

CHAPTER 7:

Lease Extension

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Overview

Lease extensions are employed, if necessary, when a Government tenant is unable to vacate the property by the time a lease expires. An extension is a negotiated agreement between the lessor and the Government allowing the tenant agency to continue to occupy its current location for a short term. In an extension, other terms and conditions of the lease originally agreed upon remain unchanged, unless otherwise stated in the lease extension document via Lease Amendment.

Extensions are a critical tool and a valid option for avoiding a holdover occupancy (see Chapter 10, Lease Holdover). They can perform an important function in filling a short-term gap, by allowing continued occupancy if a lease is near expiration and no other viable options are available.

It is important not to rely upon extensions as standard, everyday practice. They pose several problems and concerns and the Leasing Specialist must approach them as a lease action of last resort.

Extensions are undesirable because of several disadvantageous market factors:

- Extensions limit the negotiating power of the Government to secure favorable contract terms, rents, or other conditions.
- Typically, agreements with shorter terms carry higher rental costs.
- Lessors may not want or even be able to accept the terms sought by the Government, due to prior commitments for the space.
- Lessors may have trouble securing financing with the lack of a long-term agreement.

1. Policy

a. General Requirements

If the value of a lease extension exceeds the Simplified Lease Acquisition Threshold (SLAT), a justification for other than full and open competition is required.

For extension values below the SLAT, the Lease Contracting Officer may use the Simplified Lease procedures and document the file accordingly. The Lease Contracting Officer's documentation must be updated to reflect the SLAT procedures for extensions. See Chapter 3, Simplified Lease Acquisition, for more background on these procedures.

b. When To Seek an Extension

The Lease Contracting Officer may enter into a contract without providing for full and open competition when the property or services needed by the agency are available from only one

↳ 2. Requirements Development

responsible source, no other type of property or services will satisfy the needs of the agency, and the action is supported by a Justification for Other Than Full and Open Competition (Justification). The following are examples where this would apply to an extension:

- The agency occupying the leased space is scheduled to move into other federally controlled space, but encounters unexpected delays in preparing the new space for occupancy.
- The Government encounters unexpected delays outside of its control in acquiring replacement space.
- The Government is consolidating various agencies and the Lease Contracting Officer needs to extend the terms of some leases to establish a common expiration date.
- The agency occupying the space has encountered delays in planning for a potential relocation to other federally controlled space due to documented organizational, financial, or other uncertainties.

2. Requirements Development

a. Determine Need for Extension

In order to negotiate acceptable extension terms, the Lease Contracting Officer needs to know the status of the long-term replacing action that will deliver future space for the client agency—that is, when the future space will be available for occupancy. This factor could drive the requirement for a short-term extension to serve as an interim solution between a client agency's current requirement (the expiring lease) and its future long-term requirements.

The Leasing Specialist must arrange a lease extension of adequate length to protect the Government's occupancy, yet also negotiate extension terms effectively with the current lessor to limit duplicated rents and other costs.

b. Administrative Requirements

Create a Project

Request a project number for budgetary and tracking purposes. A separate project number is needed to track every lease extension, regardless of its length.

Obtain Signed Occupancy Agreement from Client Agency

Prepare a revised draft Occupancy Agreement (OA) reflecting the revised lease terms. Agency signature of the OA is not required when the rental rate terms of the expiring lease and extension are identical.

Deferred Maintenance Issues

Consult with the Lease Administration Manager on space issues that can be addressed during the extension period, such as deferred maintenance items identified during inspections.

Draft Extension Schedule

Prepare a milestone schedule for the extension action in eLease.

c. In-House versus Broker

Lease extensions are conducted in-house only, unless the region has provided a justification that clearly identifies the need to use a broker. The National Program Manager must make an exception before the Region may use a broker for extensions unless the long-term housing solution for that agency is being tasked to the broker. In that case a broker may also be tasked with the extension project.

3. Acquisition Planning

a. Prepare Acquisition Plan

A lease extension requires an acquisition plan. See chapter 2 for more details.

b. Review Existing Lease File

The Leasing Specialist must review and ascertain significant elements of the existing lease file and contract terms.

- Determine the Lease Amendment number for the extension Lease Amendment.
- Look for Tenant Improvement (TI) Rates—Amortized TI rates included in the initial lease will likely expire. The extension rate must not include these rates.
- Confirm that ownership information is correct and that the Form 3518, Representations and Certifications, is current—Verify that the owner's name and address in the lease is correct and current. Verify this information against the Central Contractor Registration (CCR). If the property has changed hands, or there was a name change, a lease assumption (novation) agreement or a change of name agreement is necessary. Updates to the lessor's address can be made via the extension Lease Amendment or in a separate Lease Amendment.

c. Develop Negotiation Objectives

Short-term extensions can require the Government to pay a premium rate because of both their short term and the usual inclusion of termination rights. If there were no rate adjustments during the prior term, negotiating an extension may present an opportunity for a rate adjustment (for GSA or the lessor). Prepare your negotiation objectives with these factors in mind.

4. Market Analysis

Analyze the market to determine a potential rate for the extension term. Conditions in the current market will assist in determining a fair and reasonable rate for the Government. These can be

↳ 5. Justification

established using CoStar and other market data tools, as well as leases recently awarded in the delineated area. Because rates vary across different markets and neighborhoods, a precise market study is necessary for preparing to negotiate a fair and reasonable rental rate.

The negotiated rental rate for the extension must exclude a tenant improvement allowance, since the allowance would have been recovered under the initial term of the lease. As such, the short-term extension might be less than the rental rate for the prior expired term. Nevertheless, in a very aggressive market the rental rate could be higher than average due to the short-term nature of the extension. Always make certain that the rental rate is within the market range, preferably no higher than the average rental rate, and that it is considered fair and reasonable.

5. Justification

a. Justification Approval Thresholds

If the value of a lease extension will not exceed the simplified lease acquisition threshold the lease contracting officer may use the Simplified Lease procedures and explain the absence of competition in the file. See Desk Guide chapter 2, part 1 for Justification and approval requirements for leases that exceed the SLAT.

b. Developing the Justification

The Lease Contracting Officer must document the Justification in writing, certify its accuracy and completeness, and obtain the required approvals.

The Justification must provide a sound rationale for securing an extension. The following are some of the factors that the justification could cite, as appropriate:

- Financial or other advantages of avoiding a lease holdover (this does not require a cost benefit analysis) and
- A lack of potential lessors interested in providing space under a short-term lease,

Because Justifications for projects above the SLAT require approval above the Lease Contracting Officer level, sufficient time must be allowed for obtaining these approvals.

c. Posting the Justification

The Justification must be posted on the Federal Business Opportunities (FedBizOpps) website after awarding the lease extension. Information exempt for public disclosure must be redacted. See Chapter 2, Part 5, Section 5.f, "Post-Award Notifications," for more information.

6. Negotiation and Award

a. Request for Offer and Negotiation

A request for an offer for a lease extension can be made via phone, email, or formal letter to the lessor. Negotiations must not commence until after the acquisition plan and justification have been approved.

b. Scoring—Operating Versus Capital Lease

The Lease Contracting Officer must include a memorandum in the file (see Attachment 1 to this chapter) verifying that the lease for the extension period remains an operating lease as defined in Appendix B of OMB Circular No. A-11 (2008). If the memorandum verifies that, for scoring purposes, the extension is for a term not more than 5 years, the rent to be paid under the extension is below the prospectus threshold amount applicable at the award date of the extension, and the extension meets the following criteria, a “90 percent” scoring calculation is not required to make an operating lease determination. The memorandum must indicate:

1. Ownership of the asset will remain with the lessor during the term of the lease and is not transferred to the Government at, or shortly after, the end of the lease period.
2. The lease does not contain a bargain-price purchase option.
3. The lease extension term does not exceed 75 percent of the estimated economic life of the asset.
4. The asset is a general-purpose asset rather than being for a special purpose of the Government and is not built to the unique specification of the Government as lessee.
5. There is a private sector market for the asset.
6. The project will not be constructed on Government land.
7. There is no provision of Government financing and no explicit Government guarantee of third party financing.
8. Risks of ownership of the asset remain with the lessor unless the Government was at fault for such losses.

If any of the above criteria are not met, Leasing Specialists and Lease Contracting Officers must refer to [the latest GSA scoring policy](#).

c. Price Negotiation Memorandum

The Lease Contracting Officer must document the background of the lease and explain the purpose of the extension in a Price Negotiation Memorandum (PNM). Because the extension is a sole-source acquisition, this document focuses on negotiations with the existing lessor, as opposed to the multiple offerors that the PNM for a new lease might discuss. It must capture the progression and final outcome of negotiations with the lessor, and the business rationale leading up to the final recommended decision. Its content must otherwise meet the same requirements as described in Chapter 2, Part 5, Section 3.c, “Price Negotiation Memorandum (PNM).”

d. Certification of Funds (Prevalidation)

The Leasing Specialist must request certification of Budget Activity 53 funds from the authorized budget official. The certification must cover the extension period approved in the acquisition plan and agreed to by the lessor. When funds are certified, the Budget Office will provide the Leasing Specialist with an approved prevalidation of funding document, often referred to as a BA 53 fundcert.

e. Execute Lease Amendment

The Leasing Specialist must prepare the Lease Amendment reflecting the results of the final negotiation, including revised lease expiration date, any changes to the rental rates, operating expense base, termination rights, or any other terms which have been amended.

After review and approval by the Lease Contracting Officer, the Leasing Specialist must send two copies of the Lease Amendment to the lessor for signature. Once the Lease Amendments are returned by the lessor, the Leasing Specialist must check the documents to confirm that all pages are initialed with no new changes. The Lease Contracting Officer must execute both copies of the Lease Amendment and return one signed copy to the lessor for its records. The date of Government execution must be recorded in the upper right corner of the document.

Lease Amendments for extensions include three dates: the beginning and end dates of the lease contract term and the date of signature.

The Lease Contracting Officer must submit the required documents for processing lease payments. Upon completion of processing, the Lease Contracting Officer must notify the Project Manager and Lease Administration Manager of the completed action and place the original executed lease in the lease file. The Lease Contracting Officer must provide copies to local and headquarters representatives of the client agency, the GSA field office, Federal Protective Service, and other appropriate team members.



Attachment 1: Determination of Operating Lease Classification for Lease Extension

Date:

Memorandum for: The File

From: Contracting Officer

Subject: Lease GS-xxx-xxxxx

Determination of Operating Lease Classification for Lease Extension

The Government intends to extend the above lease through for the period _____ through _____. This memorandum verifies, for consistency with scoring policy, that the lease term does not exceed 5 years and has met the following conditions and, therefore, can be classified as an operating lease as further defined in OMB Circular No. A-11, Appendix B. Having satisfied the criteria listed below, the “90 percent” scoring calculation is not required.

1. Ownership of the asset will remain with the lessor during the term of the lease and is not transferred to the Government at, or shortly after, the end of the lease period.
2. The lease does not contain a bargain-price purchase option.
3. The lease extension term does not exceed 75 percent of the estimated economic life of the asset.
4. The asset is a general-purpose asset rather than being for a special purpose of the Government and is not built to the unique specification of the Government as lessee.
5. There is a private sector market for the asset.
6. The project will not be constructed on Government land.
7. There is no provision of Government financing and no explicit Government guarantee of third party financing.
8. Risks of ownership of the asset remain with the lessor unless the Government was at fault for such losses.

The rent to be paid under the extension is below the prospectus threshold amount applicable at the award date of the extension.

GSA Contracting Officer