

Management System: Real Property Management**Subject Area: Acquisition of Real Property****Procedure: Acquiring Real Property by a Contractor Lease****Issue Date and Revision Number:**
3/5/2015 0**Lead Subject Matter Expert:**
Matthew Reardon**Management System Owner:**
Bud Sokolovich**1.0 Applicability**

This procedure applies to any U.S. Department of Energy (DOE) contractor that has identified a need to acquire real property by lease under the purview of the Department of Energy, Office of Environmental Management Consolidated Business Center (EMCBC). DOE may authorize its contractors to acquire leased space to house contractor personnel; however, DOE is responsible for overseeing the lease procurement of its contractor when the rental is directly reimbursed under the DOE contract. The acquisition of the leasehold interest will follow the same procedures and be subject to the same requirements as though DOE were signing the lease. The contractor may not lease general purpose office space to house DOE or other Governmental personnel.

Leases may be used to acquire needed special purpose facilities and land. When leasing building space, all leased space must be acquired, designed, and occupied in a manner which meets all legal and regulatory requirements. For detailed reference material, refer to the DOE *Real Property Desk Guide*.

All Federal agencies must follow the budget scoring rules for leases, capital leases, and lease-purchases identified in Appendices A and B of OMB Circular A-11, "*Preparation, Submission and Execution of the Budget*."

2.0 Required Procedure

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| Step 1 | <p>Steps 1 to 23 apply to all lease space regardless of the square footage size of the lease.</p> <p>Lease Size: 10,000 Square Feet or Greater</p> <p>a. The contractor works with the Sponsoring Program, Site Office, and/or</p> |
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| | <p>the Environmental Management Consolidated Business Center (EMCBC) Certified Realty Specialist (CRS) to ensure that the mission need justification, for all new lease space of 10,000 square feet or more, has been approved by the sponsoring Headquarters' (HQ) program and submits the approved justification to EM HQ Office of Safety, Security, and Infrastructure for review.</p> <p>b. EM HQ Office of Safety, Security, and Infrastructure reviews the approved mission need justification and notifies the Certified Realty Specialist (CRS) that the review has been completed.</p> <p>c. Leases of 10,000 square feet or more without a designated HQ Program is reviewed and concurred in by the Site Office and/or the CRS. The reviewer notifies the CRS and EM HQ Office of Safety, Security, and Infrastructure via email that the concurrence has been completed. Lease Size: Less than 10,000 Square Feet</p> <p>The HQ Sponsoring Program(s) approves the mission need justification for new lease space less than 10,000 square feet; however, if there is not a designated HQ Program(s) sponsoring the lease, then the Site Office and/or the CRS approves the mission need justification. Notification to EM HQ Office of Safety, Security, and Infrastructure is not required for new lease space less than 10,000 square feet.</p> |
| Step 2 | <p>The contractor submits the request to the Site Office or the CRS to acquire the leased space. Such requests will include:</p> <ul style="list-style-type: none"> • A detailed description of the space requirements (i.e., total amount of space required, special requirements, and associated parking requirements); • The length of time the space will be needed; • A statement that a review of existing space on site has been performed and that no existing space is available that will meet the requirement; • A statement to verify that the lease property is not in a floodplain; • The preferred area of consideration for the space including justification for the location and an area map; and • A total cost estimate for the lease action. |
| Step 3 | <p>The Site Office reviews and concurs in the request and forwards the request to the CRS for coordination with other Federal agencies.</p> |
| Step 4 | <p>The CRS coordinates with the U.S. General Services Administration (GSA), and if appropriate, local DOE offices, and other Federal property holding agencies to determine if the program need can be satisfied utilizing Government-owned space.</p> |
| Step 5 | <p>a. If Government-owned space is available, the CRS will notify the Site Office (if applicable) and will work with the agency controlling the space to assign the space to the contractor.</p> |

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| | <p>b. If Government-owned space is not available, the CRS will notify the Site Office or the Contracting Officer (CO) that the contractor may start the process to acquire the space by lease.</p> |
| <p>Step 6</p> | <p>The contractor conducts a market survey of available properties. The Market Survey should include as a minimum:</p> <ul style="list-style-type: none"> • The name and address of the building visited; • The amount of space available; • Current and proposed rental rates; • Services included in the rental; and • Length of proposed rental agreements. |
| <p>Step 7</p> | <p>The contractor prepares and issues a Solicitation for Offers (SFO). The SFO normally consists of:</p> <ul style="list-style-type: none"> • General space requirements, including evaluation and award factors; • General building requirements including architectural, mechanical, electrical, plumbing, etc.; • Services, utilities and maintenance; • Special requirements; • Safety and fire prevention requirements; • Required Terms and Conditions; and/or • New leases, including build-to-suit lease solicitations are to include a preference for buildings certified to the LEED Gold Standard (see Executive Order [E.O.] 13423, <i>Strengthening Federal Environmental, Energy, and Transportation Management</i>). |
| <p>Step 8</p> | <p>The contractor only advertises for space equal to or greater than 10,000 square feet. Although a formal SFO is not required for space less than 10,000 square feet, it is helpful in generating interest in the procurement and for finding out what is available in the market. The characteristics of an SFO can be sent to all Parties that have a potential of meeting the Contractor’s requirements. The contractor develops a potential list of Parties by conducting a thorough market survey.</p> |
| <p>Step 9</p> | <p>The contractor evaluates offers in accordance with the SFO, negotiates with Offeror’s, and prepares negotiation report.</p> <p>Offerors not meeting the minimum requirements of the solicitation will not be considered further.</p> <p>A determination of which offer represents the best value to the government is made.</p> |
| <p>Step 10</p> | <p>The contractor issues a letter to the Offerors representing the best value to the</p> |

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| | government for the best and final offers. |
| Step 11 | The contractor evaluates final offers. |
| Step 12 | <ul style="list-style-type: none"> a. If applicable, the contractor requests an appraisal. b. If a detailed market survey is provided and prior approval from the CRS is obtained, this requirement can be waived. |
| Step 13 | The contractor prepares a lease agreement and submits a complete lease package to the Site Office or the CRS for review and CRS approval. |
| Step 14 | <p>The Site Office or the CRS seeks concurrence from the EM Head of Contracting Activity to request approval of the indemnification clause from the Senior Procurement Executive on leases containing indemnity and/or hold harmless clauses.</p> <p><i>Delegation No. 2010-001, dated November 15, 2010, further re-delegated the Authority to Approve Routine Requests for Approval of Subcontract Indemnification Provisions in Accordance with the Department of Energy Acquisition Regulation 970.5244-1(l) to only the Managers of the Oak Ridge Office and Chicago Office. For details surrounding the Managers limited authority, see Delegation No. 2010-001.</i></p> |
| Step 15 | <p>The CRS distributes the lease agreement and supporting documentation to the Real Estate Committee or appropriate personnel for review and comment. The CRS works to resolve any comments.</p> <p>NOTE: Additional subject matter experts may be consulted during the review process as necessary to ensure that all other areas are adequately covered.</p> |
| Step 16 | <p>If comments and concerns can be readily addressed, the CRS forwards approval of the lease to the Site Office or contractor.</p> <p>NOTE: The CRS “approval” in this context means that the proposed lease meets the Government requirements and does not direct or authorize the Management and Operating (M&O) contractor to commit Federal monies for the lease. Only the CO has the authority to direct the M&O contractor to expend monies for procurement actions including those covered by lease acquisitions.</p> |
| Step 17 | In those instances where further negotiations with the Prospective Lessor will be required and/or additional documentation is required, the CRS returns the lease to the contractor without approval. |
| Step 18 | The contractor is required to adequately address the comments and resubmit the revised lease and supporting documentation for the Committee’s or appropriate personnel’s review and approval. |
| Step 19 | The CRS forwards approval letter to the Site Office or contractor as described in Step 16 above. |
| Step 20 | The contractor awards the lease. |

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| Step 21 | The contractor forwards a copy of the signed lease to the CRS or the Site Office. |
| Step 22 | The contractor inspects and accepts the space prior to occupancy. |
| Step 23 | The Facilities Information Management System (FIMS) Administrator will enter the information in the FIMS database. |

3.0 References – Forms/Attachments/Exhibits

3.1 References:

- DOE *Real Property Desk Guide*, dated June 2014
- E.O. 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*
- E.O. 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*
- Energy Independence and Security Act of 2007 (EISA) for Lease Acquisition (Section 435)
- OMB Circular A-11, Appendices A and B, "*Preparation, Submission and Execution of the Budget*"

4.0 Records Generated

Records generated through implementation of this procedure are identified as follows and are maintained by the Office of Technical Support and Asset Management in accordance with the EMCBC Organizational File Plan:

| Records Category Code | Records Title | Responsible Organization | QA Classification (Lifetime, Non-Permanent, or Not Applicable) |
|------------------------------|---|--|---|
| ADM 03-01-A | Real Property Files – Copy of Executed Lease and Supporting Documentation | Office of Technical Support and Asset Management | N/A |

EMCBC RECORD OF REVISION**DOCUMENT TITLE: Acquiring Real Property by a Contractor Lease**

If there are changes to the controlled document before the two-year review cycle, the revision number stays the same; one of the following will indicate the change:

I Placing a vertical black line in the left margin adjacent to sentence or paragraph that was revised; or

I Placing the words GENERAL REVISION at the beginning of the text. This statement is used when entire sections of the document are revised.

If changes and updates occur at the two-year review cycle, the revision number increases by one.

| Rev. No. | Description of Changes | Revision on Pages | Date |
|-----------------|-------------------------------|--------------------------|-------------|
| 0 | Initial Document | | 3/5/2015 |