

FEMA Emergency and Disaster Leasing Process

1. Presidential Disaster Declaration.

- a. When the President issues a disaster declaration, representatives of GSA, FEMA, and other agencies deploy to the affected area. In accordance with the GSA/FEMA Memorandum of Agreement dated June 18, 2007 (Attachment 3), and Emergency Support Function #7 of the National Response Framework, GSA must provide contracting support services to FEMA consistent with mission assignments and tasks issued by FEMA.
- b. GSA regional managers will appoint a GSA coordinator to work with FEMA on all GSA activities related to disasters. Only GSA's coordinator or designee may accept mission assignments and tasks from FEMA.
- c. This RSL states GSA's standard procedures unless otherwise directed and changed in writing at the local command level or when deemed not to meet FEMA's operational and programmatic requirements in its response to the Presidential Emergency Declaration.

2. Leasing Authorities.

- a. Pursuant to 40 U.S.C. § 585, GSA may enter into a lease for the accommodation of a federal agency in buildings or improvements for a term of up to 20 years. Unimproved land is not covered under 40 U.S.C. §585 and GSA may only lease unimproved land for terms up to 1 year, pursuant to 40 U.S.C. § 581(c). Unimproved land is completely vacant land with no development. Examples of improvements include buildings, pavement, or utilities, either existing or to be provided by the Lessor. For the purposes of leasing authority, the improvements must facilitate occupancy. A lease for unimproved land may contain yearly renewal options to be exercised at the Government's discretion.
- b. The Contracting Officer shall immediately notify Central Office and the regional Portfolio office of any emergency leases that exceed prospectus limitations prior to the award of such a lease.

3. GSA Action Requested.

- a. FEMA will submit a Mission Assignment or task to the Emergency Support Function 7 leader (GSA's coordinator or designee) at the Regional Response Coordination Center or the Joint Field Office. Generally, FEMA requests for supplies, space or services will be submitted on a FEMA Form 90-136, *Action Request Form*, or other appropriate and approved tasking document.
- b. The form must have been approved by the appropriate FEMA Emergency Response Team Operations Section Chief or Acting Chief and a FEMA Comptroller/Finance Section funding official.
- c. The form must include the following information, at a minimum, in the *Justification/Statement of Work*:

- i. FEMA tracking number,
- ii. FEMA contact and phone number,
- iii. Type of space required (e.g., warehouse, office, land),
- iv. Related security requirements,
- v. Approximate amount of space required,
- vi. Nature of occupancy (e.g., Joint Field Office, Disaster Recovery Center, warehouse, travel trailer staging area),
- vii. Term (months or years), and
- viii. Desired location (city or county and state).

4. Request Transmitted to Realty Specialist.

- a. GSA's coordinator will forward the request form to the GSA realty services (RS) coordinator for the affected location who will then initiate lease actions. GSA realty specialists must not initiate leasing actions based on a verbal request and must not accept forms directly from FEMA.
- b. The RS coordinator must maintain a copy for tracking and assign the project to the appropriate RS contracting officer (RS/CO).

5. FEMA Consultation and Market Survey.

- a. The RS/CO must contact the FEMA representative to obtain complete information on the requirement and initiate a market survey to locate potential acceptable properties. In many cases, FEMA will identify specific locations on the request form along with the name and telephone number of the owners. FEMA often requests a specific property because of the need to be housed in a specific area, and the FEMA team has surveyed the area for sources. The RS/CO must also use sources such as internal contacts, current Lessors, area realtors, and onsite market surveys with FEMA to locate space. RS/COs must document the availability of sources and place the documentation in the permanent file. See paragraph 7 for information and limitations on the class justification for other than full and open competition (OTFO) for emergency leases for responders. If the class OTFO does not fit the facts then a separate OTFO must be prepared.
- b. The RS/CO should coordinate with the FEMA representative regarding the provision of law enforcement and security services provided through the Federal Protective Service (FPS) prior to the market survey. FPS services for emergency leases will be provided in accordance with provisions in the Memorandum of Agreement between DHS-FEMA and FPS (attachment 4 of this RSL). FPS should be included on the market survey to the extent practicable. The RS/CO must notify FEMA of apparent security deficiencies at sites surveyed.

6. FPS services and fees related to FEMA emergency leases

- a. For Stafford Act Emergency Leases, FPS services provided directly to FEMA are governed by the guidelines set forth in the joint DHS/FEMA -ICE/FPS MOA, dated April 2, 2008 (Attachment 4).
- b. FPS services provided for leases that were initially Stafford Act emergency leases, but then assume standard GSA reimbursable billing via an OA (in

accordance with the provisions of paragraph 20 of this RSL Attachment 1) must follow the established GSA – FPS protocols for FPS service provision and fee reimbursement.

7. Class OTFOs. The Federal Acquisition Regulation authorizes Class Justifications for Other than Full and Open Competition (OTFO) in support of emergency situations. Such OTFOs are typically approved when the need for a group of properties is of such an unusual and compelling urgency that the Government would be seriously injured unless the number of solicited sources is limited. One or more OTFOs for different types of leases may be in effect at any one time for RS/COs to reference. RS/COs may sign leases while the class OTFOs, based on the unusual and compelling urgency of the situation, are pending approval.
 - a. The Commissioner signed a GSA *Class Justification for Other than Full and Open Competition for Acquisitions of Space and Related Services to Support Federal Agencies Acting in Response to Emergencies OR Major Disaster Situations As Herein Specified* on November 5, 1992. The Justification is still valid for leases we do for FEMA and other agencies responding to a disaster. This justification must not be used for leases to provide replacement space, either temporary or permanent, for displaced agencies or space for displaced citizens. A copy of this justification follows as Attachment 2.
 - b. The RS/CO must include a certification in the lease contract file when relying upon the 1992 justification. Certification language is on the last page of the justification. It says in part, "The Contracting Officer anticipates being able to negotiate a fair and reasonable price consistent with market conditions and the Government's requirements." The RS/CO must document the agreed-upon price in relation to the current market as part of the certification, recognizing that market conditions for these leases may be considerably different than the market conditions prior to the disaster.
8. Term.
 - a. FEMA will have included the required lease term on the request form. If the lease is for unimproved land, GSA authority limits lease terms to 1 year; however, the RS/CO may add as many option years as appropriate. If the lease is for a building or for land with improvements, the term may be for up to 20 years.
 - b. Under the Stafford Act, FEMA has authority to provide direct temporary housing assistance to individuals and households displaced as a result of disasters. That includes providing temporary trailer homes, etc. That authority necessarily includes the authority to lease land and property upon which to place the temporary housing. FEMA's authority is 18-month authority, so upon FEMA's delegation to GSA, the RS/CO will have authority to enter into leases for unimproved land for firm terms up to 18 months.
9. Negotiations.

- a. The RS/CO must contact the owner(s) and conduct negotiations.
- b. FEMA has agreed to instruct its contractors and agents to refrain from engaging in substantive negotiations or discussions with prospective Lessors regarding terms and conditions, including proposed pricing, when the lease is to be entered into by GSA. The RS/CO retains full responsibility and authority for negotiating lease terms and must not yield to pressures from any level or source to relinquish his or her responsibility to due diligence, including determinations of fair and reasonable pricing. The RS/CO will consult the Office of General Counsel for support as necessary.
- c. Fair and Reasonable Rates. The RS/CO must make determinations as to fair and reasonable rates. This can be accomplished in various ways depending on the circumstances and the RS/CO's knowledge of the market.
 - i. For leased space, the RS/CO must employ standard leasing protocols in making a fair and reasonable rate determination.
 - ii. Leased Land.
 - (a) The RS/CO should compare offered land rents to rental rates for land having the same or a similar highest and best use to the land they expect to lease. That is, retail land rental rates for retail oriented land, industrial land rental rates for industrial land, agricultural land rental rates for use of agricultural land for such as pasture and vacant unimproved lands, fields with crops growing, and so forth.
 - (b) Consideration of the land comparables to be used should be given to the amenities present at the site GSA intends to lease such as zoning, land with active businesses on site, on and off-site pavement and other site amenities, utilities that are in place, and other infrastructural improvements. Where offered land rents mandate GSA reimburse the offeror for any cost or service in addition to the offered land rental rate, comparison with land comparables or other reasonable supporting data must be provided to adequately account for these additional costs.
 - (c) Consideration of the local market conditions and circumstances after the disaster may be considered in determining fair and reasonable pricing.
 - (d) When the value of land and rental rates for land are not reasonably obvious or readily supportable, National Office strongly advises the RS/CO to consult with GSA Regional appraisers or other local land-market experts (real estate brokers, auctioneers, tax assessors and real estate appraisers) to determine the market value and adequate rates of return on land for determining reasonable land rental rates, and utilize all available other resources (to include local and regional published data) in making such a determination.
 - (e) Regions should make every reasonable effort to make appraisal resources available to the RS/CO, including available appraisal staff, land valuation details, and other Portfolio experts, to assist the RS/CO in making such determinations for land leases.
 - iii. Renewal Options. When the RS/CO elects to exercise a lease renewal option in accordance with paragraph 8a of this attachment, the RS/CO should reevaluate market conditions to determine if the option rate is a

fair and reasonable rate. Market conditions under disaster settings can change rapidly. It is suggested that on the 9-month anniversary of the land lease, the RS/CO shall consult with the Regional appraiser regarding market conditions and market data before exercising a renewal option. The appraiser can advise on the need for an appraisal to support renegotiation of the lease rate if market conditions warrant.

- iv. The final responsibility and determination of fair and reasonable rates for these emergency situations will be at the discretion of the RS/CO. The RS/CO must document the file on how this determination was made.
9. Regional Management Control. National Office recommends that the regions establish an informal pricing consultation process prior to award to encourage RS/CO consulting with a peer or higher level associate who is not involved in the particular acquisition. Documentation may be informal.
 10. Condemnation. If a fair and reasonable price consistent with current market conditions cannot be negotiated, it may be necessary for the Government to condemn the leasehold interest. In such situations the RS/CO must consult with GSA Office of General Counsel at the earliest possible time.
 11. Environmental/NEPA. GSA is the acquisition agency responsible and will lead, unless otherwise agreed to by FEMA, in addressing environmental issues, including performing National Environmental Policy Act (NEPA) analyses as applicable. FEMA will serve as a cooperating agency. To the maximum extent practicable, consistent with the GSA NEPA Desk Guide, rely on categorical exclusions or environment assessments and findings of no significant impact for the proposed leasing action. If an environmental assessment or environmental impact statement is necessary coordinate with FEMA as required.
 - a. In every acquisition, the RS/CO must forward all NEPA documentation received to the Office of General Counsel assigned to the FEMA response team for review. The RS/CO must also consult with regional environmental program officials to assist in the reviews. If a concern is raised in this review, reviewers must consult with FEMA and/or PBS national environmental program officials for resolution.
 - b. The RS/CO must include a copy of the final NEPA findings, analysis, and concurrence in the lease file.
 12. Occupancy Agreements. GSA and FEMA have agreed not to require Occupancy Agreements for emergency leases that will be directly billed to FEMA. The RS/CO must advise and consult with FEMA throughout the process regarding available space for lease and anticipated costs. When a FEMA emergency lease requirement can be filled in vacant existing owned or leased space, an Occupancy Agreement will be required, and standard pricing policies apply. In such instances, the standard FEMA AB code should be used for STAR project purposes (AB code 7060 **must not** be used in those instances). Further, standard DHS-FPS security fees shall also apply.

13. Minimum Content of Emergency Lease Contracts.

- a. The RS/CO must use a Standard Form 2, *U.S. Government Lease for Real Property*; or GSA Form 3626, *US Government Lease for Real Property (Short Form)*; a lease rider; a GSA Form 3518, *Representations and Certifications*; and GSA Form 3517, *General Clauses*, in emergency leases and include the full text GSA Form 3516A, *Solicitation Provisions*, in solicitations.
- b. If the full text of standard SFO conditions and performance requirements are not incorporated, leases must, at a minimum, require –
 - i. A Certificate of Occupancy, or equivalent as stated in applicable sections of the SFO.
 - ii. Fire and life safety compliance, in accordance with State and Local codes, and applicable sections of the SFO.
 - iii. Accessibility compliance, in accordance with ABAAS (Architectural Barriers Act Accessibility Standards) requirements, and applicable sections of the SFO.
 - iv. OSHA, Asbestos and other environmental requirements, in accordance with State and Local codes, and applicable sections of the SFO.
 - v. Services, utilities, and maintenance.

These minimum conditions and performance requirements are stated in the Standard Conditions and Requirements section of the GSA Form 3626, *U.S. Government Lease for Real Property (Short Form)*. The text may be incorporated directly from the GSA Form 3626.

- c. When the lease cost will not exceed the Simplified Lease Acquisition Threshold for space in a building, the RS/CO may consider use of a GSA Form 3626 in place of the SF 2.
- d. Central Contractor Registration is not required for emergency leases, (FAR § 4.1102 (3) (ii)), but see paragraph 20 of this RSL for CCR treatment should the lease become a longer term need.

14. Request for FEMA Approval. After conducting negotiations, the RS/CO must provide a cost estimate to the GSA's coordinator referencing the FEMA request form action number. GSA's coordinator will request that FEMA develop a corresponding FEMA Form 40-1, *Requisition and Commitment for Services and Supplies*, approving the proposed lease. GSA will not accept the form without a funds citation for payment and a name in the funds certification box.

15. Award. The RS/CO may award the lease when the Form 40-1 is received with the funding code and contract number.

16. Lease Administration and Lease Management.

- a. The RS/CO must include the FEMA Procurement Instrument Identifier (PIID) number, as issued on an approved FEMA 40-1, along with a regionally issued GSA lease number on emergency leases. If any Stafford Act emergency leases will transition to GSA billing in accordance with paragraph 20 below, the existing Lease number will be retained, however other project information must be updated accordingly (ie: STAR, New AB Code, Signed OA, etc).

- b. GSA Property Management will perform lease administration and lease management for FEMA emergency leases. The GSA contracting officer may designate qualified and trained FEMA personnel as COR's or COTR's for specifically enumerated duties under a particular lease. In such cases GSA retains the contract administration responsibilities unless specifically delegated upon request. See the DHS/FEMA, GSA MOU, section IV, A.7, and B.8 and 9.
- c. With specific respect to leasehold interests in land for FEMA, GSA should not assume any responsibility related to the use, management, operation demobilization of facilities and functions related to the leased property, including but not limited to: providing site infrastructure, site management, repair and replacement of facilities, social services, decommissioning and demobilization requirements, removal of improvements, and site restoration requirements.

17. Other Administrative Matters.

- a. The RS/CO must keep a log of regular and overtime hours and expenses in support of projects for reporting to GSA's coordinator as requested.
- b. Property managers must keep a log of regular and overtime hours and expenses in support of lease administration for all GSA emergency leases.
- c. FPDS. FEMA emergency leases must be reported by GSA in the Federal Procurement Data System (FPDS), except for any FPDS entries required to be made after contract administration has been delegated to FEMA for a particular lease or leases. All information reported by GSA into FPDS shall be obtained through STAR.
- d. Lease Files. The region geographically containing the declared disaster area must maintain all original lease documents and pre-award documentation, and input this documentation into eLease for recordkeeping purposes. If an RS/CO is deployed from another region to work on leases during disaster recovery, the deployed RS/CO must consult with the affected regional managers to arrange for the proper assignment and physical transfer of those leases and project files to an RS/CO assigned to the affected region. File retention and disposal will be according to standard schedules for GSA leases.
- c. STAR Records. PBS has identified a unique AB Code for FEMA Stafford Act emergency leases, which is **7060**. This unique code will simplify recordkeeping and reporting. All FEMA emergency leases shall be entered into STAR according to standard lease input procedures. Since CCR registration is not required for emergency Stafford Act leases, and STAR will require an input for CCR information; use of zero- fill (0) for those fields is suggested for consistency. In instances where a Stafford Act emergency lease transfers to standard GSA OA billing, a new STAR project should be initiated, with the standard FEMA AB Code used, BA-53 Certification of Funds obtained, along with a signed OA from FEMA.
- d. The RS/CO must transmit a complete copy of the lease contract file to FEMA.

18. Additional Management Controls. GSA National Office will maintain electronic copies of this RSL or successor documents on the Realty Policy page of GSA InSite.

FEMA forms and GSA lease templates, delegations of authority, and other directives and resource documents will also be maintained.

19. Contract Payments. For real property leases FEMA will initially be responsible for making timely payments to the Lessor. Under this "direct billing" approach, GSA will utilize FEMA funding codes/citations to support lease awards, and such leases will instruct Lessors to bill FEMA directly. No later than six (6) months following a lease award, FEMA, in consultation with GSA, will determine whether a given lease should continue to utilize the "direct billing" approach or be converted to the "reimbursable billing" approach. See the DHS/FEMA, GSA MOU, section VI for details on Contract Payment and Reimbursement.
 - a. If FEMA decides to keep the lease for an extended term, they must provide a new or amended FEMA Form 40-1 prior to the RS/CO extending the lease, unless the original Form 40-1 covers a longer term.
 - b. If it is determined to convert a given lease to the reimbursable approach (OA billing) the RS/CO must issue a supplemental lease agreement amending the existing lease to direct the lessor to bill GSA thereafter. Subsequent non-Stafford Act lease actions will be subject to standard GSA leasing procedures. In addition, FEMA will be required to sign an Occupancy Agreement (OA), as set forth in paragraph c below, prior to GSA issuing an SLA converting a lease to reimbursable billing.
 - c. FEMA will sign an Occupancy Agreement enumerating all terms, costs, and conditions for the lease location. Conventional pricing policy principles will apply when determining whether the space is cancellable or non-cancellable (see also Pricing Policy Desk Guide Chapter 3.2.10, PBS Fee). For land leases, the Contracting Officer should also apply pricing policy principles in determining the whether the OA should be cancellable or non-cancellable, and exercise professional discretion in application of such a determination accordingly.
 - d. The RS/CO must require the lessor to register in the Central Contractor Registration (CCR) system. Registration must be completed no later than 60 days after the execution date of the SLA directing the Lessor to bill GSA.