

## Leasing Delegation Frequently Asked Questions

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### 1. When did the new GSA lease delegations approval and submission requirements become effective?

The changes to the program became effective upon publication of Federal Management Regulation (FMR) Bulletin 2008-B1 in the Federal Register on November 19, 2007.

### 2. Why did GSA change the delegations program?

The GSA Office of the Inspector General (IG) and the Government Accountability Office (GAO) conducted audits of delegated leases. They found that some delegated leases were not awarded in accordance with applicable policies, laws, or regulations and others may have violated prospectus limitations. The IG recommended that GSA consider limiting delegations of lease authority to a specific square footage threshold and that GSA implement management controls commensurate with the risks at that threshold.

### 3. Will this change to the program impact existing delegated leases?

Not immediately; however, according to the FMR Bulletin, agencies are required to contact GSA no less than 18 months in advance of lease expiration to begin the approval process for a new delegation or enable GSA to begin the acquisition process.

### 4. What is a General Purpose leasing delegation?

A General Purpose delegation grants GSA's leasing authority to a requesting federal agency to perform for itself all functions necessary to acquire general purpose office space in privately-owned buildings upon request and approval from GSA. Each authorization to use the delegation is for specific lease space and that particular Federal Agency for the lease procurement, subject to the limitations contained in the FMR and FMR Bulletin 2008-B1.

### 5. What are Special Purpose and Categorical delegations?

Thirteen specifically identified agencies have Special Purpose leasing delegations for special types of space, subject to additional limitations described in the FMR at 41 C.F.R. [§102-73.170](#) through [§102-73.225](#). Some examples are:

- a. The Department of Agriculture is delegated the authority to lease cotton classing laboratories, unimproved land, and space for agricultural commodities stored in licensed warehouses and utilized under warehouse contracts;
- b. The Department of Commerce is delegated authority to lease space for the Census Bureau, laboratories for testing materials, classified and ordnance devices, calibration of instruments, and atmospheric and oceanic research, maritime training stations and radio stations; and
- c. The Department of Defense (Air Force) is delegated authority to lease Civil Air Patrol Liaison Offices and land incidental thereto when required for use incidental to, in conjunction with, and in close proximity to, airports, including aircraft and warning stations.

All agencies are authorized to use the Categorical space delegations. This delegation authorizes agencies to acquire specific types of space identified in the FMR at 41 C.F.R. [§102-73.155](#), subject to additional limitations described in the FMR at 41 C.F.R. [§102-73.230](#) through [§102-73.240](#). Some examples include greenhouses, laundries, space for antennas, and depots, and space for short-term use (such as conferences and meetings, judicial proceedings, and emergency situations).

### 6. What is the history of the Provider of Choice leasing delegation program?

The Administrator of GSA has statutory authority to delegate the authority to procure leases of real property. Prior to 1996, executive agencies could request a delegation from the Administrator on a case-by-case basis. Such requests were infrequently made.

In September 1996, the Administrator issued a "Provider of Choice" delegation to all executive agencies. This was a broad, but conditional, lease delegation for general purpose office space. The conditions were primarily:

- a. Federal agencies must obtain prior approval from the GSA regional office having jurisdiction over the proposed leasing action by submitting a written request to the Assistant Regional Administrator for the Public Buildings Service,
- b. The approval must be based upon a finding that there is no vacant Government-owned or leased space available that will meet the agency's requirements,

- c. Agencies must use appropriately trained lease contracting officers, and
- d. Agencies must acquire and utilize the space in accordance with all applicable policies, laws and regulations.

In May 2005, GSA issued FMR Bulletin 2005-B1, which added further conditions of approval, including:

- a. Leases that will become available in Federally-controlled facilities,
- b. GSA can limit the length of the term of the lease to be consistent with any community housing plans,
- c. The name of the contracting officer conducting the procurement must be submitted, and
- d. An acquisition plan for the procurement must be submitted.

The FMR Bulletin restricted delegation authorizations to below prospectus level procurements. Agencies were required to maintain the administrative and organizational capacity to support the leasing activities, acquire space at rates consistent with prevailing market rents for comparable facilities in the community, and coordinate accountability for all leasing activities through the agency's Senior Real Property Officer.

In November 2007 the Administrator modified the program and published FMR Bulletin 2008-B1 to address programmatic deficiencies identified by audits conducted by GAO and the GSA IG. FMR Bulletin 2008-B1 requires agencies using the delegation authority to *demonstrate* -

- a. Their capacity to support the delegation,
- b. That the granting of the request is in the best interests of the Government, and
- c. How the agency's use of the delegated authority is cost-effective for the Government.

The delegation change also limits use of the delegation to lease transactions of less than 20,000 rentable square feet of general purpose office space. In addition, GSA will issue a technical amendment to the FMR to reflect the revised square footage limitation. Additional agency reporting requirements were implemented and GSA's oversight of the leasing delegations was centralized.

## **7. What factors will GSA consider in deciding whether or not to grant the delegation authorization?**

GSA will consider the following factors:

- a. Compatibility with the GSA community housing plan and GSA activities in the specific market,
- b. Adequacy of the requesting agency's organizational structure and staffing proposed for the delegation,
- c. Demonstrated ability of the requesting agency to meet or exceed GSA's Public Buildings Service published performance measures for cost of leased space,
- d. Whether the requesting agency has complied with all applicable laws, Executive Orders, regulations, OMB Circulars, and reporting requirements under previously authorized delegations, and
- e. Whether the granting of the delegation authorization is cost-effective for the Government.

Failure to demonstrate compliance with any of the enumerated factors will be a basis for denying the agency's request. No delegation will be granted solely for the purpose of accelerated delivery.

## **8. Are all General Purpose leasing delegations covered by the new submission requirements contained in FMR Bulletin 2008-B1?**

All General Purpose leasing delegations regardless of size are covered by the requirements of the Bulletin.

## **9. Are Categorical and Special Purpose leasing delegations covered by the new submission requirements contained in FMR Bulletin 2008-B1?**

Special Purpose leasing delegations for 2,500 rentable square feet or more of space are covered by the requirements of the Bulletin. Categorical delegations for specific types of space (see question 2, above) are not covered.

## **10. Are agencies with independent statutory authority to acquire space impacted by the changes in FMR Bulletin 2008-B1?**

The changes to the leasing delegation program only impact agencies using GSA delegation leasing authority and have no effect upon agencies that have independent statutory authority to acquire space.

## **11. How does an agency submit a request for a leasing delegation to GSA?**

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 rentable square feet of such Special Purpose

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space, the head of a Federal agency or his or her designee shall submit a request for authorization by emailing [delegationrequest@gsa.gov](mailto:delegationrequest@gsa.gov) or sending the request to:

General Service Administration  
Director, Real Estate Acquisition Division  
Public Buildings Service  
1800 F Street, N.W.  
Suite 2326  
Washington, DC 20405

The requesting agency must submit:

- a. 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;
- b. 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 General Services Administration Acquisition Manual (GSAM);
- c. 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>;
- d. 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;
- e. A floodplain check in accordance with Executive Order 11988, "Floodplain Management;"
- f. 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;
- g. A plan for meeting or exceeding GSA's performance measures (lease cost); GSA's performance measures can be found on the Office of Management and Budget (OMB) website at <http://www.whitehouse.gov/omb/expectmore/detail/10001157.2005.html>; and
- h. The total amount of space required, any special requirements, and any associated parking requirements.

GSA has developed a leasing delegation request application form to be completed by the requesting agency. The form is available on [www.gsa.gov/leasing](http://www.gsa.gov/leasing) and will assist the requesting agency to submit a complete application.

#### **12. May the requesting agency have a GS-1102 contracting officer execute the lease contract?**

Maybe. 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 GSAM. If a GS-1102 takes the required courses, obtains the realty experience, and is given a leasing warrant by his or her administrative officer responsible for the agency's warrant program, then that contracting officer may execute the lease. Otherwise, however, a GS-1102 contracting officer without the required training, experience and warrant may not execute a lease under the delegation.

#### **13. What does the FMR Bulletin 2008-B1 mean when it talks about organizational capacity?**

Agencies are required to demonstrate ongoing real estate, legal, architectural, engineering, and post-occupancy administration support available to inspect buildings, review floor plans, determine compliance with life safety, accessibility and building codes, and cost estimating, and technical staff sufficiently trained to comply with all applicable laws, regulations, and Executive orders governing lease acquisitions and administration of lease contracts.

#### **14. Why did GSA adopt a square footage threshold for General Purpose Leasing delegations?**

The 2007 GAO and GSA IG audits recommended greater GSA oversight of delegated activities, with the level of oversight commensurate with the risks to the Government. The decision not to delegate any leases exceeding 19,999 rentable square feet was made to address specific concerns that agencies were failing to comply with laws, regulations, Executive orders or OMB Circulars governing the lease acquisition process. 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.

#### **15. What documents must be submitted to GSA after the delegated lease is executed?**

Within thirty days after the award of the lease, additional documents must be submitted to the Director, Real Estate Acquisition Division, GSA, 1800 F Street, NW, Washington, DC 20405, or electronically to [delegationrequest@gsa.gov](mailto:delegationrequest@gsa.gov).

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 the following documents or evidence of compliance:

- a. The fully-executed lease document and all attachments;
- b. 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);
- c. The market survey data identifying properties considered in connection with the space need, including historic buildings considered in accordance with Executive Order 13006;
- d. The final scoring evaluation in accordance with OMB Circular A-11 (2002), Criteria and Scoring Ramifications for Operating and Capital Leases;
- e. The Price Negotiation Memorandum, prepared in accordance with section 570.307 of the GSAM and section 15.406-3 of the FAR;
- f. Copy of the Post-Award Synopsis posted in FEDBIZOPPS;
- g. The small business subcontracting plan, if required, in accordance with section 19.702 of the FAR;
- h. Documentation that the Excluded Parties List (also known as the Debarred Bidders List) was checked; and
- i. A Funds Availability Statement signed prior to lease award by a budget official with the 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, the agency, in addition to submitting items listed in a through i above, must submit the following additional documents or evidence of compliance:

- a. The solicitation for offers (SFO) (and any amendments issued during the procurement);
- b. The pre-solicitation ad posted on FEDBIZOPPS or in a local publication;
- c. Documentation of compliance with the National Environmental Policy Act of 1969, as amended, in accordance with 40 CFR § 1508.9;
- d. Documentation that vending facilities will be provided in accordance with the Randolph-Sheppard Act;
- e. The Price Negotiation Memorandum, prepared in accordance with section 570.307 of the GSAM and section 15.406-3 of the FAR;
- f. Documentation that the building meets all applicable fire and life safety requirements;
- g. 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;
- h. The pre-occupancy final inspection report verifying measurement of the demised space as shown on a CAD floor plan, correction of deficiencies, and punch-list items; and
- i. 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.

#### **16. Once an agency has been authorized to use a delegation, will they be required to comply with GSA requests for additional information concerning a specific delegated lease?**

Yes. As a condition for the use of GSA leasing delegation authorizations, agencies are required to make their lease files available for audit by GSA's IG or other GSA personnel or authorized agents, as determined by the GSA Director, Real Estate Acquisition Division, or his or her successor.

Additionally, in accordance with Executive Order 13327 and FMR part 102-84, 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. 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.

**17. In addition to reviewing files for compliance with the laws, regulations, Executive Orders and OMB Circulars governing procurement of leasehold interests in real property, what else will GSA evaluate in deciding whether to grant a future delegation authorization to my agency?**

In addition to the factors listed in response to question 7, above, 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 maintain and provide, upon request by GSA, detailed acquisition costs.

Failure to demonstrate compliance with the enumerated factors and cost-effectiveness shall be a basis for denying the agency's future requests.

**18. If my agency enters into a lease pursuant to a delegation of authority, at the expiration of the lease are we authorized to enter into a succeeding lease, or, if necessary, a lease extension?**

The delegation authorization that GSA grants your agency will specify the term for which you are authorized to sign a lease. No succeeding leases or extensions of a lease term are permitted without an additional delegation authorization from GSA. 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.

**19. If my agency enters into a lease pursuant to a delegation of authority, and during the term of the lease we determine we require expansion space, what do we do?**

The delegation authorization that GSA grants your agency will specify the amount of space you are authorized to lease. If, during the term of the lease, expansion space is required, you must request additional delegated leasing authority from GSA prior to negotiating with the lessor for the expansion space. No delegation authority will be granted if the initial and expansion space together totals in excess of 19,999 rentable square feet of General Purpose space.

If your agency cannot wait until the lease expiration for the expansion space, options available to GSA, to be determined in GSA's sole discretion, include:

- a. GSA can take the original lease into its inventory and negotiate a supplemental lease agreement for the expansion space;
- b. GSA can do a separate lease for the expansion space co-terminus with the original lease entered into using the delegated authority; or
- c. The GSA Administrator can issue a one-time delegation with the total square footage exceeding the 19,999 rentable square foot limitation.

**20. If my agency received a delegation authorization for a 10-year lease and entered into a lease for a 10-year term, may we exercise an option at the end of that term for additional years without seeking a further delegation from GSA?**

No, an authorization is limited in years; however, an agency may request a new delegation authorization from GSA. If granted, the agency may exercise the option.

**21. Does my agency require a GSA leasing delegation authorization to acquire parking spaces?**

No. Agencies should ask GSA if there is any federally controlled parking spaces available. If there is no available Government owned or leased parking spaces to meet the need, the requesting agency may use its own authority to acquire parking spaces by service contract.