

PBS Client Enrichment Series – Q & A



Topic: Introduction to Occupancy Agreements (OAs)

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Link to Client Enrichment Series Information: www.gsa.gov/ces

Additional Occupancy Agreement Policy Information: Can be found in the Pricing Desk Guide which may be accessed at: www.gsa.gov/rentpricingpolicy.

Is a signed OA the same as a 'letter of intent', and gives you what to expect ?

Answer - The OA states the business terms/provisions of the space being assigned to the customer agency. It is also a preview of the customer agency's total Rent charges. By updating/revising the OA, the customer agency can see how the business terms evolve throughout the space acquisition process. The OA is not a legal contract, however, it is a formal inter-agency agreement between the signing parties; PBS will honor its terms and expects the customer agency to honor its terms as well. PDG 2.1 (GSA Leases) and 3.1 (GSA Federally Owned)

A letter of intent is a document outlining the understanding between two or more parties who intend to formalize it into a legally binding agreement.

Will overtime utilities, above standard or reimbursable services be covered in this briefing?

Answer - Not in detail. Please reference [Pricing Desk Guide](#) Sections 2.6 (GSA Leases) and 3.7 (GSA Federally Owned).

What is the difference between parking and surface parking spaces?

Answer- Surface parking is in/on an open, uncovered lot. Structured parking is in a constructed garage/facility. Separate rates may be charged for different types of parking. PDG 2.15 (GSA Leases) and 3.3.4 (GSA Federally Owned).

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Is headcount included on the OA? If so, where and if not, is there a reason it's not captured?

Answer - Head count is captured by your regional Client Planning Manager during the Client Project Agreement process. It is not specifically shown in the OA.

So, the agency specific clauses are driven by the A/B code, correct?

Answer - An A/B code is assigned to each customer agency and the OA system identifies an agency's specific clauses by that code.

Are there limitations to what can be removed from OAs? I ask because we were offered a Lessor Concession for a succeeding lease TI and signed an OA to reflect the concession. However, recently, GSA stated that the Lessor cannot support the concession and are now taking it away. It seems like a concerning practice.

Answer - In GSA Leases, Rent is a passthrough of the underlying lease contract rent (plus any standard operating costs not performed through the lease, the PBS lease fee, and any other applicable charges added.) Because the Lease is a contract between GSA and the Lessor, GSA cannot give the occupying customer agency anything more than what GSA gets regarding Rent negotiations under the Lease. As the OA is updated during the space acquisition process, the customer agency can see how the business terms evolve. However, the printed OA boiler plate cannot be changed.

Does the tenant agency have any say in the acceptance of space for SCD in lease space?

Answer - SCD= Substantial Completion Date. The tenant agency's obligation to pay rent when space is governed by the OA starts when the space is substantially complete and operationally functional. The customer agency should have a walk through with GSA before the space is accepted as substantially complete. Any items other than small punch list items should be corrected before GSA's accepts the space as substantially complete.

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What happens if the commencement date is incorrect or a project takes longer than expected? Can the agency require an updated OA with a more realistic commencement?

Answer - The initial draft OA will be updated as needed throughout the space acquisition process. Dates and other pertinent information should reflect actuals by the time of the final billing OA. This is taken care of by the OA preparer for the customer agency's space assignment and does not require any special request by the customer agency. If you think the information is incorrect in the OA, then please contact your regional Client Planning Manager.

In the type of Clauses available, can you give me an example of a Regional Clause?

Answer - There are 'PBS Standard' clauses (which are mandatory and appear as boilerplate language), 'Agency Specific' clauses (which apply to a customer agency's occupancy), 'Optional' clauses (which are based on a situation that applies to an occupancy), or 'Ad Hoc' clauses (which are specific to one customer agency.) There is no 'Regional' clause designation.

I understand that there is not a grace period due to issues like furniture. Is there an overlap period between old lease and new lease if there is a move involved? (i.e. old lease continues past start date of new lease)

Answer - Potentially there could be an overlap period between the old lease and the new lease. If there is a delay in a new lease project completion and it is caused by the tenant (i.e., agency failed to meet the review and approval times in the design & construction schedule or agency changed project scope), consequences will be borne by the agency. As a consequence of an agency delay, the lessor may decline to postpone the scheduled completion date, which may result in agency rent charges at two locations simultaneously PDG 4.5 (Customer Agency Caused Delays) . As a consequence of a lessor or GSA delay, no rent is payable for the duration of the delay PDG 4.6 (Lessor or GSA caused Delays.)

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What is “CPI”?

Answer - CPI stands for Consumer Price Index.

Is there a way to have the OAs include the exact location of our space within the property location e.g. all suite number? It seems only the address is included. With project/program managers changing throughout the years, it would be helpful to have that breakdown.

Answer - The OA IT system does not allow for suite data specific input. If a customer agency would like suite numbers or other information indicated in the OA, please ask the regional Client Planning Manager to request an Ad Hoc Clause be added to show this information.

Is there a reference that cites all std. services and above std. services &/or equipment?

Answer - Yes, it is the PBS Pricing Desk Guide that can be accessed at www.gsa.gov/rentpricingpolicy. Standard and above standard services are noted in the operating rent component sections of the chapters in the Guide; 2.6 for leased space and 3.7 for owned space.

Why is some space non-cancelable?

Answer - Non-cancelable designation is for space where GSA's ability to backfill the space with another customer agency is limited, or of low probability, due to certain qualities of the space; for example, a remote or not easily accessible location. GSA makes the final determination of whether space is non-cancelable. PDG 5.2 (Non-cancelable Space)

Who determines which type of leased space is used? Federal or leased?

Answer - The Federal Management Regulations stipulate that space acquisitions for federal agencies should first look to federally owned buildings, and if space is not available that meets the necessary requirements, then government controlled

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space (leased space in a private sector market) can then be looked to for fulfilling a space requirement.

If the OA does not have the watermark, is it an executed OA?

Answer - A watermark is not required for an executed OA. The docuSign notation is sufficient. If an agency does not have access to docuSign, we still accept OAs signed via pen that has been scanned and emailed.

I have questions about the clause that deals with responsibility for environmental compliance. Does it vary by location or agency? Is the tenant agency always responsible for compliance for operations (RCRA, waste management, etc.) and GSA always responsible for construction and rehab actions (NEPA, National Historic Preservation Act, etc.)?

Answer - In GSA Leases, Lessors conduct Phase I & II environmental site assessments. However, customer agencies must reimburse the cost (via RWA) of any procurement specific NEPA study, environmental assessment, or an environmental impact statement. Remediation costs are borne by the lessor in the shell rent.

For GSA federally owned buildings, GSA conducts Phase I & II environmental studies to protect against contaminants and other risks. The cost of a NEPA study, environmental assessment, or environmental impact statement is funded by GSA as the building owner.

By signing the OA, the customer agency signifies they will comply with the 'Environmental & Safety Standards & Regulations' section. That section outlines that the customer agency is responsible for compliance with all applicable Federal, State, and local environmental, health & safety laws and regulations; including those issued and cited by EPA, OSHA, the Federal Management Regulations and the Code of Federal Regulations.

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Does GSA always amortize Tenant Improvements (TI)?

Answer - No. In answering this question there are specific differences between GSA Leases and GSA Federally Owned space. Please reference PDG 2.5.3. and 3.6.3. Except for caveats in the above reference sections, generally:

- Shell Condition/1st generation space- PBS is obligated to provide the full TI allowance which is amortized into the rent.
- Relet/2nd Generation Space (i.e., has existing TI build out from the prior tenant)- GSA may provide the TI allowance subject to funds availability; but is not obligated to do so.
- Existing Occupancy- If a customer agency initiates space alterations during an existing occupancy, the costs are borne by the customer agency's.

Is there a reference in the Pricing Desk Guide which gives more details on the importance of having an OA?

Answer - Yes. The Pricing Desk Guide may be accessed at: www.gsa.gov/rentpricingpolicy; see sections 2.1 (Leased Space) and 3.1 (Federally Owned Space)

Are agencies still responsible for rent in the case they are not able to move in due to Covid-19?

Answer - We still charge rent during the pandemic based on the fact that customers have not vacated the premises and have plans to return to the space that is assigned to them. Most customers have already received their appropriations and are able to pay rent. As we model after the commercial sector, it is also important to note that many private sector landlords are continuing to charge private sector tenants rent.

However, any rent credits GSA may receive from a lessor due to a closure will be passed through to customer agencies on their rent bill. Customers may still



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request to release space, but standard pricing policy applies and to release space, the space must be vacant of furniture and IT equipment.

Could you address the OA Financial summary, that you do get a full sheet of this for each of the years that you will occupy your space, whether or not you're a lease or renting federal workspace. I did not hear that being identified....it could give really good information and help with planning down the road...

Answer - It is correct that a full sheet for each Fiscal Year of the Financial Summary is provided and attached to the OA narrative pages.

How are TI's (Tenant Improvements) factored into the OA?

Answer - Above the signature blocks of the OA are two sections, one labeled TI Amortization Cost and the other labeled TI Improvement Lump Sum Cost. The dollar amount printed in the 'TI Amortization Cost' is what has been amortized into the rent payments. The dollar amount printed in the 'TI Improvement Lump Sum Cost' is what the customer agency must provide via a Reimbursable Work Authorization (RWA). Also, the Financial Summary will reflect the amount amortized into the Rent as well as the amortization interest rate.

Where do Overtime Utilities fit into all of this?

Answer - Standard utilities are based on a one-shift office operation, Monday through Friday, excluding federal holidays. PBS provides a consistent heating or cooling temperature for 10 operating hours in a federally owned building, and a minimum of 10 operating hours in a GSA lease (the lease provisions will specify the standard in a lessor's building). Overtime utilities are the reimbursable amounts that exceed the standard provided.

Is there a circular or something that shows how the ULA for COVID Cleaning is being charged on the OA?

Answer - The leased OAs have a clause that indicates that GSA is including permanent routine (daily) enhanced cleaning and disinfecting requirements in its lease specifications. The cost for these enhanced disinfecting services will be

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itized separately on the lease contract and may be discontinued if later determined to be unnecessary. The OA clause includes how much the tenant agencies will reimburse GSA for these services and the clauses are in effect until such time as the enhanced cleaning/disinfecting services are discontinued. The additional cost for these enhanced disinfecting services are included in the agency's operating costs.

Does eOA contain all versions of OAs (Proforma, final, etc) or just the final OA? Also, are the OAs in this tool signed?

Answer - In eOA, the user can see the final, draft and closed OA's for their agency. The user can also generate the Signed Agreement documents in eOA.

Where can I watch a recording of this session?

Answer - All our sessions are available on our [CES playlist](https://www.youtube.com/playlist?list=PLvdwyPgXnxxXtIR2I3cSAtkf9h32UI3r5) on YouTube (https://www.youtube.com/playlist?list=PLvdwyPgXnxxXtIR2I3cSAtkf9h32UI3r5). The [Introduction to Occupancy Agreements class can be found here](https://www.youtube.com/watch?v=HdVzkjgg54I&list=PLvdwyPgXnxxXtIR2I3cSAtkf9h32UI3r5&index=4) (https://www.youtube.com/watch?v=HdVzkjgg54I&list=PLvdwyPgXnxxXtIR2I3cSAtkf9h32UI3r5&index=4)