



General Services Administration
Public Buildings Service
Washington, DC 20405

DEC 20 1995

PER-95-06

MEMORANDUM FOR ALL REAL PROPERTY LEASING ACTIVITIES
(PER DISTRIBUTION LIST)

FROM:

GLEN W. OVERTON
ACTING COMMISSIONER - P

A handwritten signature in black ink, appearing to read "Glen W. Overton", written over the typed name.

SUBJECT:

Effective Date of Memorandum for All Real Property Leasing
Activities (RE: Executive Order 12072/Implementation of Urban
Location Policy)

Attached is an advance copy of our Memorandum on the implementation of E.O. 12072.

The effective date of the attached Memorandum shall be the date of publication in the Federal Register of the amendment to the FPMR described in the Note to Paragraph 1 of the Memorandum. I encourage all affected real property leasing activities to take such actions, including establishing appropriate channels of communication with local officials, as will facilitate the implementation of E.O. 12072 in accordance with the attached Memorandum immediately upon publication of the amendment to the FPMR.

Attachment



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MEMORANDUM FOR ALL REAL PROPERTY LEASING ACTIVITIES
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FROM: GLEN W. OVERTON
ACTING COMMISSIONER - P

SUBJECT: Executive Order 12072
Implementation of Urban Location Policy

1. Purpose. This acquisition letter is issued to ensure that all personnel comply with their responsibilities under E.O. 12072 (Attachment 1) and GSA's regulations implementing E.O. 12072^{NOTE} and to clarify GSA procedures with respect to the policy for location of Federal facilities in urban areas.
2. Background. On August 16, 1978, President Carter issued Executive Order 12072, which directs Federal agencies to give first consideration to centralized business community areas when filling federal space needs in urban areas. The objective of the Executive order is that Federal facilities and Federal use of space in urban areas shall serve to strengthen the Nation's cities and to make them attractive place to live and to work. This Administration has reaffirmed its commitment to Executive Order 12072 and to its salutary goals. To this end, the Federal government must locate its facilities, whenever possible, in areas which contribute to the revitalization of America's urban communities.
3. Effective Date/Expiration Date. These instructions are effective upon receipt in real estate activities, and will expire 12 months from the date of issuance unless otherwise extended.
4. Cancellation. None.
5. Applicability. All real property activities.
6. Instructions/Procedures. Business practices are attached (Attachment 2). Should you have any questions regarding this acquisition letter, please contact Hilary Peoples, Assistant Commissioner, Office of Commercial Broker, on (202) 501-1025. Thank you for your attention to this matter.

Attachments

^{NOTE} It is anticipated that the provisions of Federal Property Management Regulation (FPMR) D-76, Section 101-17.205 which relates to urban location policy will be amended in the near future to reflect the guidance contained in³, Section IQ I- this acquisition letter. A draft FPMR amendment reflecting this guidance is attached as Attachment 3.

Executive Order 12072
Federal Space Management
August 16, 1978

By the authority vested in me as President of the United States of America by Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)), and in order to prescribe appropriate policies and directives, not inconsistent with that Act and other applicable provisions of law, for the planning, acquisition, utilization, and management of Federal space facilities, it is hereby ordered as follows:

1-1. Space Acquisition.

1-101. Federal facilities and Federal use of space in urban areas shall serve to strengthen the Nation's cities and to make them attractive places to live and work. Such Federal space shall conserve existing urban resources and encourage the development and redevelopment of cities.

1-102. Procedures for meeting space needs in urban areas shall give serious consideration to the impact a site selection will have on improving the social, economic, environmental, and cultural conditions of the communities in the urban area.

1-103. Except where such selection is otherwise prohibited, the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials.

1-104. The process of meeting Federal space needs in urban areas shall be consistent with the policies of this Order and shall include consideration of the following criteria:

- (a) Compatibility of the site with State, regional, or local development, redevelopment, or conservation objectives.
- (b) Conformity with the activities and programs of other Federal agencies.
- (c) Impact on economic development and employment opportunities in the urban area, including the utilization of human, natural, cultural, and community resources.
- (d) Availability of adequate low and moderate income housing for Federal employees and their families on a nondiscriminatory basis.
- (e) Availability of adequate public transportation and parking and accessibility to the public.

1-105. Procedures for meeting space needs in urban areas shall be consistent with the policies of this Order and shall include consideration of the following alternatives:

- (a) Availability of existing Federally controlled facilities.
- (b) Utilization of buildings of historic, architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2507, 40 U.S.C. 612a).
- (c) Acquisition or utilization of existing privately owned facilities.
- (d) Construction of new facilities.
- (e) Opportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.

1-106. Site selection and space assignments shall take into account the management needs for consolidation of agencies or activities in common or adjacent space in order to improve administration and management and effect economies.

1-2. Administrator of General Services.

1-201. The Administrator of General Services shall develop programs to implement the policies of this Order through the efficient acquisition and utilization of Federally owned and leased space. In particular, the Administrator shall:

- (a) Select, acquire, and manage Federal space in a manner which will foster the policies and programs of the Federal government and improve the management and administration of government activities.
- (b) Issue regulations, standards, and criteria for the selection, acquisition, and management of Federally owned and leased space.

(c) Periodically undertake surveys of space requirements and space utilization in the Executive agencies.

(d) Ensure, in cooperation with the heads of Executive agencies, that their essential space requirements are met in a manner that is economically feasible and prudent.

(e) Make maximum use of existing Federally controlled facilities which, in his judgment, are adequate or economically adaptable to meeting the space needs of Executive agencies.

(f) Annually submit long-range plans and programs for the acquisition, modernization, and use of space for approval by the President.

1-202. The Administrator is authorized to request from any Executive agency such information and assistance deemed necessary to carry out his functions under this Order. Each agency shall, to the extent not prohibited by law, furnish such information and assistance to the Administrator.

1-203. In the process of meeting Federal space needs in urban areas and implementing the policies of this Order, the Administrator shall:

(a) Consider the efficient performance of the missions and programs of the agencies, the nature and function of the facilities involved, the convenience of the public served, and the maintenance and improvement of safe and healthful working conditions for employees.

(b) Coordinate proposed programs and plans for facilities and space with the Director of the Office of Management and Budget.

(c) Consult with appropriate Federal, State, regional, and local government officials and consider their recommendations for and objections to a proposed selection site or space acquisition.

(d) Coordinate proposed programs and plans for facilities and space in a manner designed to implement the purposes of this Order.

(e) Prior to making a final determination concerning the location of Federal facilities, notify the concerned Executive agency of an intended course of action and take into account any additional information provided.

1-204. In ascertaining the social, economic, environmental and other impacts which site selection would have on a community, the Administrator shall, when appropriate, obtain the advice of interested agencies.

1-3. General Provisions.

1-301. The heads of Executive agencies shall cooperate with the Administrator in implementing the policies of this Order and shall economize on their use of space. They shall ensure that the Administrator is given early notice of new or changing missions or organizational realignments which affect space requirements.

1-302. Executive agencies which acquire or utilize Federally owned or leased space under authority other than the Federal Property and Administrative Services Act of 1949, as amended, shall conform to the provisions of this Order to the extent they have the authority to do so.

1-303. Executive Order No. 11512 of February 27, 1970, is revoked.

JIMMY CARTER
THE WHITE HOUSE,
August 16, 1978.
Exec. Order No. 12072, 43 FR 36869

EXECUTIVE ORDER 12072
IMPLEMENTATION of URBAN LOCATION POLICY - BUSINESS PRACTICES

1. CBA Location - First Consideration.

- a. E.O. 12072 requires that "the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and other areas of similar character, including other specific areas which may be recommended by local officials (CBAs)." E.O. 12072, § 1-103.
- b. First consideration means that when existing Government owned or controlled space is unavailable¹, an agency request for space in an urban area must be satisfied within the applicable CBA unless the requesting agency provides GSA with a written justification explaining why the agency program function(s) involved cannot be efficiently performed within the CBA. This requirement affects all space requests, including those for expiring leases. Delineated areas (specific boundaries within which space will be obtained to satisfy an agency space requirement) may be expanded beyond, but still include, CBAs, but only as provided in this acquisition letter.

2. Agency Justifications.

- a. In keeping with the goals of Executive Order 12072 and the Administration's commitment to its policies, agencies bear a heavy burden in justifying a location outside of a CBA. Accordingly, the agency's written justification must set forth facts and considerations sufficient to demonstrate that first consideration has been given to the CBA and support the determination that the agency program function(s) involved cannot be efficiently performed within the CBA. Specifically, justifications must address, at a minimum, "the efficient performance of the missions and programs of the agencies, the nature and function of the facilities involved, the convenience of the public served, and the maintenance and improvement of safe and healthful working conditions for employees." E.O. 12072, § 1-203(a).
- b. The sufficiency of some justifications will be readily apparent, as for example, an FAA request for location at an airport that is located outside of a CBA.² Justifications based on executive or personnel preferences or other matters which

¹ E.O. 12072 requires the Administrator to "[m]ake maximum use of existing Federally controlled facilities which, in his judgment, are adequate or economically adaptable to meeting the space needs of Executive agencies." E.O. 12072, § 1-201(e).

² Executive Order 12072 provides that "space assignments shall take into account the management needs for

do not have a material and significant adverse impact on the efficient performance of agency program functions are insufficient.

- c. FPMR Temporary Regulation D-76 provides that requesting agencies must comply with all requirements of E.O. 12072 prior to submitting their request for space in urban areas to GSA. FPMR Temp. Reg. D-76, § 101-17.205(a). Agency justifications will be submitted to and reviewed by GSA. GSA is responsible for approving the final delineated area applicable to an agency's proposed space action. As the procuring agency, GSA must conduct all acquisitions in accordance with the requirements of the Executive order and other applicable laws and regulations.

3. Delineated Areas.

- a. The Competition in Contracting Act (CICA) requires that an agency "specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement." 41 U.S.C. § 253a(a)(1)(A). CICA also requires that agency solicitations "include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law." 41 U.S.C. § 253a(a)(2)(B). Therefore, the anticipated degree of competition within the CBA may be considered in determining whether restricting the delineated area to the CBA meets the requirements of CICA.³
- b. Where it is determined that an acquisition should not be restricted to the CBA, GSA may expand the delineated area in consultation with the requesting agency and local officials. The CBA must be included in such an expanded area.

consolidation of agencies or activities in common or adjacent space in order to improve administration and management and effect economies." E.O. 12072, § 1-106. Justifications that rely on consolidation or adjacency requirements must be carefully reviewed for legitimacy. E.O. 12072 also directs the Administrator to "[e]nsure, in cooperation with the heads of Executive agencies, that their essential space requirements are met in a manner that is economically feasible and prudent." Agency justifications that rely on budget or other fiscal restraints for locating outside the CBA will likewise be subject to careful review for legitimacy.

³ The General Accounting Office has specifically ruled that GSA may limit its consideration of proposals for office space to those offering space within an urban area's CBA based on E.O. 12072. H&F Enterprises, B-251181.2, July 13, 1993, 93-2 C.P.D. par. 16.

4. Review and Approval of Decisions to Locate Outside the CBA or to Expand the Delineated Area Beyond the CBA.

The Regional Administrator shall review and concur in a decision to fill an agency's space requirements of 25,000 square feet or greater either outside the CBA, or to expand the delineated area to include non-CBA areas. Written notice of each such decision shall be provided to the Commissioner of the Public Building Service (PBS).

5. Agency's Rights to Obtain Review of Delineated Areas.

- a. Disagreements concerning delineated area should be resolved early in the requirements development process. Potential for disagreements should be minimized by advising agencies of their and GSA's responsibilities under E.O. 12072.
- b. If an agency disagrees with a delineated area for a space action for less than 25,000 square feet, at the written request of the agency, the appropriate Assistant Regional Administrator shall review the delineated area and make a final decision.
- c. If an agency disagrees with the delineated area for a space action of 25,000 square feet or greater, the agency may request, in writing, that the Commissioner of PBS refer the matter to an interagency council for decision. An interagency council will be comprised of the Administrator of General Services or designee, the Secretary of Housing and Urban Development, or designee, and such other Federal official(s) as the Administrator may appoint.
- d. During the review process, GSA will proceed with requirements development and other activities related to the requesting agency's space request. A solicitation for offers will not be issued, however, until all delineated area issues have been finalized and resolved.

6. Consultation with Local Officials.

- a. E.O. 12072 requires that GSA "[c]onsult with appropriate Federal, State, regional, and local governmental officials and consider their recommendations for and objections to a proposed selection site or space acquisition." E.O. 12072, § 1-203(c). This consultation process is part of the requirements development process and must be initiated early in the process where an agency has proposed either a non-CBA delineated area or an expanded delineated area including CBA as well as non-CBA areas. The consultation process must continue, as necessary and appropriate, throughout the acquisition cycle.

- b. Regional GSA personnel shall provide appropriate Federal, State, regional, and local officials such notice as will keep them reasonably informed about GSA's proposed space action. For all proposed space actions with delineated areas either partially or wholly outside the CBA, regional personnel shall consult with such officials by providing them with written notice, by affording them a proper opportunity to respond, and by considering all recommendations for and objections to the proposed space action. This consultative process is consistent with the fully informed and well considered decision contemplated by the Executive order.

- c. In addition, local officials shall be contacted on a regular basis to verify CBA boundaries. If there is any doubt as to the geographic boundaries of the CBA in a particular community, the appropriate decisional official or body (e.g., mayor, city council) in the local government shall be consulted.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

Assignment and Utilization of Space

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Interim Rule with Request for Comments

SUMMARY: This interim rule begins the process of replacing Part 101-17 of the Federal Property Management Regulations (FPMR). Policy and procedures regarding the assignment and utilization of space have been provided by a series of temporary regulations since 1982, the most current being FPMR Temporary Regulation D-76 which went into effect on August 26, 1991. This interim rule repeals the outdated and superseded permanent FPMR Part 101-17 and provides new guidance concerning the location of Federal facilities in urban areas.

DATES: This interim rule is effective upon publication in the Federal Register. Comments should be submitted on or before 30 calendar days following publication in the Federal Register.

ADDRESS: Comments should be submitted to the General Services Administration, Public Buildings Service (PG), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Real Property Policy, at (202) 501-1737.

SUPPLEMENTARY INFORMATION: The purpose of this interim rule is to provide new, permanent FPMR guidance regarding the location of Federal facilities in urban areas.

On August 16, 1978, President Carter issued Executive Order 12072, which directs Federal agencies to give first consideration to centralized community business areas when filling federal space needs in urban areas. The objective of the Executive order is that Federal facilities and Federal use of space in urban areas serve to strengthen the nation's cities and make them attractive places to live and to work. This regulation serves to reaffirm this Administration's commitment to Executive Order 12072 and its goals.

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. (5 U.S.C. 601, *et seq.*). An initial regulatory flexibility analysis has therefore not been performed.

The Paperwork Reduction Act does not apply to this action because the proposed changes to the Federal Property Management Regulations do not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501, *et seq.*

List of Subjects in 41 CFR Part 101-17

Administrative practices and procedures, Federal buildings and facilities, Government real property management.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c)

Accordingly, it is proposed to amend 41 CFR Part 101-17 by deleting all subparts and sections in their entirety and by adding a new § 101-17.205 to read as follows:

“SUBCHAPTER D - PUBLIC BUILDINGS AND SPACE

PART 101-17 – ASSIGNMENT AND UTILIZATION OF SPACE

§101-17.205 Location of Space

(a) Each Federal agency is responsible for identifying its geographic service area and the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable statutes, regulations and policies. Specifically, under the Rural Development Act of 1972, as amended, 42 U.S.C. § 3122, agencies are required to give first priority to the location of new offices and other facilities in rural areas. When agency mission and program requirements call for location in an urban area, agencies must comply with Executive Order 12072, August 16, 1978, 3 CFR 213 (1979), which requires that first consideration be given to CBAs and other designated areas. The agency shall submit to GSA a written statement explaining the basis for the delineated area.

(b) GSA shall survey agencies' mission, housing, and location requirements in a community and include these considerations in community-based policies and plans. These plans shall provide for the location of federally-owned and leased facilities, and other interests in real property including purchases, at locations which represent the best overall value to the Government consistent with agency requirements.

(c) Whenever practicable and cost-effective, GSA will consolidate elements of the same agency or multiple agencies in order to achieve the economic and programmatic benefits of consolidation.

(d) (1) GSA will consult with local officials and other appropriate Government officials and consider their recommendations for, and review of, general areas of possible space or site acquisition. GSA will advise local officials of the availability of data on GSA plans and programs, and will agree upon the exchange of planning information with local officials. GSA will consult with local officials to identify central business areas (CBAs).

(2) With respect to an agency's request for space in an urban area, GSA shall provide appropriate Federal, State, regional, and local officials such notice as will keep them reasonably informed about GSA's proposed space action. For all proposed space actions with delineated areas either partially or wholly outside the CBA, GSA shall consult with such officials by providing them

with written notice, by affording them a proper opportunity to respond, and by considering all recommendations for and objections to the proposed space action. All contacts with such officials relating to proposed space actions must be appropriately documented in the official procurement file.

(e) GSA is responsible for reviewing an agency's delineated area to confirm that, where appropriate, there is maximum use of existing Government-controlled space and that established boundaries provide competition when acquiring leased space.

(f) In satisfying agency requirements in an urban area, GSA will review an agency requested delineated area to ensure that the area is within the CBA. If the delineated area requested is outside the CBA, in whole or part, an agency must provide written justification to GSA setting forth facts and considerations sufficient to demonstrate that first consideration has been given to the CBA and to support the determination that the agency program function(s) involved cannot be efficiently performed within the CBA.

(g) Agency justifications for locating outside CBAs must address, at a minimum, the efficient performance of the missions and programs of the agencies, the nature and function of the facilities involved, the convenience of the public served, and the maintenance and improvement of safe and healthful working conditions for employees.

(h) GSA is responsible for approving the final delineated area. As the procuring agency, GSA must conduct all acquisitions in accordance with the requirements of all applicable laws, regulations, and Executive orders. GSA will review the identified delineated area to confirm its compliance with all applicable laws, regulations, and Executive orders, including the Rural Development Act of 1972, as amended, the Competition in Contracting Act, as amended, 41 U.S.C. §§ 252-266, and Executive Order 12072.

(i) Executive Order 12072 provides that "space assignments shall take into account the management needs for consolidation of agencies or activities in common or adjacent space in order to improve administration and management and effect economies." Justifications that rely on consolidation or adjacency requirements will be carefully reviewed for legitimacy.

(j) Executive Order 12072 directs the Administrator of General Services to "[e]nsure, in cooperation with the heads of Executive agencies, that their essential space requirements are met in a manner that is economically feasible and prudent." Justifications that rely on budget or other fiscal restraints for locating outside the CBA will be carefully reviewed for legitimacy.

(k) Justifications based on executive or personnel preferences or other matters which do not have a material and significant adverse impact on the efficient performance of agency program functions are not acceptable.

(l) In accordance with the Competition in Contracting Act, GSA may consider whether restricting the delineated area to the CBA will provide for competition when acquiring leased space. Where it is determined that an acquisition should not be restricted to the CBA, GSA may

expand the delineated area in consultation with the requesting agency and local officials. The CBA must continue to be included in such an expanded area.

(m) If, based on its review of an agency's requested delineated area, GSA concludes that changes are appropriate, GSA will discuss its recommended changes with the requesting agency. If after discussions the requesting agency does not agree with GSA's delineated area recommendation, the agency may take the steps described below. If an agency elects to request a review of the GSA's delineated area recommendation, GSA will continue to work on the requirements development and other activities related to the requesting agency's space request. GSA will not issue a solicitation to satisfy an agency's space request until all requested reviews have been resolved.

(1) For space actions of less than 25,000 square feet, an agency may request a review of GSA's delineated area recommendation by submitting a written request to the responsible Assistant Regional Administrator for the Public Buildings Service. The request for review must state all facts and other considerations and must justify the requesting agency's proposed delineated area in light of Executive Order 12072 and other applicable statutes, regulations, and policies. The Assistant Regional Administrator will issue a decision within fifteen (15) working days. The decision of the Assistant Regional Administrator will be final and conclusive.

(2) For space actions of 25,000 square feet or greater, a requesting agency may request a review of GSA's delineated area recommendation by submitting a written request to the Commissioner of the Public Buildings Service that the matter be referred to an interagency council for decision. The interagency council will be comprised of the Administrator of General Services or his/her designee, the Secretary of Housing and Urban Development, or his/her designee, and such other Federal official(s) as the Administrator may appoint.

(n) The presence of the Federal Government in the National Capital Region (NCR) is such that the distribution of Federal installations will continue to be a major influence in the extent and character of development. These policies shall be applied in the GSA National Capital Region, in conjunction with regional policies established by the National Capital Planning Commission and consistent with the general purposes of the National Capital Planning Act of 1959 (66 Stat. 781), as amended. These policies shall guide the development of strategic plans for the housing of Federal agencies within the National Capital Region.

(o) Consistent with the policies cited in paragraphs (a), (b), (c) and (e) above, the use of buildings of historic architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505) will be considered as alternative sources for meeting Federal space needs.

(p) As used in § 101-17.205, the following terms have the following meanings:

(1) "CBA" means the centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials in accordance with Executive Order 12072.

(2) "Delineated area" means the specific boundaries within which space will be obtained to satisfy an agency space requirement.

(3) "Rural area" means any area that (i) is within a city or town if the city or town has a population of less than 10,000 or (ii) is not within the outer boundaries of a city or town if the city or town has a population of 50,000 or more and if the adjacent urbanized and urbanizing areas have a population density of more than 100 per square mile.

(4) "Urban area" means any Metropolitan Area (MA) as defined by the Office of Management and Budget (OMB) and any non-MA that meets one of the following criteria:

(i) A geographical area within the jurisdiction of any incorporated city, town, borough, village, or other unit of general local government, except county or parish, having a population of 10,000 or more inhabitants.

(ii) That portion of the geographical area within the jurisdiction of any county, town, township, or similar governmental entity which contains no incorporated unit of general local government, but has a population density equal to or exceeding 1,500 inhabitants per square mile; or

(iii) That portion of any geographical area having a population density equal to or exceeding 1,500 inhabitants per square mile and situated adjacent to the boundary of any incorporated unit of general local government which has a population of 10,000 or more inhabitants. (Reference: Intergovernmental Cooperation Act of 1968, 40 U.S.C. § 535.)

Date: _____

Roger W. Johnson
Administrator of General Services