



# CHAPTER 6: Change in Square Footage— Expansion and Reduction

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## Overview

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Changing agency initiatives can result in client agencies requesting that the General Services Administration (GSA) expand or reduce space under a lease. When these changes occur during the course of a lease and when it is impractical to wait until the expiration or end of the firm term, GSA will determine if a change in square footage project on behalf of one or more agencies is the correct solution.

A change in square footage project can be in the form of an increase or a decrease of space and must be initiated by the client agency through normal space acquisition channels.

This chapter guides the user through the process of changing square footage during the course of a lease. If a given subject matter is covered in detail elsewhere in this Desk Guide, the user is referred to that chapter or appendix for comprehensive instruction rather than repeating the information here.



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## Part 1: Expansions

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## 1. When Is an Expansion Considered?

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New or replacing space actions may be accomplished through a lease expansion project whenever appropriate space is available for lease in a location where GSA already leases space. Expansion requests typically come from an agency that has a mission-related need for additional space at a leased location. There may be cases where an expansion of an existing lease is warranted regardless of whether the requesting agency is already housed at the location. In other words, an expansion project is the expansion of an existing **GSA lease with the lessor**, not necessarily an existing **Occupancy Agreement (OA)** with a client agency under a given lease.



Expansions

↳ 2. Determining the Scope of the Lease

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## **2. Determining the Scope of the Lease**

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Requests for expansion of space are handled differently depending on whether the expansion is within the scope of the lease or outside the scope of the lease.

An expansion is a modification of the lease contract. Whether an expansion is within the scope of a lease is a procurement-related issue. Contracting officers must consider whether expansion was within the scope of the competition that resulted in the award of the current contract. Factors to consider are the extent of the change, the performance period, the difference in cost between the awarded lease and the lease as modified, and whether the expansion is of a nature which potential offerors would reasonably have anticipated under the Changes clause. The standard Changes clause for leases over the simplified lease acquisition threshold (SLAT) provides that the Government may increase the amount of space, if the Lessor consents to the change, thereby putting the offerors on notice that the Government may request an expansion during the term of the lease.

For example, the expansion of a warehouse lease to provide for like warehouse space, or a laboratory lease to provide for like laboratory space, could be considered within the scope of the lease, regardless of the agency. The similarity of the use of the space and mission are factors that can be taken into consideration. However, the expansion of a basic office lease to provide for a technical laboratory space, warehouse, or even high-end office space such as a judge's chambers may not be within the scope of the lease.



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## 3. Expansions Within the Scope of the Lease

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The Lease Contracting Officer may determine, without further review by the Office of Regional Counsel, that an expansion request is within the general scope of the lease when:

- The expansion request is made from the same agency component or sub-division as the existing lease;
- Personnel to be housed in the expansion space have a mission-related need to be co-located with the employees in the existing space;
- The expansion request is coterminous with the existing lease term;
- The expansion request is for a reasonable amount of space in comparison to the space currently under lease; and
- The expansion request is not received immediately after the award of the lease—generally a year after the award would be considered a reasonable amount of time.

Lease Contracting Officers must consult with the Office of Regional Counsel before determining that an expansion request is within the general scope of the lease if all of the criteria of this paragraph are not met.

### a. Agency Requirements

The client agency's requirements may come to GSA documented, totally conceptual, or somewhere in between. The Leasing Specialist must understand the agency's needs as described in Chapter 1, Requirements Development, and must have received verification of the funding necessary for the changes before issuing changes to the lessor.

### b. Competition

If the expansion space is within the general scope of the lease, the Leasing Specialist may acquire the space through negotiations with the lessor without a Justification for Other Than Full and Open Competition (Justification) (see GSAM 570.403). However, the Lease Contracting Officer must document the file with a written determination that the expansion is within the scope of the lease.

### c. Availability of Space

Expansion projects are initiated based on the premise that expansion space exists or can be constructed at the leased location and that it can satisfy the space need. The Leasing Specialist must explore potential space solutions as well as determine the proposed cost of the expansion space during an initial conversation with the lessor before initiating the project. Projected expansion rates must be used in the cost-benefit analysis discussed below.

### d. Market Research

The Leasing Specialist must assess the market value of the space, including the space being expanded as well as other leases in the building and in buildings of similar character in the immediate market vicinity.



### Expansions

#### 3. Expansions Within the Scope of the Lease

### e. Documentation

The Desk Guide chapters Introduction: General Information, Lease Authorities, and Responsibilities and Chapter 2, New or Replacing Lease, part 1, describe the systems required for documenting lease actions (STAR, eLease, etc.).

PBS revises the existing OA to include the expansion space. The OA Tool blends the rates of the existing and expansion space. The OA must continue to reflect the underlying lease contract.

### f. Funding

An expansion to an existing lease is considered a new occupancy and PBS' policy and practice is to require the lessor to provide the full tenant improvement (TI) allowance based on the client agency's tier. (See Pricing Desk Guide (PDG) Section 2.2.1, 4<sup>th</sup> Ed.) Whether the TIs are funded through the rent or by a Reimbursable Work Authorization (RWA), the Leasing Specialist must obtain a signed OA before awarding the expansion in the Supplemental Lease Agreement (SLA). The OA must clearly indicate both the anticipated costs and method of funding. Refer to PDG for relet space, second-generation space that already has TIs installed for a prior tenant, for determination of the TI allowance and lump-sum payment options.

In special circumstances, GSA may find it necessary or even advantageous to use Budget activity 54 (minor repair and alteration) funds to contract for the work directly. This option would normally be a last resort and the Leasing Specialist must discuss it with a regional portfolio manager and Field Office staff. If BA 54 funding is to be used, the Leasing Specialist must refer to the PDG for guidance on amortization of GSA installed leasehold improvements.

### g. Negotiations

The Leasing Specialist must advise the lessor that, unless specifically excluded in the SLA, requirements and terms and conditions (other than price) in the existing lease will also be in effect for the expansion space. These include technical requirements such as fire suppression systems, and services such as cleaning, electricity, and maintenance. The Leasing Specialist should advise the lessor to account for the cost of these requirements in its proposal.

### h. Award and Construction

At the conclusion of negotiations, once the lessor's proposal has been determined to be fair and reasonable based upon market prices for comparable space, the Leasing Specialist must update the agency's OA with the final negotiated costs. After the agency signs the OA, the Lease Contracting Officer must issue a Notice to Proceed to the lessor and schedule the design kickoff meeting with the agency's and lessor's teams as soon as practical to maintain the project's momentum.

The Leasing Specialist or the construction manager must actively manage the construction process either directly or indirectly through other resources to remain on schedule and within budget. Regularly scheduled construction inspections are critical, and the Leasing Specialist or construction manager must compare the work to the plans and specifications, the lease, and the SLAs to verify compliance with the Government's requirements.

### i. Lease Copies and Post-Award Notifications

The Lease Contracting Officer must distribute the SLA and prepare post-award notifications as prescribed in Desk Guide chapter 2, part 5, subparagraphs 5e and 5f.



### **j. Commencement of Rent**

Once GSA accepts the space as substantially complete and operationally functional, the rent must commence immediately unless otherwise stipulated in the SLA. Commencement activities include gathering as-built drawings, activating the lease, closing out the project, and other procedures described in Chapter 2, New or Replacing Lease, part 8.



Expansions

4. Expansions Outside the Scope of the Lease

## 4. Expansions Outside the Scope of the Lease

### a. Agency Requirements

After consultation with the Office of Regional Counsel, the Leasing Specialist may determine that acquisition of the expansion space needed is outside the general scope of the lease according to the criteria in the paragraph<sup>2</sup>, “Determining the Scope of the Lease,” of this chapter and part.

Notwithstanding that the expansion is not within the scope of the lease, if the agency has a mission-related need for the personnel to be co-located, or there are other justifiable reasons for the expansion,, the Leasing Specialist must follow the steps in subparagraphs b and c below to determine which alternative is more cost effective and obtain approval to consolidate at the existing location or at a new location.

### b. Market Survey and Cost-Benefit Analysis

The Leasing Specialist must conduct a market survey as described in Chapter 2, New or Replacing Lease, part 2 to determine the availability of suitable alternative locations. If alternative locations are available that can satisfy the total requirement, the Leasing Specialist must perform a cost-benefit analysis to determine if it is in the Government’s best interest to relocate. This analysis must follow the cost-benefit analysis procedures as outlined in Chapter 5, Succeeding Lease, Superseding Lease, and include the same factors, as appropriate. If the lease has cancellation rights include the cost of the unexpired portion of the firm lease term rather than the full lease term.

If the cost-benefit analysis supports an expansion, then the Leasing Specialist may proceed after preparing the documentation and approval of the Justification as described in subparagraph c below.

If the cost-benefit analysis does not support an expansion at the existing location, then the Leasing Specialist and the Regional Account Manager (RAM), as necessary, must advise the agency and obtain its approval to proceed with a replacement lease for the entire requirement. Therefore, even when expansion space is available and expansion could simplify the procurement, the Leasing Specialist must not assume that an expansion is the only option or best option.

### c. Justifications and Documentation

If the Leasing Specialist pursues the expansion alternative and the lease is below the simplified lease acquisition threshold (SLAT), then the lease file must include documentation that explains the lack of competition (GSAM 570.203-2b).

However, if the Leasing Specialist pursues an expansion and the lease is above the SLAT, then an Justification is required (GSAM 506.3).

The negotiation, award, design, construction, and commencement steps for out-of-scope expansions are the same as the steps for in-scope expansions discussed above.

Once the physical and financial viability of an expansion has been established, the Leasing Specialist must create the project in the appropriate system or systems and, if the expansion will be outside the scope of the lease, prepare the Justification.



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## Part 2: Reductions

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Reductions

↳ 1. Agency Requirements

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## 1. Agency Requirements

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When an agency notifies GSA that it intends to release space back to GSA, the Leasing Specialist must first verify that the requestor has the authority to request the change. The Leasing Specialist should contact the appropriate RAM for verification, if necessary, and refer requestors to their appropriate agency officials if they are unauthorized to request changes and obligate the agency.

As with expansion projects, the client agency's reduced requirements may be fully documented, totally conceptual, or somewhere in between. The Leasing Specialist must understand the agency's needs and must have received verification of funding necessary for any changes before issuing changes to the lessor. (Refer to Chapter 1, Requirements Development.) Whenever significant changes are needed to reduce the space, GSA may provide space planning services to the agency or contract with the lessor, as long as the agency funding is adequate and designated for this purpose.

Whenever an agency notifies GSA that it intends to release space for which the Government does not possess termination rights under the lease, GSA will be responsible for marketing and backfilling the space to future tenants. All decisions should be made with this in mind.

For agency repayment obligations see Pricing Desk Guide (PGD), 4<sup>th</sup> Ed., section 5.3.4, Repayments Upon Return of Space.



## 2. Agency Rights and Obligations

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Before accepting returned space from a client agency, the Leasing Specialist must ascertain whether the agency possesses cancellation rights under its Occupancy Agreement (OA). The Leasing Specialist should research the most current OA to determine whether it is cancelable or non-cancelable, as well as the lease contract and SLAs to ascertain GSA's rights and obligations toward the lessor. Whether GSA has termination rights with the lessor through the lease has no bearing upon the agency's right to return space to GSA. The agency's rights with GSA are governed by the OA and national pricing policy.

Most OAs relieve an agency from the obligation to pay rent for terminated space beyond 4 months after notifying GSA in writing. The return of space to GSA must comply with the PDG.

Before the end of the 4-month notice period client agencies returning space must pay PBS the principal balance remaining on any TIs. For additional information on lump sum payment options for TIs, see 4<sup>th</sup> Ed. PDG Section 2.5.10. Additionally, the client agency remains liable to pay rent until it has completely removed all personnel and furnishings from the affected space and has completed all work to construct new demising walls and modify building systems. In some circumstances, accomplishing this may take much longer than 4 months. The Leasing Specialist should advise the client agency of these facts when a longer period is anticipated.

When the agency's occupancy is governed by a noncancelable OA, GSA still has discretion over whether to allow the client agency to terminate space. Several factors may affect GSA's decision in this situation, including whether:

- The lease may be terminated without consequence or expense to GSA;
- The terminating agency has agreed to cover the estimated cost obligations;
- Another agency desires to backfill the space and agency vacating the space agrees to pay any rent differential between the backfill tenant and rent the vacating agency was paying not including TIs.; or

Considering the OA and lease obligations is only the first step in determining whether GSA will accept space back from the client agency. The Lease Contracting Officer must not render a decision on this basis alone.

## Reductions

## ↳ 3. Marketability of Space

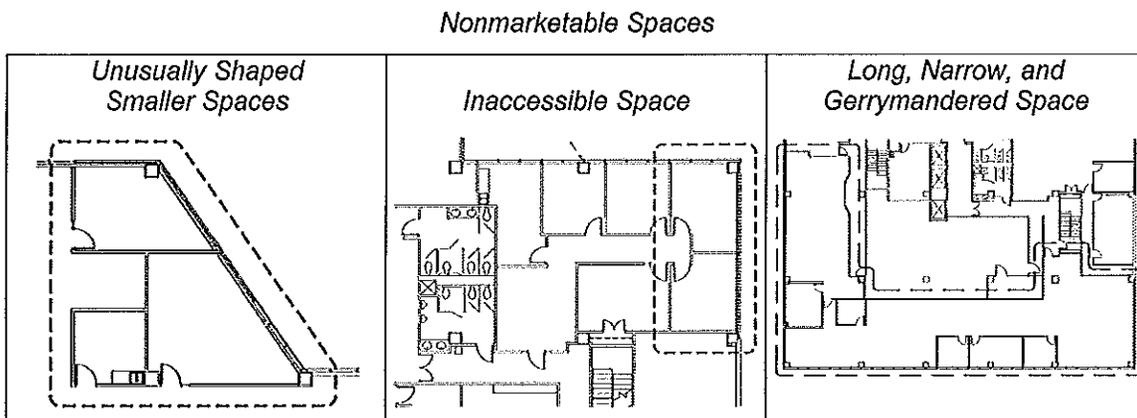
### 3. Marketability of Space

Just as critical as the agency's right to return space to GSA is the marketability of the space being returned. It is unreasonable for GSA to accept, and in turn expect a lessor to accept, space that is not marketable. Once the Leasing Specialist determines that the agency has cancellation rights in its OA, GSA's next responsibility is to determine the space's marketability as defined in the 4<sup>th</sup> Ed. Pricing Desk Guide, 5.3.2.

The following are examples of situations where the marketability of space is questionable :

- Small spaces, single offices, or closets;
- Inaccessible space at the back of the agency's other space;
- Gerrymandered space that makes a tenant's layout difficult or impossible;
- Long, narrow spaces;
- Corridors; and
- Any other space that would be difficult to backfill as a result of the characteristics of the space itself, not the finishes or building location.

The figure below illustrates some of these problematic spaces.



If an agency is the sole occupant of a building or occupies a large block of space on multiple floors, making partially returned space viable may mean requiring the agency to consolidate operations on fewer floors so that the partially returned space is not comprised of numerous small (but otherwise viable) spaces, which unduly limit GSA's opportunities for backfill. The agency must bear the costs of alterations and moving necessary to perform this work.



## 4. Marketability Determination

If the Lease Contracting Officer and regional asset manager determine the space is not marketable, GSA may suggest ways to reconfigure the space to make it marketable. Once these discussions are concluded with the agency and the Lease Contracting Officer determines whether the resulting space is marketable, the Leasing Specialist must notify the agency of the decision in writing and, if appropriate, provide a replacement OA indicating the new reduced square footage after the work is complete. If the space cannot be made marketable in a configuration acceptable to both GSA and the client agency, the Leasing Specialist should provide the determination that the space is not marketable to the agency in writing, and the project may be closed out in the appropriate systems. PBS may not refuse an agency release of space just because there may not be a suitable tenant and the space might remain vacant.

### Marketable Space

Larger, squarer, more accessible spaces with windows are more easily marketable for backfill. The Leasing Specialist should keep this in mind when discussing marketable space with the agency.

## 5. Notice to the Lessor

Before GSA can terminate space with the lessor, the Lease Contracting Officer must understand the Government's rights and obligations under the lease. Several questions, including the following four questions, must be answered at this point:

- Does GSA possess termination rights under the lease?
- If so, what are the notification requirements for exercising termination rights?
- Is the agency terminating all or a portion of its space?
- If a portion, does GSA possess partial termination rights or full termination rights?

The answers to these questions will help the Lease Contracting Officer determine whether to issue notification of termination or to initiate discussions with the lessor.

### a. Complete Terminations

#### Within Termination Rights

The simplest form of termination occurs when the client agency terminates its entire space during the Government's termination rights period. In this circumstance, the Lease Contracting Officer may notify the lessor in writing as prescribed in the terms of the lease and proceed to close out the space just as if the lease had expired. (Refer to Chapter 2, New or Replacing Lease, part 8 for closeout procedures.)

#### Without Termination Rights

If the lease does not grant the Government the right to terminate, or if termination rights take effect so far in the future that allowing the lease to run its course would pose an unacceptable financial burden to the Government, the Lease Contracting Officer should consult with a regional asset manager to consider whether legitimate backfill opportunities exist. When looking for backfill opportunities consider the security level of the remaining tenants and the prospective tenants in making the decision. When all options for backfill are exhausted the Lease Contracting Officer should contact the lessor to request the right to terminate. Most lessors will require GSA to make some form of lump-sum payment—called a buyout—for this right. In this circumstance, the Lease Contracting Officer should perform an analysis to establish the present value of the remaining term of the lease and compare it to the lessor's buyout requirement.

Collaboration with the Office of Regional Counsel, regional asset management, regional finance staff, and the Lease Contracting Officer's management are essential at this point so that proper budgetary actions are taken before agreeing to terms with the lessor. The Lease Contracting Officer must make a judgment as to whether it is more favorable to compensate the lessor in a lump-sum payment or to continue making monthly rent payments. The rationale must be documented in the file.

#### Look for Backfill Tenants

Before agreeing to a buyout payment for the lessor, the Lease Contracting Officer should consider whether other client agencies or private-sector backfill tenants are available and could mitigate GSA's financial exposure.



The final agreement should be established through an SLA and the lease closed out after the space is vacated in agreement with the established terms.

### b. Partial Terminations

#### Within Termination Rights

When the client agency terminates only a portion of its space (or its entire space when the agency is housed in a multitenant lease), where the lease provides partial termination rights, the Leasing Specialist must notify the lessor in writing as provided in the lease, supply a floor plan that clearly delineates the space being terminated, and request a cost proposal from the lessor if any work will be required to subdivide the space. The costs must be documented in the lease through an SLA. Obtain floor plans that clearly show the remaining premises.

#### Provisions for Remaining Space

The Leasing Specialist should remind the lessor that the space remaining under the lease will be subject to the surviving lease provisions and verify that the physical space and building systems are altered accordingly.

If there is an outstanding TI balance after a partial release of space, the unamortized balance of the TI may be reamortized over the remaining space in the OA as provided in PDG, section 5.3.5.

### c. Documentation

Chapter 2, New or Replacing Lease, part 1 describes the systems required for documenting lease actions (STAR, eLease, negotiation records, etc.).

### d. Design and Lease Commencement

See Chapter 2, New or Replacing Lease, or Chapter 8, Alterations in Leased Space, for details on design and configuration of occupied space.

If GSA excess furniture services are desired, the RAM can assist with arrangements.

See Chapter 2, New or Replacing Lease, part 8, which provides details on lease commencement activities.