from Successful Offeror consistent with Executive Order 12699 for new buildings (new lease construction) and Executive Order 12941 for existing buildings;
12. Copy of the Post-Award Synopsis posted in FEDBIZOPPS;
13. The small business subcontracting plan, if required, in accordance with section 19.702 of the FAR;
14. Documentation that the Excluded Parties List (also known as the Debarred Bidders List) was checked;
15. The pre-occupancy final inspection report verifying measurement of the demised space as shown on a CAD floorplan, correction of deficiencies, and punch-list items;
16. A Funds Availability Statement signed prior to lease award by a budget official with the requesting agency; and
17. 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.

To determine whether the delegation was in the Government's best interest, GSA shall evaluate whether a delegation was cost effective for the Government in the acquisition and delivery of the space. In evaluating cost-effectiveness, GSA shall consider the negotiated rental rate in comparison to the prevailing market rental rate for a similar class of building, and may consider factors as GSA deems appropriate, including, but not limited to, 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.

If the awarded lease is for an average annual rental of \$100,000 or less, including option periods and excluding the cost of operational services, the agency must submit to the GSA Director for the Real Estate Acquisition Division, Public Buildings Service, or his or her successor, the following documents or evidence of compliance:

1. The fully-executed lease document and all attachments;
2. If a sole source contract, a Justification for Other Than Full and Open Competition in accordance with section 6.303 of the Federal Acquisition Regulation (FAR) and sections 502.101 and 504.803 of the GSAM;
3. The market survey data identifying properties considered in connection with the space need, including historic buildings considered in accordance with Executive Order 13006;
4. The final scoring evaluation in accordance with OMB Circular A-11 (2002), Criteria and Scoring Ramifications for Operating and Capital Leases;
5. The Price Negotiation Memorandum, prepared in accordance with section 570.307 of the GSAM and section 15.406-3 of the FAR;
6. Copy of the Post-Award Synopsis posted in FEDBIZOPPS;
7. The small business subcontracting plan, if required, in accordance with section 19.702 of the FAR;
8. Documentation that the Excluded Parties List (also known as the Debarred Bidders List) was checked; and
9. A Funds Availability Statement signed prior to lease award by a budget official with the requesting agency.

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

(a) The bi-annual reporting of lease performance information for General Purpose, Categorical, and Special Purpose lease delegations to GSA's Office of Governmentwide Policy, as stated in FMR Bulletin 2005-B1 (Delegations of Lease Acquisition Authority - Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations) is no longer required. In its place, and 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 provide data on all leased assets acquired under a delegation from GSA.

The FRPP data elements that must be submitted for each leased asset include, but are not limited to:

1. Agency/Bureau Name;

2. Size;
3. Location; and
4. Type of Space.

Agencies will also have to indicate whether the leased asset was acquired through a General Purpose, 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 from the agency's Senior Real Property Officer. FRPP data concerning GSA lease delegation actions may be provided to GSA PBS 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. 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 have been amended from time to time, include, but are not limited to, the following:

1. Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58);
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. § 251 *et seq.*);
5. Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613);
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. § 254(a));
9. Davis-Bacon Act of 1931 (40 U.S.C. §§ (40 USC 3141-3148));
10. Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701-707);
11. Earthquake Hazards Reduction Act of 1977 (42 U.S.C. § 7701-7706);
12. Energy Policy Act of 1992 (42 U.S.C. § 8253);
13. Examination of Records (41 U.S.C. § 254d);
14. Leasing Authority (40 U.S.C. § 585);
15. Fire Administration Authorization Act of 1992 (15 U.S.C. § 2227);
16. Intergovernmental Cooperation Act of 1968 (40 U.S.C. §§ 901-905);
17. National Historic Preservation Act of 1966 (16 U.S.C. §§ 470-470w-6);
18. Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651-678);
19. Officials Not to Benefit (41 U.S.C. §22);
20. Prohibitions on Use of Appropriated Funds to Influence Federal Contracting (31 U.S.C. § 1352);
21. Prompt Payment Act (31 U.S.C. §§ 3901-3907);
22. Prospectus Authority (40 U.S.C. § 3307);
23. Randolph-Sheppard Act (20 U.S.C. § 107 *et seq.*);
24. Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157);
25. National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*);
26. Small Business Act (15 U.S.C. §§ 631 *et seq.*);
27. Rural Development Act of 1972 (42 U.S.C. § 3122);
28. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4651-4655.);
29. Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 690);
30. Executive Order No. 11375, "Equal Employment Opportunity" (Oct. 13, 1967, 32 FR 14303);
31. Executive Order No. 11988, "Floodplain Management" (May 24, 1977, 42 FR 26951);

32. Executive Order No. 11990, "Protection of Wetlands" (May 24, 1977, 42 FR 26961);
33. Executive Order No. 12072, "Federal Space Management" (Aug. 16, 1978, 43 FR 36869);
34. Executive Order No. 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" (Jan. 5, 1990, 55 FR 835);
35. Executive Order No. 13006, "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities" (May 1, 1996, 61 FR 26071);
36. Executive Order No. 13423, "Strengthening Federal Environmental, Energy and Transportation Management" (January 26, 2007, 72 FR 3919);
37. Executive Order No. 13327, "Federal Real Property Asset Management" (Feb. 4, 2004, 69 FR 5897);
38. Executive Order No. 12941, "Seismic Safety of Existing Federally Owned or Leased Buildings" (Dec. 5, 1994, 59 FR 62545);
39. Comprehensive Procurement Guideline For Products Containing Recovered Materials (40 CFR Chapter I Part 247);
40. OMB Circular A-11 (Capital Lease Scoring);
41. Federal Management Regulation (FMR) [41 C.F.R. Chapter 102]; and
42. General Services Administration Acquisition Manual (GSAM) (including the General Services Administration Acquisition Regulation (GSAR) [48 CFR Chapter 5]).