



# **U. S. Department of Commerce**

## **Real Property Management Manual**

**August 2014**

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## PREFACE

Given the importance of real property to the Department of Commerce (DOC), it is appropriate to maintain a comprehensive document outlining DOC's real property policies and procedures, which is this *Real Property Management Manual* (Manual). This Manual emphasizes sound and efficient stewardship of DOC's real property assets, by promoting effective and appropriate management processes.

This Manual contains features, tools, and best practices, as well as introduces the concept of Real Property Portfolio Management, and provides guidance on its implementation. There are also comprehensive updates addressing new laws, executive orders, and Presidential and Office of Management and Budget (OMB) memoranda.

In the years since issuance of the 2003 Manual, the Federal government has increased its focus on the following real property areas:

- a. Asset and portfolio planning and management,
- b. Comprehensive capture of inventory data,
- c. Performance measurement,
- d. Disposal of underutilized and vacant properties,
- e. Strategic re-investment in mission-critical facilities,
- f. Efficient utilization of space and establishment of standards
- g. Optimization of government real properties,
- h. Adoption of private sector approach,
- i. Energy efficiency and sustainability, and
- j. Cost-consciousness.

A few of the new regulatory requirements and Federal policies that stress better asset management practices originate from the following:

- a. Executive Order 13327, *Federal Real Property Asset Management* (Feb. 4, 2004);



- b. GAO's High Risk List (Managing Federal Real Property) and numerous GAO reports, such as GAO-13-573T, *Excess and Underutilized Property Is an Ongoing Challenge*;
- c. Telework Enhancement Act of 2010, Pub. L. 111-292, 124 Stat. 3165 (Dec. 9, 2010);
- d. Presidential Memorandum, *Disposing of Unneeded Federal Real Estate—Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency* (June 10, 2010); and
- e. OMB Memorandum No. 2013-02, *Implementation of OMB Memorandum M-12-12 Section 3: Freeze the Footprint*, (March 14, 2013).

DOC has also been focusing on the following real property issues, which are addressed in this Manual:

- a. A portfolio management approach to planning and operations;
- b. Administration of properties controlled by the General Services Administration (GSA), with particular attention on validating continuing need statements;
- c. GSA rental cost projection and rent validation, including corroborating the measurement of assigned space;
- d. Federal-wide and DOC-specific business metrics to track real property performance; and
- e. Integration of real property processes with other broad DOC initiatives that deal with acquisition procurements and budgeting, such as the *Policy on Commerce Acquisition Project Management* (Nov. 6, 2012) and *DOC Scalable Acquisition Project Management Guidebook* (July 2, 2012).

## **CHAPTER 1: INTRODUCTION**

### **1.1 OVERVIEW OF THE REAL PROPERTY MANAGEMENT MANUAL**

Real property plays an integral role in the execution of the mission of the Department of Commerce (DOC), across all bureaus and Operating Units (OUs).<sup>1</sup> In this regard, the leasing, construction, operation, and maintenance of real property assets constitute a significant portion of DOC's annual budget.

This *Real Property Management Manual* (Manual) is a comprehensive reference document containing real property policies and procedures. This Manual discusses applicable laws, regulations, authorities, reporting requirements (internal and external), accountability practices, performance measures, asset business plans, and space utilization standards.

Some of the real property processes addressed in this Manual include: facility planning, acquisition of interests in real property, asset and portfolio management, space programming and utilization, facility management, repair and alteration, capital project planning and execution, survey and documentation of reinvestment needs, energy conservation and natural resource sustainability, and disposal.

This Manual is not meant to be a step-by-step guide for the execution of all real property actions. OUs are authorized to establish supplemental internal guidance. In many cases, OUs have already put such guidance in place. The Manual does provide, in some instances, specific references to these other guidance documents.

### **1.2 AUTHORITY, PURPOSE AND SCOPE OF THIS MANUAL**

In accordance with Department Administrative Order (DAO) 200-0, *Department of Commerce Handbooks and Manuals*, this Manual has the status and effect of a DAO. This Manual serves as an authoritative Department reference on real property, and supersedes the July 2003 version. All DOC

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<sup>1</sup> Operating Units (OUs) are defined in Department Organization Order (DOO) 1-1, *Mission and Organization of the Department of Commerce*. However, for the purpose of this Manual, OUs also include organizational entities within the Office of the Secretary, such as the Chief Financial Officer and Assistant Secretary for Administration and Inspector General.

employees shall adhere to the policies and procedures set forth in this Manual when performing real property functions on behalf of DOC.

However, with regard to acquiring or managing real property outside of the United States, the Foreign Service Buildings Act, 1926, as amended, (22 U.S.C. § 292 *et seq.*) and the Department of State's *Foreign Affairs Manual* may also be applicable.

### **1.3 ISSUANCE, MAINTENANCE, AND DISTRIBUTION**

DOC's Office of Facilities and Environmental Quality (OFEQ) is responsible for issuing and maintaining this Manual, which is available at <http://www.osec.doc.gov/ofeq/>.

The Facilities and Real Property Management Council and OUs are responsible for disseminating this Manual to the appropriate employees within their organizations. Updates to account for new laws, executive orders and other Federal policies will be in the form of bulletins issued and referencing the chapter and the section of this Manual.

## **CHAPTER 2: DELEGATIONS OF AUTHORITY, AND ROLES AND RESPONSIBILITIES**

### **2.1 PURPOSE, SCOPE AND APPLICABILITY**

This chapter addresses real property delegations of authority, and roles and responsibilities for conducting real property processes and activities for DOC.

When exercising any real property authority, OUs are responsible for ensuring adherence to the following in their respective areas:

- a. Legal authority exists for the action;
- b. The authority is exercised in accordance with applicable laws, regulations, policies, and procedures;
- c. The authority is being exercised by a duly authorized and qualified official; and
- d. Funds to cover the costs of implementing the action are legally available.

All DOC employees shall adhere to the policies and procedures set forth in this Chapter when performing real property functions on behalf of DOC. However, with regard to acquiring or managing real property outside of the United States, the Foreign Service Buildings Act, 1926, as amended, (22 U.S.C. § 292 *et seq.*) and the Department of State's *Foreign Affairs Manual* may also be applicable.

It is not the intent of this Manual to supersede any Federal law or specific delegation given by the Secretary or CFO/ASA.

### **2.2 DELEGATIONS OF AUTHORITY**

Authority is required to perform real property activities on behalf of DOC, which can be vested by law or delegated by GSA.

It is DOC policy to place authority and responsibility at the lowest practical organizational level in order to facilitate program execution, avoid delays, and reduce unnecessary involvement of multiple management levels. However, there are certain circumstances where authority for particular functions has not been delegated, in order to ensure propriety, portfolio

coherence, consistency, and coordination of actions between DOC organizations.

In accordance with Department Organization Order (DOO) 10-5, the Secretary has delegated to the Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA) the authority and responsibility for all DOC administrative management functions. This delegation includes authority and responsibility for real property acquisition, management, and disposal. Some of these authorities have been re-delegated through other DOOs, DAOs, and this Manual.

Delegations of authority from the CFO/ASA are generally made to a specific executive position within an OU (OU Head). Some delegations limit the level to which the OU Head may re-delegate the authority. For example, the authority to execute a real property lease contract may only be re-delegated to a Warranted Real Property Contracting Officer (RPCO). On the other hand, when the delegation does not contain a restriction on re-delegation, it is within the discretion of the OU Head to make additional re-delegations within the OU.

### **2.2.1 RESERVATION OF REAL PROPERTY AUTHORITIES BY THE CHIEF FINANCIAL OFFICER/ASSISTANT SECRETARY OF ADMINISTRATION**

The CFO/ASA expressly reserves the following authorities:

- a. The authority to approve acquisitions of real property and lesser interests in real property (e.g., easements) that are permanent in nature, regardless of the value;
- b. The authority to approve direct real property leases and requests for GSA assignment of space that cost, or exceed, eighty-five percent (85%) of the GSA prospectus level;
- c. The authority to approve, through the budget process, construction, repair, and alteration projects that cost, or exceed, the GSA prospectus level;
- d. The authority to approve requests for, and the acceptance of, GSA real property delegations of authority, except for the delegations specified in Section 2.3.1 and COR delegations;

- e. The authority to accept any donation or gift of real property or lesser interests in real property (e.g., leases, easements), regardless of the value;<sup>2</sup> and
- f. The authority to approve requests to GSA for waivers for, and modifications to, the Architectural Barriers Act standards, as described in 41 C.F.R. (Federal Management Regulation) § 102-76.90; and to approve DOC waivers for, and modifications to, the Architectural Barriers Act standards, if such authority has been delegated to the CFO/ASA.

### **2.2.2 DELEGATIONS OF AUTHORITY FOR GRANTING EASEMENTS**

The Secretary is authorized by 40 U.S.C. § 1314 to grant easements. The Secretary may grant to an applicant, on behalf of the U.S. Government, an easement that the Secretary decides will not be adverse to the interests of the U.S. Government, subject to reservations, exceptions, limitations, benefits, burdens, terms, or conditions that the Secretary considers necessary to protect the interests of the U.S. Government.

This authority is re-delegated to the CFO/ASA, the Under Secretary of Commerce for Standards and Technology and Director of NIST (Director of NIST), the Assistant Secretary for Communications and Information and Administrator of NTIA (Administrator of NTIA), and to the Under Secretary of Commerce for Oceans and Atmosphere and Administrator of NOAA (Administrator of NOAA). OUs exercising this authority must consider the issues discussed in Section 12.2 of Chapter 12 of this Manual. Additionally, the instrument granting the easement must be reviewed and approved by the Office of the General Counsel's (OGC's) Office of the Assistant General Counsel for Finance and Litigation (F&L) prior to execution.

The authority to approve and execute easements may be re-delegated as follows:

- a. The CFO/ASA may re-delegate this authority;
- b. The Director of NIST may not re-delegate this authority;
- c. The Administrator of NTIA may re-delegate this authority only to the Director, Institute for Telecommunication Sciences, without authority for re-delegation; and

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<sup>2</sup> This does not include transactions that do not convey any interest in real property, such as revocable permits and licenses.

- d. The Administrator of NOAA may re-delegate this authority only to NOAA's Chief Administrative Officer, without authority for re-delegation.

The instrument granting the easement shall provide for termination of any part of the easement if there has been one or more of the following:

- a. A failure to comply with a term or condition of the grant;
- b. A nonuse of the easement for a consecutive 2-year period for the purpose for which granted; or
- c. An abandonment of the easement.

In addition, the instrument shall also include a provision requiring written notice of the termination be given to the grantee, or its successors or assigns.

### **2.3 DELEGATIONS OF AUTHORITIES FROM GSA<sup>3</sup>**

To the extent GSA has delegated the following authorities to the Secretary of DOC, and to the extent any such authority has not been reserved by the Secretary or the CFO/ASA, the authorities are hereby delegated to OFEQ and the OUs, for their respective areas, with power of re-delegation within their respective organizations:

- a. The authority to lease space under a categorical space delegation or DOC special purpose space delegation (occasionally referred to as "blanket" delegations), to the extent authorized by 41 C.F.R. § 102-73.140 and FMR Bulletin C-2. Only Warranted Real Property Contracting Officers (RPCOs) may execute such leases;
- b. The authority to negotiate and execute leases for space in buildings and land incidental thereto when leased for a nominal consideration of \$1 per annum, and limited to terms not to exceed 1 year, to the extent authorized by 41 C.F.R. part 102-73. Facilities acquired under this authority must meet the same requirements and standards for facilities acquired competitively. Only Warranted RPCOs may execute such leases;

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<sup>3</sup> GSA delegations are discussed in more detail in Chapter 6. However, as also noted in Chapter 6, when GSA delegates its lease acquisition authority (40 U.S.C. § 585) to an OU, the delegation includes the ability to limit obligations related to a long term lease on a fiscal year basis without violating the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(B), subject to the OU's compliance with the conditions of the delegation.

- c. The authority to transfer excess real property, to the extent authorized by 41 C.F.R. part 102-75;
- d. The authority to act as the disposal agency for surplus real property, to the extent authorized by 41 C.F.R. part 102-75; and
- e. The authority to abandon, destroy, or to donate to public bodies, government-owned real property, to the extent authorized by 41 C.F.R. part 102-75.

## **2.4 ROLES AND RESPONSIBILITIES**

DOC employees are to manage, administer and conduct DOC's real property programs with economy and efficiency and to strive to eliminate fraud, waste and abuse.

### **2.4.1 OFFICE OF FACILITIES AND ENVIRONMENTAL QUALITY**

#### **2.4.1.1 DIRECTOR, OFFICE OF FACILITIES AND ENVIRONMENTAL QUALITY<sup>4</sup>**

In accordance with DOO 10-5 and DOO 20-1, the Director of the Office of Facilities and Environmental Quality (OFEQ):

- a. Establishes DOC-wide policy and procedures for the acquisition, management, and disposal of real property;
- b. Serves as liaison with the GSA on all government-wide real property programs;
- c. Reviews and makes recommendations to the CFO/ASA for requests for, and acceptance of, GSA real property delegations of authority, except for the delegations specified in Section 2.3.1 and COR delegations;
- d. Provides the CFO/ASA with advance notice of all real property disposal, transfer, and exchange actions;
- e. Oversees major real property projects and coordinate Department-wide facilities requirements;

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<sup>4</sup> Previously, the Office of Facilities and Environmental Quality (OFEQ) was the Office of Administrative Services (OAS).



- f. Manages the GSA nation-wide Departmental building delegation program;
- g. Implements and oversees policies and procedures for compliance with real property laws, regulations, policies, and procedures;
- h. Oversees compliance with program requirements, and sound asset and portfolio management practices and principles;
- i. Implements DOC-wide real property initiatives;
- j. Serves as the Senior Real Property Officer (SRPO) for DOC, in accordance with Executive Order 13327;
- k. Reviews and provides advice on all real property matters which require approval of the CFO/ASA;
- l. Provides a full range of administrative services for DOC, including space management and use, property management, and building management for the Herbert Clark Hoover Building (HCHB), including operations, maintenance and repairs (in accordance with the GSA Building Delegation Agreement);
- m. Manages the Federal Real Property Management System (FRPM) (DOC's real property inventory system), including establishing policies and procedures and developing requirements;
- n. Approves permanent and interim warrants for the positions of RPCO, for lease contracting activities, and ACO, for lease administration activities; and
- o. Re-delegates any of the authorities in his/her respective area of responsibility, subject to such conditions and limitations on the authorities as the delegating official may prescribe.

#### **2.4.1.2 ASSOCIATE DIRECTOR, OFFICE OF REAL PROPERTY PROGRAMS<sup>5</sup>**

In accordance with DOO 20-1, the Associate Director of the Office of Real Property Programs (ORPP):

- a. Develops and coordinates DOC's real property policy;

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<sup>5</sup> Previously, the Office of Real Property Programs (ORPP) was the Office of Real Estate Policy and Major Programs (OREPMP).

- b. Provides analytic and technical support and advice to OUs in the planning and execution of real property programs and activities;
- c. Serves as a real property subject matter expert;
- d. Develops and implements a DOC-wide portfolio management approach to the planning and execution of real property activities;
- e. Issues and updates this Manual;
- f. Serves as the DOC point of contact for real property policy matters with Departmental counterparts and external entities, such as GSA, the Office of Management and Budget (OMB), and the Department of Justice (DOJ);
- g. Conducts analytical studies to gauge the effectiveness of DOC real property policies, procedures, and operations;
- h. Defines, develops, and manages the FRPM database and, in coordination with the OUs, develops DOC-wide data systems requirements and makes periodic updates to the database;
- i. Secures legal guidance and opinions from the Office of the General Counsel's (OGC's) F&L that regard real property issues;
- j. Reviews and makes recommendations to the Director of OFEQ for requests for, and acceptance of, GSA real property delegations of authority, except for the delegations specified in Section 2.3.1 and COR delegations;
- k. Provides the Director of OFEQ with advance notice of all real property disposal, transfer, and exchange actions;
- l. Analyzes, monitors and provides advice to the CFO/ASA, Director of OFEQ, and other high level officials on issues relating to the implementation of government-wide real property programs and DOC real property initiatives;
- m. Manages the DOC Real Property Contracting Officer (RPCO) Warrant Program;
- n. Develops policies for the use and disposal of tobacco products and for the use, storage, and consumption of alcoholic beverages in DOC occupied facilities;

- o. Serves as a liaison with GSA on implementation of government-wide real property programs;
- p. Provides real property support during Continuity of Operations Plan (COOP) and coordinates with GSA's PBS regional offices to procure replacement space for affected DOC locations; and
- q. Re-delegates any of the authorities in his/her respective area of responsibility subject to such conditions and limitations on the authorities as the delegating official may prescribe.

#### **2.4.1.3            ASSOCIATE DIRECTOR, OFFICE OF SUSTAINABLE ENERGY AND ENVIRONMENTAL PROGRAMS**

In accordance with DAO 217-16, the Associate Director of the Office of Sustainable Energy and Environmental Programs (OSEEP):

- a. Assists the CFO/ASA in his/her role of Senior Sustainability Officer for facility energy and environmental programs;
- b. Coordinates DOC implementation and oversight of Federal mandates for facility energy conservation and environmental stewardship;
- c. Provides Department-wide policy and guidance aligned with Federal statutes, Executive Orders, and other applicable regulations in the areas of facility energy conservation and environmental stewardship;
- d. Coordinates the assimilation and submission of special and annually recurring energy and environmental reports and awards programs;
- e. Serves as lead liaison with matters involving the OMB, the Office of the Federal Environmental Executive (OFEE), GSA, Government Accountability Office (GAO), the Inspector General (IG), other DOC Office of the Secretary Directors, the Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), and Department of Energy (DOE), and any other Federal agencies and national laboratories on energy and environmental program matters; and
- f. Re-delegates any of the authorities in his/her respective area of responsibility subject to such conditions and limitations on the authorities as the delegating official may prescribe.

#### **2.4.1.4 ASSOCIATE DIRECTOR, OFFICE OF SPACE AND BUILDING MANAGEMENT**

In accordance with DOO 20-1, the Associate Director of the Office of Space and Building Management (OSBM):

- a. Operates and manages the HCHB in accordance with the GSA Building Delegation Agreement;
- b. Plans, develops, and coordinates current and projected space requirements for the HCHB;
- c. Provides facility management services for the HCHB, including office renovation, carpet/drapes, furniture, cabling, telecommunications services, space planning, and design services;
- d. Provides labor/moving services for the HCHB;
- e. Coordinates the recycling program for the HCHB;
- f. Serves as the contracting officer technical representative (COTR) for the contracts regarding HCHB's cafeteria, landscaping, janitorial, elevators, and exterminating services;
- g. Provides building operations for the HCHB, including HVAC, electrical, plumbing, carpentry, and welding services; and
- h. Re-delegates any of the authorities in his/her respective area of responsibility, subject to such conditions and limitations on the authorities as the delegating official may prescribe.

#### **2.4.2 DOC ORGANIZATIONAL UNITS**

Except in the areas of responsibility reserved in other parts of this Manual, the head of an OU may re-delegate any of the authorities in his/her respective area of responsibility, subject to conditions and limitations contained herein.

All OUs are required to do the following:

- a. Comply with all applicable real property laws, regulations, executive orders, policies, and procedures;
- b. Implement DOC's real property policies and procedures;

- c. When operating under, or subject to, GSA authorities, implement GSA's applicable real property policies and procedures;
- d. Recommend additions, modifications, and deletions to DOC's real property policies and procedures (OFEQ will review and consider such recommendations);
- e. Develop supplemental internal OU-specific real property policies and procedures (potentially adopting applicable GSA policies and procedures);
- f. Initiate requests for real property actions, by contacting an appropriate office that is responsible for real property issues, and coordinate such requests with ORPP;
- g. Assist with the development of required asset acquisition documentation;
- h. Coordinate with OFEQ and other Departmental counterparts when approval or guidance relating to policy issues concerning real property acquisition, management, utilization, and disposal are required;
- i. Coordinate and provide ORPP with advanced notice of all requests for, and acceptance of, GSA real property delegations of authority, except for the delegations specified in Section 2.3.1 and COR delegations;
- j. Recommend space design, layout, and utilization improvements to assure space is assigned, managed, and used properly;
- k. Acquire real property and interests in real property in a manner that is consistent with site-specific workspace plans and DOC portfolio management plans, and, as applicable, local portfolio plans and goals;
- l. Provide ORPP with advance notice of all real property disposal, transfer, and exchange actions;
- m. Monitor projects in OU controlled space (e.g., construction, alterations, tenant improvements, and repairs);
- n. Periodically assess real property assets that are either less than fully utilized or underutilized to determine if co-location, consolidation, or disposal is appropriate;
- o. Recommend real property assets to ORPP for disposal;

- p. Coordinate the screening, reassignment, transfer, or disposals of unneeded assets, and provide funding and management of the asset while it is under control of the OU;
- q. Verify and maintain the accuracy of OU information entered into the FRPM database;
- r. Approve, coordinate, and ensure timely real property payments;
- s. Comply with the National Historic Preservation Act of 1966, Pub. L. No. 89-665 (Oct. 15, 1966) (16 U.S.C. § 470 et seq.) by nominating properties for inclusion on the National Register of Historic Places by assessing the impact of all actions or undertakings proposed for historic properties and by obtaining comments from the State Historic Preservation Officer (SHPO) and other appropriate organizations on actions that may affect the condition and/or historic or cultural nature of the property prior to the commencement of the project;
- t. Maintain records of all real property under the OUs area of responsibility, such as all documents pertaining to the acquisition, management, and disposal of an asset. Examples of applicable records include the following: acquisition files, title files, surveys, leases, contract files regarding construction and facilities management, drawings, AutoCAD (computer aided design) files, records of legislative jurisdiction, disposal files, outgrants, use agreements, occupancy agreements (OAs), and other agreements affecting the use of facilities;
- u. Monitor and enforce the terms and conditions of leases, agreements, OAs, easements, licenses, permits, etc.;
- v. Develop and justify the following: facilities requirements, budgets for acquisitions, maintenance, lease cost, construction, space changes to meet space utilization rates, and annual work space management plans;
- w. Include in Exhibit D of the OU's DOC budget request the cost of either:
  - i. Alterations to existing owned or leased facilities to meet the Architectural Barriers Act Accessibility Standard (ABAAS), included in 41 C.F.R. part 102-76, and to eliminate fire, safety, health, and environmental hazards; or

- ii. Acquisition of alternate facilities, and related moving expenses, which meet the Architectural Barriers Act Accessibility Standard (ABAAS), and DOC and OSHA fire, safety, health, and environmental standards;
- x. Provide funds for any fees that are payable to state and local governments for environmental programs, when such fees are authorized by Federal law or regulation, and are required by state or county law;
- y. When requesting noncompetitive acquisitions, provide sufficient information to ensure compliance with applicable laws and regulations (e.g., Competition in Contracting Act);
- z. Participate in the acceptance of facilities, including verification of square footage and inspection of the premises;
- aa. Assist with conducting physical inventories and the review of inventories for accuracy;
- bb. Provide OSEEP with required information that is necessary for meeting DOC's reporting requirements on energy usage reductions and environmental policies;
- cc. Implement GSA delegations of authority for the operation and maintenance of Federally-owned buildings and administration of GSA leases;
- dd. Nominate on-site representatives to serve as Contracting Officer's Representatives (CORs) for DOC and GSA-delegated leases, as appropriate;
- ee. Serve as the Contracting Officer's Technical Representative (COTR), as requested, for alterations and repairs, and monitors quality control and conformance with specifications;
- ff. Serve as liaison, except where the COTR has been designated, with GSA Regional Offices on daily operational matters;
- gg. Verify square footage and classification assignments for the GSA rent bills;
- hh. Assist ORPP with the verification of rent (including the financial portion – Exhibit 54) and reconciliation of discrepancies with GSA;

- ii. Establish an energy management program that complies with all applicable laws, regulations, policies, and procedures, including the Energy Independence and Security Act of 2007, Executive Order 13514, and the DOC Strategic Sustainability Performance Plan (see Chapter 9 for a full discussion of energy and environmental management requirements);
- jj. Perform condition survey reports, at the request of GSA or OFEQ, to document the condition of DOC leased space at time of occupancy and upon vacating the space; and
- kk. Complete annual engineering plans, which will be used by engineers in scheduling and planning their workload.



## **CHAPTER 3. PORTFOLIO MANAGEMENT**

### **3.1 INTRODUCTION TO PORTFOLIO MANAGEMENT**

This chapter provides guidance and direction for establishing and maintaining a strategic, portfolio management approach to DOC's real property inventory. This chapter is applicable to all real property controlled by DOC, whether owned, leased, or occupied under another type of arrangement (e.g., permit or license).

#### **3.1.1 PORTFOLIO MANAGEMENT OVERVIEW**

“Portfolio management” refers to a corporate, holistic, performance-based management discipline that seeks to link real property decision-making and activity—involving long-range planning, programming, budgeting, operations, transactions (including leases and other means of acquisition, as well as delegations), capital project selection and execution, and disposal—to DOC program mission objectives and optimum real property performance outcomes. Portfolio management is an approach concerned with lifecycle costs and with examining individual and group assets. Sound portfolio management entails various cross-sectional analyses of the portfolio, both to measure performance and to discover trends and patterns, which may foster changes and/or improvements to policy or practice.

Portfolio management is of critical importance because funding decisions are often not a function of asset-level analytics, since Federal agencies are often in a perennially constrained capital budgeting environment. Rather, within Federal agencies, capital funding is most often done on the basis of establishing a priority among a variety of competing needs. Capital decision-making in the Federal context is effectively a rationing process, and this highlights the importance of understanding the whole as well as individual parts and their relation to each other, which are hallmarks of the portfolio management approach.

“Asset management” is a related discipline that focuses on individual properties rather than the aggregate portfolio, or sub-portfolios. However, asset management shares a lifecycle cost orientation, a concern with measureable performance, and how a property serves the agency mission need.

### 3.1.2 IMPETUS FOR PORTFOLIO MANAGEMENT IN THE FEDERAL REAL PROPERTY CONTEXT

Executive Order 13327, *Federal Real Property Asset Management* (Feb. 4, 2004), called upon agencies to “develop and implement an agency asset management planning process . . . .” Among other things, each Federal agency’s asset management plan shall:

- a. Identify and categorize all real property owned, leased, or otherwise managed by the agency;
- b. Prioritize actions to be taken to improve the operational and financial management of the agency’s real property inventory; and
- c. Make life-cycle cost estimations associated with the prioritized actions.

Executive Order 13327 significantly enhanced the management orientation toward real property, by calling for a more incisive portfolio management focus on sound planning and strategic decision-making, based upon accurate, comprehensive inventory data, including performance characteristics, and physical attributes of assets and with a view not only to the initial costs, but to costs over the life of an asset.

Subsequent presidential memoranda and directives have continued to reinforce the importance of a portfolio management approach to real property. For example, Executive Order 13576, *Delivering an Efficient, Effective, and Accountable Government* (June 13, 2011), stresses the need for “conducting frequent data driven reviews of agency progress toward goals in the areas that OMB identifies as being critical to performance improvement across agencies or that the agency head identifies as top near term priorities.” Listed among these goals is “improving the management of Federal real estate . . . .” A Presidential Memorandum, *Implementation of Energy Savings Projects and Performance-Based Contracting for Energy Savings* (Dec. 2, 2011), called for wider implementation of energy savings contracts and performance-based contracting in the management of nearly three billion square feet of Federal building space, explicitly endorsed a macro or portfolio level management approach, in both choice of projects and the means of project implementation.

In addition, OMB Memorandum M-12-12, *Promoting Efficient Spending to Support Agency Operations* (May 11, 2012), further emphasized the need for spending efficiently, reducing waste, and controlling the Federal budget. Specifically, the Memorandum advised agencies “to act as a careful steward of taxpayer dollars, ensuring that Federal funds are used for purposes that

are appropriate, cost effective, and important to the core mission of executive departments and agencies . . . .” The Memorandum further instructs agencies to dispose of excess assets and not add new office or warehouse space without an offset reduction to existing space. This policy was reinforced and clarified by OMB Memorandum No. 2013-02, *Implementation of OMB Memorandum M-12-12 Section 3: Freeze the Footprint* (March 14, 2013), which, among other things, instructed agencies to not increase their space above Fiscal Year 2012 inventory without an offset.

### **3.1.3 UNDERUTILIZED ASSETS**

DOC real property assets that are either less than fully utilized or underutilized should periodically be assessed to determine if co-location, consolidation, or disposal is appropriate. 41 C.F.R. § 102-75.50 defines “underutilized” as “an entire property or portion thereof, with or without improvements, which is used– (a) Irregularly or intermittently by the accountable Executive agency for current program purposes of that agency; or (b) For current program purposes that can be satisfied with only a portion of the property.”

DOC policy is that OUs shall periodically (at least every five years) study and analyze the real property assets they control and/or occupy, to ensure that each asset is used as efficiently and effectively as possible. Some of the asset management factors to consider include the following:

- a. The asset is fully utilized;
- b. The asset matches best with the OU’s mission (e.g., office space is not being used mostly for storage and/or warehousing);
- c. The asset’s location best matches the OU’s mission;
- d. The asset is being put to its highest and best use. This factor may take into consideration the OU’s mission and changes in the community since the asset was obtained;
- e. The asset’s operating and rental costs are not excessive; and
- f. The asset is not considered worthless due to accumulated repair and alterations needs.

If the results of the aforementioned assessment show that an asset is either less than fully utilized or underutilized, then the OU, regardless of ownership and in coordination with ORPP, shall develop a comprehensive strategy to ensure that the asset is put to a more efficient and effective use. The strategy

may result in backfilling, co-location, consolidation, and/or disposal of the asset. In addition, OUs are also required to identify underutilized assets in FRPM, which will be uploaded into FRPP.

### **3.2 ROLES AND RESPONSIBILITIES**

The DOC portfolio management process is carried out by both ORPP and OUs.

The role of ORPP is to:

- a. Promulgate and champion real property portfolio management principles;
- b. Serve as DOC's clearinghouse for asset and portfolio management tools, procedures, and best practices;
- c. Serve as a liaison to GSA, OMB, and the Federal Real Property Council (FRPC) on real property asset management matters;
- d. Serve as DOC's central coordinating office for the assembly and reporting of real property inventory and performance data to GSA, OMB, and Congress;
- e. Conduct portfolio-wide, sectional, and sub-portfolio analyses and studies of various aspects of DOC's real property portfolio and operations, with the goal of validating the status quo or making recommendations for greater efficiency or effectiveness. Such recommendations could take the form of real property process improvements, operational efficiencies, inventory adjustments and/or changes, or consolidations or co-locations of space;
- f. Assist OUs in developing asset and portfolio management plans, and in conducting lifecycle cost/benefit analyses of strategic and tactical alternatives;
- g. Promulgate space utilization and space effectiveness goals and metrics;
- h. Serve as messenger and, in some cases, advocate for new development in the industry in terms of workplace strategy and real property use patterns; and
- i. Work with other DOC offices to assess and manage risks, primarily the Office of Program Evaluation and Risk Management (OPERM).

The role of each OU is to implement a portfolio management approach in the administration of its real property assets.

This entails, principally, the OUs to do the following:

- a. Apply a holistic, strategic perspective in real property decision-making;
- b. Update DOC's Real Property Asset Management Plan, as required by Executive Order 13327;
- c. Prepare Building Asset Plans (BAPs) and Portfolio Ten Year Plans (PTYPs) (as explained later in this chapter); and
- d. Provide ORPP with the Federal Real Property Management (FRPM) system data and information requested in ad hoc queries from Congress or the Administration.

### **3.3 PORTFOLIO MANAGEMENT PRINCIPLES**

The Federal Real Property Council (FRPC), established by Executive Order 13327, has promulgated guiding principles for improved asset management for all Federal agencies. The FRPC, chaired by OMB, consists of Senior Real Property Officers (SRPOs) from Federal agencies as well as certain OMB and GSA officials. The FRPC's tasks are to: assist and guide agencies in developing asset management plans, establish performance measures to determine the effectiveness of Federal real property management, and serve as a clearinghouse for "best practices in evaluating actual progress in the implementation of real property enhancements."

ORPP has developed DOC's guiding principles and analytics for the application of its portfolio management approach, which is closely patterned on the FRPC guidance, and they include the following:

- a. Begin with a perspective on the entirety; move only to the project level after engaging in a "macro" view of mission and resources;
- b. Collect quantitative data and benchmark performance wherever possible; seek comparable organizations, both inside and outside the government, against which behavior can be measured and/or compared;
- c. Align DOC's real property portfolio with its mission and business objectives;

- d. Provide space in an efficient and cost-effective manner;
- e. House employees in space that maximizes their productivity and promotes their health and safety;
- f. Champion data accuracy and completeness in real property inventory reporting;
- g. Foster, promote, and develop expertise in real property skill areas, including: asset management, financial analysis, leasehold acquisition, and transaction and project management;
- h. Champion appropriate space utilization;
- i. Employ decision-support tools, including lifecycle cost analyses of alternatives, cost-benefit analyses, and “best value” trade-off models, for capital projects and other acquisitions;
- j. Seek highest and best use of real property assets; and
- k. Dispose of unneeded assets.

### **3.4 BEST PRACTICES – MANAGEMENT PLANS**

Among the most salient of the best practices is the preparation and periodic updating of management plans. Management plans can have different formats, but two of the most common are the building-specific asset plan and the portfolio level plan. However, when buildings are clustered, installation or campus plans are often preferred over building-specific plans.

When an organization is an end-user of space, building level asset plans typically focus on how the building addresses the program’s mission, and how satisfied the occupants are with the space and building operations and services. End-user building asset plans typically contain a financial performance section, with a primary focus on overall cost, operating efficiency, and space utilization. Best-in-class end-user plans typically include computer-aided design (CAD) building drawings that show each workstation, and a suite of key performance indicators that measure overall cost, cost per person, cost per square foot, and overall utilization, as well as workstation and special space utilization efficiency.

ORPP has BAP templates available for optional use by OUs. These templates draw heavily upon data elements that are already captured by the FRPM system, and, therefore, require minimal manual data entry input. PTYPs are another best practice, discussed in Section 3.5 below.

### 3.5 PORTFOLIO MANAGEMENT STRATEGIES

One of the most prominent and best understood hallmarks of the portfolio management approach is the strategic, macro-level, or “big-picture” focus. Without taking a portfolio management approach, a large organization with occupied space in many leased buildings may look at each lease expiration as a one-off, stand-alone transaction, rather than looking across the local portfolio (or beyond) for various leveraging opportunities for savings.

Relevant questions OUs should address include the following:

- a. Can one lease be extended so that it is coterminous with another, and then seek space for the combined requirement? If yes, it may be possible to secure a lower per square foot rental rate due to shared administrative support and leveraging the entity’s bulk buying power.
- b. Does another OU or Federal agency have available vacant or underutilized space at a lower rental rate than the current space?
- c. Is now the best time to secure a long term lease?
- d. Should the lease include a unilateral option to pick up additional space at a pre-set price? This may allow for growth or accommodate another unit of the organization?
- e. Have space consolidation opportunities been fully explored (rather than merely co-location)?

Although the foregoing questions are focused on leased space, similar questions apply to owned space. However, the prompting for an examination of alternatives for owned space often occurs when there is a capital project rather than when approaching lease expiration.

Particularly for owned space, an awareness of the larger funding environment is necessary, since capital budget resources are often limited or unavailable. The budget realism is that pursuit of funding may be a futile exercise, except for the most mission-critical, high-visibility projects. This may be true, even though a facility condition assessment supports a maintenance, repair or modernization project. In such cases, even though the thirty-year present value analysis of project alternatives required by OMB Circular No. A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*, supports capital reinvestment, the portfolio management-infused analysis, which encompasses not only project-level specifics and lifecycle costing, but also ascertaining funding probabilities in

light of the larger budgetary environment, may suggest a different outcome. That outcome, depending upon circumstances, may involve a lease, or a ground lease-lease back (if the authority for this type of transaction is available), or some alternative-financing mechanism, such as an energy savings performance contract (ESPC).

Fundamental to portfolio management strategy is portfolio-level, long range planning. Section 3.4 outlines as best practice for the preparation and maintenance of PTYPs and BAPs. Developing strategies is intrinsic to the planning process. One of the principal objectives is to think about the future in a structured, purposeful way, so that behavior can be conformed to the strategies embedded in the plans. Naturally, if conditions warrant, the strategy can and should be revised; a critical examination of the strategy is part of the annual review and updating of these planning tools.

### **3.5.1 PRINCIPLE ELEMENTS OF A STRATEGIC PORTFOLIO MANAGEMENT APPROACH**

The principle elements of a strategic portfolio management approach include the following:

- a. Contextualized Decision-making: Examination beyond the specific transaction or property to comprehend how one particular action or building fits within the larger framework of mission need and portfolio performance;
- b. Analysis of Alternatives: A pragmatic examination of all feasible alternative actions;
- c. Lifecycle, Present-value Cost Analysis: A disciplined examination of alternatives not just involving first costs, but also predictable recurrent and periodic costs, and terminal (residual) values, all cast in present day worth by discounting future expenditures or income in accordance with present value theory;
- d. Long-term Focus: A view beyond present day needs that encompasses expectations about how needs may change in terms of size and character over time;
- e. Cost-Benefit Analysis: Analysis of alternatives not only in terms of lifecycle costs, but also through attribution of, where possible, monetized benefits; and



- f. Risk Assessment, Management and Mitigation: Process of identifying and assessing future events that may negatively impact the course of action, and establishing plans to mitigate and minimize this impact.

### **3.6 BUDGET INTEGRATION**

Budget submissions are one of the most definitive statements of policy a Secretary and President make. The allocation of scarce resources to specific missions, programs, and activities articulates the priorities of the Secretary and establishes the future direction of the Department.

Program analysis is the systematic application of analytical methods to assess the effectiveness and efficiency of a program or programs and alternative program options. Program analyses are conducted to support the budget formulation process and other strategic decisions of senior Departmental leadership. Program analyses undertaken to support budget formulation should provide concrete alternatives for the allocation of resources—for the budget year and following years. The Department’s Office of Performance, Evaluation, and Risk Management (OPERM) responsibilities include program analysis, as well as risk assessment, management, and mitigation.

OUs are expected to implement program analysis decision documents into their real property acquisition, management, and disposal processes, through budget formulation.

### **3.7 PROCESS INTEGRATION**

The DOC budgeting process and Scalable Acquisition Project Management Framework and process (the Framework) prescribe minimum activities and their documentation from project and/or program conceptualization through user occupancy. Each OU has leeway to tailor and scale the processes and documentation appropriately to the size of their activities.

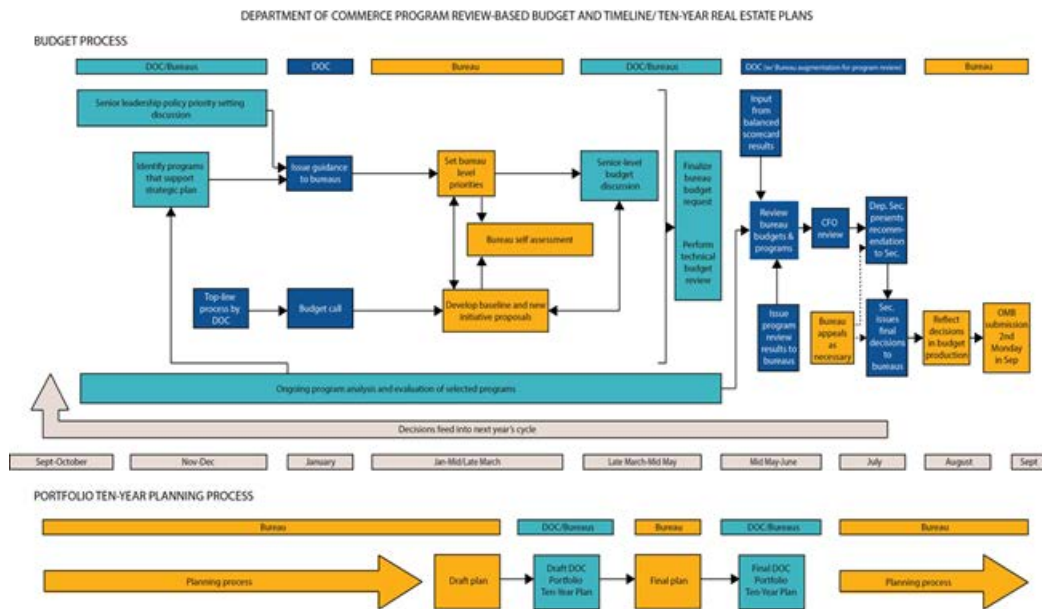
However, certain, large scale, high visibility, and/or high risk facilities projects will be designated for oversight by the Milestone Review Board (MRB), chaired by the Deputy Secretary. High-profile acquisition programs and projects are subject to MRB oversight. For more information, see the Department’s *Policy on Commerce Acquisition Project Management* (Nov. 6, 2012) and *DOC Scalable Acquisition Project Management Guidebook* (July 2, 2012).

OUs that engage in portfolio planning should be better prepared for budget and milestone reviews (whether OU- defined or policy specified), and should

have sound justifications for their real property budgets and proposed projects. Preparation of a PTYP is recommended, but not mandatory.

PTYPs are intended to accomplish the following:

- a. Align their real property with direction from strategic plans and individual programs;
- b. Reduce operating expenses;
- c. Improve the environmental sustainability of facilities; and
- d. Optimize space utilization to the minimum area needed.



### 3.7.1 COLLABORATION AND REVIEW

ORPP is available to assist OUs with the formulation of plans for all assets, leased and owned. ORPP will help OUs meet their space needs efficiently and economically by identifying opportunities across the DOC portfolio (consolidation, co-location, etc.), and ORPP may prepare Local Portfolio Plans (LPPs). Through partnering efforts and joint facilities planning meetings, ORPP will seek to foster collaboration across the OUs.

### **3.7.2 TIMEFRAME**

PTYPs cover (1) the prior fiscal year, (2) the present fiscal year, and (3) the next eight years. The PTYP and budget processes are aligned and carried out in concert, as illustrated on the following page.

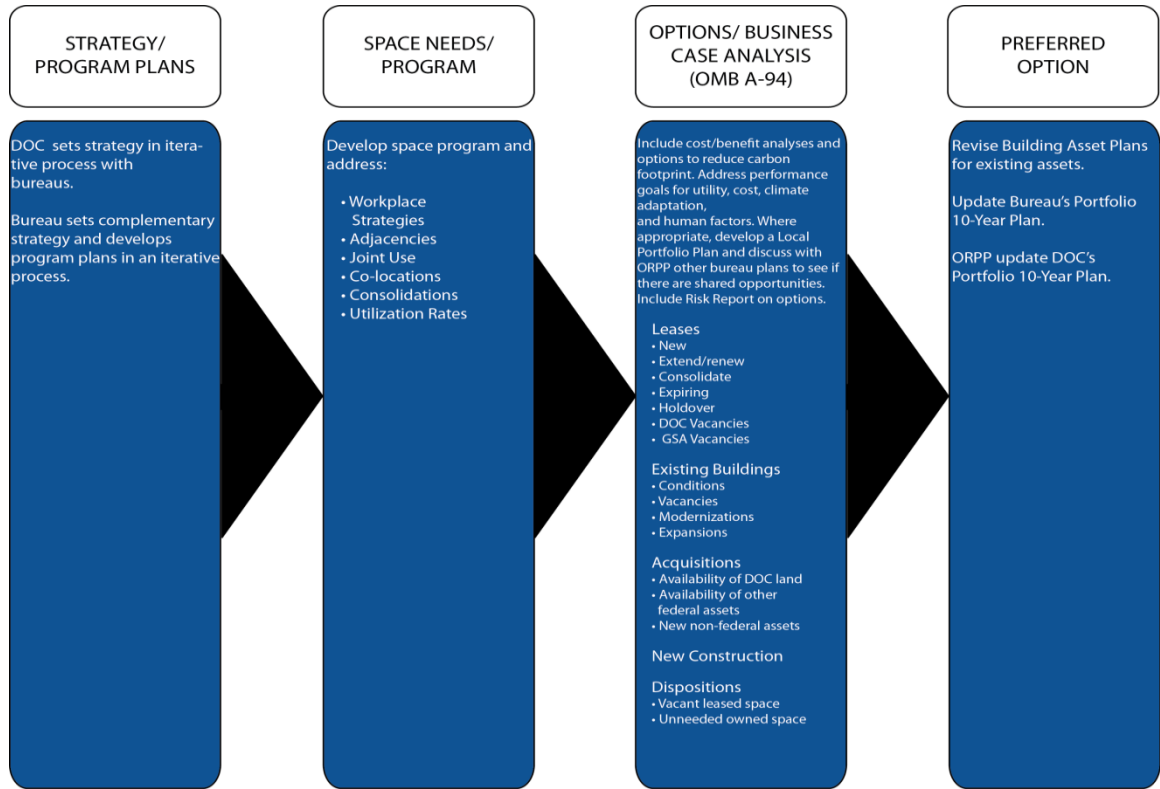
### **3.7.3 APPLICABILITY**

In order to have a comprehensive approach to the portfolio, PTYPs address all real property owned and leased by OUs, including GSA controlled buildings, proposed real property acquisitions (leased and owned), and new construction projects.

### **3.7.4 PLANNING PROCESS**

The planning process addresses the strategic plan and goals of the OU. It identifies programmatic space requirements and explores options for meeting the space needs, as shown in the below diagram.

During the planning process, ORPP and DOC's Office of the Budget provide input from various committees (such as the Facilities Council), policies, goals, criteria, and performance measures addressing real property. The goal is to improve utilization, reduce operating expenses, and promote sustainability. OUs may also prepare BAPs for specific owned and leased assets, and revise their plans as conditions change. If OUs create PTYPs, they might also find it useful to prepare Local Portfolio Plans (LPPs) or Campus Plans, with ORPP's assistance for large sites and regions/markets where there are multiple DOC offices. The LPPs would provide an overview of the tenancies, market conditions, and potential consolidation and co-location opportunities. These opportunities could also be included in BAPs.



### 3.7.5 PORTFOLIO TEN-YEAR PLAN FORMAT

PTYPs may be in any format, but including the below information is recommended. Most of the data is available within DOC systems, and, to the extent possible, ORPP will assist OUs with incorporating reports into PTYPs.

#### 3.7.5.1 STRATEGIC AND PROGRAM PLANS

- Summary of the operating OU's strategic plan and program plans and, if a DOC-wide PTYP is prepared, strategic plans and program plans for all OUs. Note significant changes from prior year's PYTP.
- Summary of how the OU's plans comport with DOC's strategic plan.

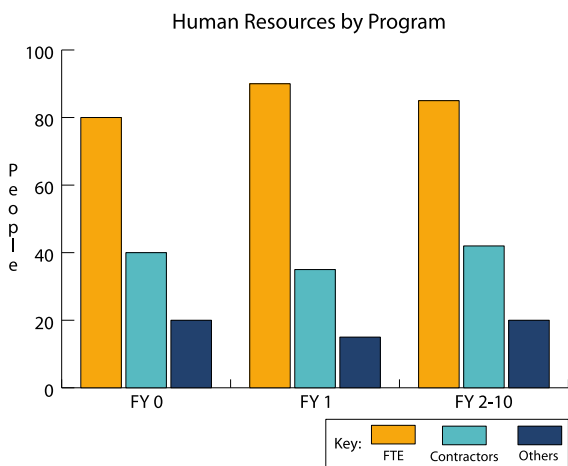
#### 3.7.5.2 FACILITIES OVERVIEW

- Summary of real property challenges (e.g., move costs for consolidations, facilities modernization needs).

- b. Summary of investment priorities for the next three to five years – only for NOAA, NIST, Census and Patent and Trade Office (PTO).

**3.7.5.3 HUMAN RESOURCES IN SUPPORT OF THE STRATEGIC AND PROGRAM PLANS**

- a. Summary of the rationale for proposed additions and/or contractions in numbers of people requiring space (e.g., implementation of hoteling, changes in program staffing requirements).
- b. Data on human resources by program and building, in the format shown below for the prior fiscal year (FY 0) and the ten-year planning period. DOC space includes space owned and directly leased by DOC; Other Federal Space includes space leased and owned by other Federal agencies (such as GSA), and Non-Federal Space includes space owned and controlled by others (e.g., State or local government, institutions, the private sector).



HUMAN RESOURCES BY PROGRAM/OFFICE

	FY 0		
	DOC Space	Other Federal Space	Non-Federal Space
PROGRAM 1			
FTE			
Contractors			
Others			
PROGRAM 2			
FTE			
Contractors			
Others			
TOTAL			
FTE			
Contractors			
Others			

**3.7.5.4 FACILITIES IN SUPPORT OF THE STRATEGIC AND PROGRAM PLANS**

- a. Prior fiscal year portfolio data with data elements to be taken from Federal Real Property Profile (FRPP).
- b. Proposed changes (ten-year projection) to portfolio with justification for changes, e.g. conditions assessment to justify capital investment.

- c. Description of options considered.

OUs with owned assets will need to include condition assessments for assets proposed for re-investment or disposal.

#### **3.7.5.5 IMPACT OF PROPOSED CHANGES ON PERFORMANCE**

- a. List past fiscal year performance against measures.
- b. Project ten-year performance against measures if PTYP is approved.

#### **3.7.5.6 BUDGET**

- a. Resource requirements:
  - i) Rent
  - ii) Tenant improvements
  - iii) Furniture, fixtures and equipment
  - iv) Move costs
  - v) Repairs and alterations
  - vi) New construction
  - vii) Dispositions
- b. Financial sources for proposed plan
- c. Enterprise and project Risk Assessment, as required by MRB
- d. Options, if resources are not available.

## **CHAPTER 4. REAL PROPERTY DATA AND PERFORMANCE MEASUREMENT**

### **4.1 OVERVIEW OF REAL PROPERTY DATA AND PERFORMANCE MEASUREMENT**

The effective planning and management of the DOC real property portfolio requires accurate and timely data collection, compilation and analysis. More recently, the Administration has emphasized the goal of reducing the overall cost of real property to the taxpayers by, in part, reducing inventory.

In this regard, the collection of data, such as space allocations per person, assists the Administration and OMB with the goal of reducing overall space usage, whether through legislation, reduced budget allocations, or both. Space allocations can be improved by leveraging mobility and using alternative work strategies, such as telework, hoteling, and desk sharing.

Timely and accurate data facilitates DOC's responses to various inquiries, such as from Congress and OMB. Internally, timely and accurate data is also needed for complying with financial statement reporting requirements and for preparing the annual budget. Additionally, data allows DOC to compare the costs of its real property over time, meet its mission, and provide for the safety and comfort of its employees.

### **4.2 DATA COLLECTION AND REPORTING REQUIREMENTS**

Federal agencies have many real property data reporting requirements. Some of these requirements originate from the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. 110-140, 121 Stat. 1492 (Dec. 19, 2007); the Energy Policy Act of 2005 (EPAct 2005), Pub. L. 109-58, 119 Stat. 594 (Aug. 8, 2005); Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (Oct. 5, 2009); Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* (Jan. 24, 2007); and Executive Order 13327, *Federal Real Property Asset Management* (Feb. 4, 2004).

#### **4.2.1 FEDERAL MANAGEMENT REGULATION (41 C.F.R. PART 102-84), ANNUAL REAL PROPERTY INVENTORIES**

41 C.F.R. part 102-84 provides guidance that all agencies must follow when preparing and submitting annual real property inventory information for owned, leased, and managed assets.

#### **4.2.2 EXECUTIVE ORDER 13327, FEDERAL REAL PROPERTY ASSET MANAGEMENT (FEB. 4, 2004)**

Executive Order 13327 requires that agencies report all owned, leased, and otherwise managed real property assets within and outside the United States, including improvements on Federal land. The agency responsible for reporting the constructed asset-level data is defined by the following:

- a. For Federally-owned real property, the Federal agency that exercises real property accountability is responsible for reporting the asset; and
- b. For otherwise managed real property, the Federal agency that entered into the agreement with the other party (e.g., state or foreign government) is responsible for reporting the asset.

With regard to OUs that occupy GSA controlled space, GSA completes most of the data fields, and the OUs are responsible for inputting only a limited amount of data.

#### **4.2.3 DEPARTMENT ADMINISTRATIVE ORDER 217-21, SPACE ALLOWANCE AND MANAGEMENT PROGRAM**

DAO 217-21 establishes DOC's policy for office space allocation in leased and owned facilities. The DAO's goal is to bring DOC's space per person allocation in line with the Federal Government average, and advance the President's June 10, 2010 Memorandum, *Disposing of Unneeded Federal Real Estate—Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency*.

#### **4.2.4 STATEMENT OF FEDERAL FINANCIAL ACCOUNTING STANDARDS NUMBER 6**

The Statement of Federal Financial Accounting Standards Number 6 (SFFAS 6) sets out the accounting requirements for financial statement reporting on Federally owned property, plant, and equipment (PP&E); deferred maintenance and repair of PP&E; and cleanup costs. The standards pertain to tangible assets that have an estimated useful life of two or more years, are not intended for sale in the ordinary course of business, and are intended to be used or available for use by the entity.



### **4.3 FEDERAL REAL PROPERTY PROFILE**

A task force from the Federal real property community created the Federal Real Property Profile (FRPP) and a Real Property module to fulfill the Federal Real Property Council (FRPC) and GAO's business rules and regulations covering the inventory of Federal real property. The FRPP database is a crosscutting data collection and analysis tool that contains almost all of the Federal Government's real property assets. FRPC requires that Federal agencies report real property data into the FRPP annually.

With the Administration's emphasis placed on Federal real properties as a targeted area to reduce government cost and space, FRPP serves as the primary government source to help identify opportunities to reduce, realign, and make more efficient use of real property assets. OMB uses data in FRPP to work with agencies on strategies to improve the management of the Federal real property inventory and to monitor the progress of the redeployment of excess and underutilized properties. OMB and DOC use FRPP to report and monitor the results of implementing the "Freeze the Footprint" policy. Furthermore, GAO uses FRPP as a source for its analysis and reporting on the state of the Federal real property portfolio.

#### **4.3.1 DOC's FEDERAL REAL PROPERTY MANAGEMENT SYSTEM**

DOC's primary real property inventory and reporting data collection system is the Federal Real Property Management (FRPM) system. FRPM integrates the FRPP measures to maximize their utility and simplify the measurement process for OUs. Annually, a subset of FRPM data is uploaded into FRPP to meet the FRPC and Executive Order 13327 requirements.

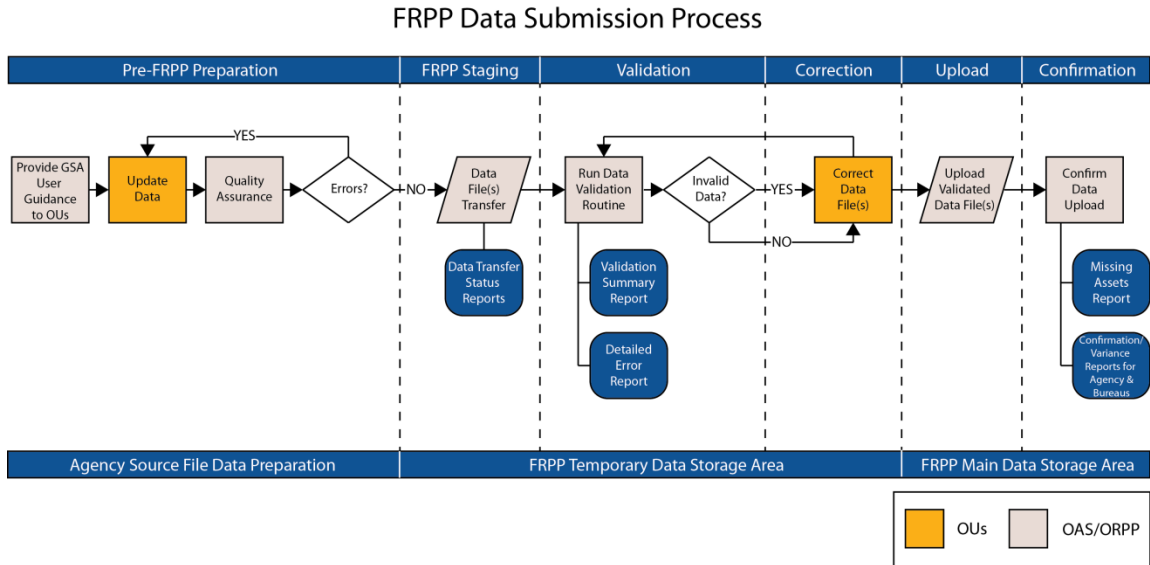
FRPM assists DOC with meeting numerous requirements, such as those set by GSA, FRPC, GAO, and the Federal Accounting Standards Board (FASB). These requirements address rental payments, depreciation, clean-up amortization, deferred maintenance, annual reporting of real property inventory data and managing DOC real property portfolio.

ORPP uses FRPM facility data elements by facility to carry out its role in support of the Continuity of Operations Plan (COOP). ORPP also provides data to DOC's Office of Security, which is shared with the Department of Homeland Security's Federal Emergency Management Agency.

FRPM is also filled with functions and features that can assist OUs with the effective management of real property. These features support the entire lifecycle of real property, from property acquisition through disposal.

Some OUs also have their own real property management systems. In addition, GSA's Rent on the Web system is available to OUs for data on leased space procured by GSA.

### 4.3.2 DATA COLLECTION PROCESS



Annually, GSA issues to Federal agencies the *Guidance for Real Property Inventory Reporting*. This guidance describes all of the data elements needed for the FRPP, which GSA maintains.

OFEQ, in turn, notifies OUs of the guidance and specifies the date OUs are required to update their data for the FRPM system.

OUs can either provide the required data (completed spreadsheets) to ORPP or they can enter their data directly into the FRPM. If OUs enter their data directly, they are required to notify ORPP once the data transfer has been completed. OUs are required to certify the accuracy of their data.

Then, ORPP inputs data into the FRPP, and is responsible for testing all the data, and providing quality assurance. In accordance with 41 C.F.R. § 102-84.30, DOC must certify the accuracy of the real property data submitted to GSA. Therefore, ORPP works with OUs to ensure the data is as accurate as possible, and correct any discrepancies. ORPP will also coordinate with OUs for the inspection of required supporting documentation. ORPP's Associate Director is DOC's point of contact for the Annual Real Property Inventory.

Currently, DOC is required to submit its data to GSA's Office of Government-wide Policy by mid-December.

#### **4.4 PERFORMANCE MEASURES**

Performance measures used by DOC to track and manage its portfolio include those in FRPP and additional measures created by DOC. Performance measures are useful for portfolio planning and budget justification. The measures provide a check on the state of DOC real property portfolio. ORPP will employ four measures: space utilization rate per person, real property costs, building conditions, and suitability of facilities. The measures are used to ensure that DOC's portfolio conforms to all required regulations and policies.

ORPP will report the results annually to the Facilities Council and OUs. The report will also compare DOC's performance measurement data to other Federal agencies and private businesses.

##### **4.4.1 SPACE UTILIZATION PER PERSON**

Space Utilization per Person measures the average usable square feet (USF) occupied per person. This measure is required only for office and certain other types of facilities, such as laboratories, hospitals, housing units, and barracks. OUs are responsible for allocating space among its personnel, which is usually based on rank, grade, position, or nature of the work performed.

DOC uses this measure as a way to benchmark its progress toward effective space utilization, as prescribed in DAO 217-21, *Space Allowance and Management Program*. In this regard, this measure allows DOC to evaluate whether DOC as a whole, as well as each OU, has met its established goal of 170 USF per person, or performed better than the Federal average utilization rate.

##### **4.4.2 REAL PROPERTY COSTS**

DOC measures the cost of real property in two ways: (1) real property cost as a percentage of the total budget, and (2) real property cost per person occupying space.

The cost as a percentage of total budget measure enables DOC to perform trend analyses over successive years to see how real property costs are changing relative to the total budget. The purpose of the measure is to raise

awareness of real property costs, understand variances from the average, and, if needed, take steps to lower real property expenditures.

The cost per person measure enables DOC and OUs to compare the costs per person across OUs, other governmental entities, and the private sector. This information may be used to pinpoint where to reduce expenditures.

For leased space, ORPP will use FRPP data for rent (Lease Annual Rent) and operating expenses (Lease Annual Operating and Maintenance Costs). For government-owned space, ORPP will use the reinvestment/facilities sustainment level recommended by the National Academy of Sciences, which is at two to four percent of functional replacement value, using the FRPP data for Value. For the number of people occupying the space, ORPP will use the FRPP data for Personnel, including the Number of Federal Employees, Number of Contractor Employees, and number of Teleworking Employees.

Measuring the true real property cost per person may require more information than is captured in the FRPP. For example, additional data is required when there is use of an OU's facility under an agreement with another entity, such as a university. Therefore, OUs shall identify those facilities to ORPP to determine the number of people, other than Federal employees and contractors, using the facility and the extent of their usage.

#### **4.4.3 BUILDING CONDITIONS**

As noted in Chapter 7 of this Manual, condition inspections of owned properties are required by financial standards (SFFAS 6) for generating a liability that is included in the financial statement of an agency. Inspections are also a management process for identifying and developing a preliminary cost and scope for repair and maintenance project development. The purpose of this process is to produce a documented, verifiable, and repeatable determination of cost estimate for maintenance liability for all owned building and structures meeting threshold requirements. Recent revisions to SFFAS 6 have been made so that information is presented consistently across all agencies, and requires a narrative for the financial statement on what the agency has accomplished in the past year to mitigate the deficiencies.

Tracking building conditions over time and/or against established benchmarks is a useful measure for managing a portfolio. This measure can be used to support a budget request for capital repairs and new construction.

The FRPP also has a performance measure relating the condition of a property. The FRPP uses Condition Index (CI) as the measure for evaluating the condition of a constructed asset and calculates CI as the ratio of Repair

Needs to Plant Replacement Value. It is reported on a scale of zero to one hundred percent. The higher the CI, the better the condition of the asset is. Repair Needs is the amount of money needed to restore an asset to a condition substantially equivalent to the originally intended and designed capacity, efficiency, or capability. Plant Replacement Value is the cost to replace an asset at today's cost. OUs report on the conditions of directly leased and owned assets as part of the FRPP reporting process.

DOC has set an acceptable building conditions goal of ninety percent for Mission Critical facilities and eighty percent for Mission Dependent, Not Critical facilities, and a process for evaluating progress toward the goals. ORPP will track the performance of building conditions over the term for which FRPP data is available, prepare an annual report on building conditions by OU and for DOC overall, as compared to the building conditions goal.

#### **4.4.4 SUITABILITY OF FACILITIES**

In addition to the physical condition of a building, it is important to understand how well an asset meets the OU's mission and satisfies its occupants. DOC measures suitability of a facility in two ways: (1) FRPP's Mission Dependence, and (2) employees' satisfaction with the space.

This first measure, FRPP's Mission Dependence, is required as part of the FRPP. The Mission Dependence measure was established to assess the value an asset brings to the performance of an agency's mission. Categories for this measure are as follows:

- a. Mission Critical: Without the constructed asset or parcel of land, the mission would be compromised;
- b. Mission Dependent, Not Critical: Does not fit into Mission Critical or Not Mission Dependent categories; and
- c. Not Mission Dependent: Mission unaffected.

The second measure, employees' satisfaction with the space, is used to assess end-user satisfaction with space quality, quantity, and building services through a carefully designed on-line annual survey of all DOC employees. ORPP is responsible for implementing and reporting on the survey, with input from OUs.

ORPP's report will organize the findings of the survey by OU, for DOC overall, and for the Mission Dependency categories. The report will also sort the results by owned, directly leased, delegated, and GSA assigned real property.

The report is intended to assist OUs with prioritizing capital projects, making decisions regarding leased locations, and identifying potential improvements.

The CFO/ASA may use the results in the budget process. ORPP may use the results for portfolio planning purposes, and working with GSA to address any systemic issues that impede employee satisfaction with a facility. Additionally, GSA periodically conducts Tenant Satisfaction Surveys, which ORPP may use for GSA assignments.

## **CHAPTER 5. PROGRAMMING, ASSIGNMENT AND UTILIZATION**

### **5.1 OVERVIEW OF PROGRAMMING, ASSIGNMENT AND UTILIZATION**

This chapter addresses the disciplines of space planning and assignment, and discusses DOC and Presidential policies regarding space utilization. This chapter focuses upon whether and how much space is to be allotted for various functions and activities, including both mission-related office space, as well as non-Federal support spaces, which include fitness and childcare centers, credit unions, vending and food service facilities, and parking.

This chapter does not address macro-level facility or asset planning; instead, chapter 3 discusses the more strategic level of real property planning.

### **5.2 UTILIZATION STANDARDS AND SPACE PLANNING CONVENTIONS**

#### **5.2.1 WHEN TO ASSESS SPACE NEEDS**

OUs should generally assess its specific space needs or requirements during four types of occasions:

- a. A new program and/or office is established;
- b. A lease (or an Occupancy Agreement (OA) in GSA-controlled owned space) is expiring and it is necessary to assess the space need for the follow-on action;
- c. An existing office and/or program is undergoing significant change in either mission and/or staffing. The change could impact the amount and type of space needed, as well as the layout or configuration of the space; and
- d. An opportunity arises for the consolidation or co-location of space, which may also result in the sharing of support spaces and services (e.g., reception areas, meeting rooms, server rooms, and amenities, such as food service, health unit, fitness center, etc.).

## **5.2.2 SPACE PROGRAM OF REQUIREMENTS**

Conducting a space need assessment is commonly termed the development of a space program of requirements (POR). The process of preparing a POR usually entails a review of the current workplace and direct observation of how work is accomplished, a review of existing space assignment policies (e.g., work station standards, work condition agreements with employee unions, and telework policies) and interviews with program managers to determine office unit adjacency requirements/preferences based upon which units interact with each other, in terms of frequency and the manner of those interactions. A POR can be prepared in-house or by an architectural-engineering (A/E) firm with a space-planning specialty or practice.

## **5.2.3 SPACE ALLOWANCE POLICY**

Federal agency policies addressing work space standards and allowances are changing rapidly, as both a direct and indirect consequence of (1) new laws and executive branch directives; (2) fundamental changes in the physical workplace enabled by an increasingly technology-driven world; and (3) an emergent new understanding in the real estate industry that office workers need both collaboration space for team interactions, as well as quiet space, free of external distractions, for tasks which require intense concentration.

### **5.2.3.1 IMPACT OF TELEWORK ON SPACE NEEDS**

Several legislative initiatives dealing with teleworking for Federal employees have caused agencies to rethink the long-held conventional belief that every office employee should be assigned to a dedicated workstation or office. In this regard, the Telework Enhancement Act of 2010, Pub. L. No. 111-292 (Dec 9, 2010) (5 U.S.C. §§ 6501-6506), directed agencies to establish policies authorizing eligible employees to telework and to set telework participation level goals.

According to the U.S. Office of Personnel Management (OPM) and GSA's interagency website, Telework.gov, telework:

*"1) is a useful strategy to improve Continuity of Operations to help ensure that essential Federal functions continue during emergency situations; 2) promotes management effectiveness when telework is used to target reductions in management costs and environmental impact and transit costs; and 3) enhances work-life balance, i.e., telework allows employees to better manage their work and family*



*obligations, retaining a more resilient Federal workforce able to better meet agency goals.”*

### **5.2.3.2 POLICY MEMORANDA AND ORDERS**

The Presidential Memorandum, *Disposing of Unneeded Federal Real Estate – Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency* (June 10, 2010), directed agencies to “take immediate steps to make better use of remaining real property assets as measured by utilization and occupancy rates, annual operating cost, energy efficiency, and sustainability.” This Memorandum further called for “increasing occupancy rates in current facilities through innovative approaches to space management and alternative workplace arrangements, such as telework; and identifying offsetting reductions in inventory when new space is acquired.”

Further, OMB Memorandum M-12-12, *Promoting Efficient Spending to Support Agency Operations* (May 12, 2012), instructed Federal agencies to dispose of excess assets and not add new office or warehouse space without an offset reduction to existing space through consolidation, co-location or disposal. Subsequently, this policy was reinforced and clarified by OMB Memorandum No. 2013-02, *Implementation of OMB Memorandum M-12-12 Section 3: Freeze the Footprint* (Mar. 14, 2013), which, among other things, directed agencies to not increase their space above Fiscal Year 2012 inventory without an offset.

Additionally Executive Orders 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* (Jan. 24, 2007) and 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (Oct. 5, 2009), called for, among other things, greater energy efficiency and sustainability in Federal use of real property. Moreover, these Executive Orders acknowledged that efficiency and sustainability are furthered by efficient building design and operation, as well as by reducing the amount of space used.

### **5.2.3.3 DEPARTMENT ADMINISTRATIVE ORDER (DAO) 217-21, SPACE ALLOWANCE AND MANAGEMENT PROGRAM**

DAO 217-21 established DOC’s policy of a standard utilization rate of 170 usable square feet per person for office/administrative space. This DAO also contains guidelines for implementing that rate for “all lease renewals, new construction and renovations” as well as wherever feasible within existing space. This DAO further requires that the rate be used “for new office space acquisition regardless of whether it is an office building or for office space in

a laboratory or warehouse.” Additionally, this DAO provides guidance as to how to perform a cost-benefit analysis to determine whether it is worthwhile to undertake alterations and/or purchase system furniture.

### **5.3 AMENITIES**

This section provides guidance on accommodating various amenities within federally owned or leased space. These amenities may include: childcare centers, fitness centers, credit unions, and food services and vending facilities (e.g., snack bars, sundry shops, and cafeterias). The presence of amenities in Federal facilities, though permitted by law, is generally not required.

It is DOC policy that before an OU decides to allow a non-Federal amenity in its facility, the OU must conduct a survey of its employees, a needs assessment study, and a market survey to inventory the available services from private businesses surrounding the facility. Then, it is at the discretion of the OU’s management to allot space and/or fund/subsidize the operating costs, the capital improvement, and any equipment for the amenity. When a non-Federal entity provides an amenity in DOC controlled space, there shall be a real property instrument (e.g., license) and an agreement or contract in place between the entity and DOC. ORPP recommends that OUs consider adopting GSA’s best practices for amenities, due to GSA’s vast experience with amenities. However, OUs operating under, or subject to, GSA authorities need to follow GSA’s real property regulations and policies regarding amenities.

When DOC is the sole building tenant, DOC needs to determine whether an amenity or amenities for Federal workers should be present in the building and the size of the space needed to accommodate the amenity or amenities.

For GSA owned or leased facilities, the OUs must coordinate with GSA for the use of the space for the amenity, including making arrangements for funding the construction of the amenity space, which in the case of a new lease, may be financed through the lease contract or paid by DOC on a lump sum basis. In cases in which DOC is a minority tenant, GSA will aggregate the Federal demand to determine the need and size of the amenities. GSA will bill the Federal end-users, not the entity operating the amenity, for the rental cost of the amenity space in the building.

Apart from the specific amenities discussed below, chapter 12 discusses the general use of DOC controlled space.

### 5.3.1 CHILD CARE CENTERS

Pursuant to 40 U.S.C. § 590, a child care provider may be allotted space in a Federal building if the following conditions are met:

- a. Space is available;
- b. The space will be used to provide child care services to children of whom at least fifty percent have one parent or guardian employed by the government; and
- c. The child care provider will give priority to Federal employees for available child care services in the space.

Space and services furnished to a child care center may be provided without charge to the child care provider. Services include: lighting, heating, cooling, electricity, office furniture, machines and equipment, classroom furnishings and equipment, kitchen appliances, playground equipment, telephone service, and security systems, including replacement of equipment.

### 5.3.2 FITNESS CENTERS

OPM, in cooperation with the U.S. Department of Health and Human Services (HHS), provides policy and guidance on Federal civilian employee health and assistance programs, and the *Employee Health Services Handbook* addresses physical fitness programs. Pursuant to 5 U.S.C. § 7901, agencies may establish and operate physical fitness programs and facilities designed to promote and maintain employee health. Fitness programs are usually designed to improve or maintain an employee's cardiovascular endurance, muscular strength and endurance, flexibility, and body composition. Agencies may operate on-site fitness facilities or use the services of a private facility. It is also possible to offer on-site fitness support without establishing a fully equipped fitness center, by providing showers, locker rooms, bike racks, and running maps, as well as possibly working with food vending operators to ensure healthy food offerings.

The *Handbook* states that physical fitness programs may be paid for in the following ways:

- a. Fully funded by an agency;
- b. Funded by a combination of employees' fees and agency funding; or
- c. Fully funded by employee contributions or fees.

The extent to which any agency pays for fitness programs depends on budget, employee needs, and agency mission.

The following is best-practice guidance for OUs contemplating establishing a fitness facility:

- a. Conduct a survey to determine if there is sufficient employee interest to warrant providing the facility;
- b. Determine what will be provided at the facility, which may include any or all the following:
  - i. Exercise equipment,
  - ii. Fitness activities,
  - iii. Health screenings,
  - iv. Health education, and
  - v. Intervention programs;
- c. Determine the space requirements for the facility. A comprehensive facility will include:
  - i. Sign-in/control desk,
  - ii. Office/testing area/storage,
  - iii. Cardiovascular equipment area,
  - iv. Strength training area,
  - v. Group exercise class area, and
  - vi. Locker and shower rooms;
- d. Assess the availability of space and agency budget resources, which may include start-up costs and rent;
- e. Interview fitness center operators to discuss staffing and operating budget requirements; and
- f. Consult GSA on fitness center layout, design and operation for GSA owned or leased buildings.

### **5.3.3 FEDERAL CREDIT UNIONS**

Pursuant to 12 U.S.C. § 1770, agencies may allot space in Federal buildings to Federal Credit Unions if there is space available and at least ninety-five percent of the membership of the credit union to be served by the space allotment is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families. In addition to the space, Federal agencies may provide operating services to Federal credit unions without charge. Operating services generally include utilities, cleaning, HVAC and space maintenance.

### **5.3.4 VENDING FACILITIES AND FOOD SERVICE**

OUs shall undertake a needs study when undergoing new construction or renovating space in order to determine whether food and/or vending concessions are needed on-site, as well as their size and type. This study shall take into account both the Federal employee population at the facility and the availability and variety of food service establishments in close proximity to the site. Facility or property managers play an important role in this effort, since they are responsible for assigning space and ensuring access to these vending machines, as well as providing the necessary utility hookups.

The Randolph-Sheppard Act, as amended, (20 U.S.C. §§ 107-107f), provides individuals who are blind priority in operating “vending facilities” (e.g., cafeterias, snack bars, and vending machines) in Federally controlled space. The Act authorizes a blind person, licensed by the state licensing agency, to operate vending facilities through permits or contracts. The Randolph Sheppard Act is administered by the U.S. Department of Education, which has issued implementing regulations in 34 C.F.R. Part 395. Pursuant to 34 C.F.R. § 395.30(a), each Federal agency “in control of the maintenance, operation, and protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation by blind licensees shall be located on all Federal property . . . .” The provision does not apply in cases in which fewer than one hundred Federal employees are or will be located in the building or when the building contains less than 15,000 square feet of interior space to be used for Federal purposes. The regulations also provide exclusion in the case of leased space for buildings in which a restaurant or other food service facility is present and pre-dates the Federal lease. In such cases, there is no requirement for locating a vending facility within the Federal leased premises if such a vending facility would compete with the pre-existing restaurant or food service facility.

Consultation with GSA is advised in terms of conducting the needs study and in terms of sizing and designing any vending facilities to be located within Federally controlled space. For GSA-controlled buildings, GSA practice is to classify these vending facilities as joint use space and to assess rent charges to each Federal tenant in that building for the joint use space on the basis of each tenant's percentage share of the entire Federal occupancy. For DOC controlled facilities, it is left up to the OU(s) paying for the facility to determine the terms and the cost recovery method when executing the license or the permit to allow the presence of these non-Federal services.

### **5.3.5 HEALTH AND WELLNESS CENTERS**

Federal Occupational Health, a program within HHS' Public Health Service, oversees Health and Wellness Centers (otherwise known as health units) in Federal facilities. The objective of allowing these centers in Federal buildings is to enhance the well-being of employees within the Federal agency. More information is available at:

<http://www.foh.dhhs.gov/services/OHC/health.html>.

### **5.4 PARKING ASSIGNMENTS AND ALLOCATIONS**

DAO 217-8, *Employee Parking, Ridesharing, and Mass Transit Benefit Program*, provides DOC policy and implementing guidance regarding employee parking. This chapter is meant to summarize and supplement the DAO.

Examples of parking are parking decks, parking garages, and surface parking lots (finished or unfinished). Authority to acquire parking may be through one of the following:

- a. GSA authority or GSA delegated authority;
- b. An OU's real property authority (if applicable); or
- c. An OU's procurement authority for service contracts.

DOC adopts as a policy 41 C.F.R. § 102-73.240, which states the following:

“Federal agencies that need parking must utilize available government-owned or leased facilities. Federal agencies must make inquiries regarding availability of such government-controlled space to GSA regional offices and document such inquiries. If no suitable government-controlled facilities are available, an agency may use its own procurement authority to acquire parking by service contract.”

#### **5.4.1 ALLOCATION AND ASSIGNMENT OF PARKING FOR OFFICIAL NEEDS**

In situations in which DOC has responsibility for Federally controlled parking facilities, the DOC facilities manager will determine the appropriate number of parking spaces for official needs based upon submission of information from occupant bureaus/OUs. DAO 217-8 discusses the priority and method for assigning parking spaces.

#### **5.4.2 EMPLOYEE PARKING**

Use of parking for privately owned vehicles of Federal employees is secondary to any official government vehicle parking. In general, DOC may not use appropriated funds to pay for employee parking because parking is considered an employee's personal expense. The Comptroller General has stated the general rule as follows:

“The basic policy of the government with respect to employee parking is that ordinarily it is the employee's responsibility to furnish transportation to and from the place of employment or duty, and if an employee chooses to use a private automobile for such purpose, the government is under no obligation to provide a parking space.”

63 Comp. Gen. 270 (Mar. 26, 1984).

A limited exception to this rule may allow an agency to use appropriated funds to pay for employee parking at the employee's duty station when the agency determines that the lack of parking facilities will significantly impair the agency's operating efficiency. *See* 72 Comp. Gen. 139 (1993). Questions regarding this exception should be directed to OGC and ORPP.

If parking is assigned to employees without charge, regardless of whether the parking facility is Federally owned or leased, the parking may be a taxable fringe benefit, if the value exceeds the legal threshold for exclusions. *See* 26 U.S.C. § 132(f).

With regard to leased space, the government may stipulate in the lease contract that parking be made available to Federal employees, in accordance with the government's proportionate share of the leased premises, at market rates to be paid directly by employees to the parking operator.

If, after satisfaction of official parking needs, parking is available and under the control of DOC, then, parking spaces are to be assigned to employees in accordance with DAO 217-8.

### **5.4.3 OPTIMIZING PARKING UTILIZATION**

Measures recommended to improve the utilization of parking include the following:

- a. Periodic surveys to determine whether official needs are current;
- b. Use of attendant-supported stacked parking, rather than “park and lock” arrangements;
- c. Implementation of parking incentives that promote ridesharing; and
- d. Employment of parking contract managers and/or the use of “oversell” factors, whereby, based upon the study of actual daily garage/lot use, the number of monthly parking permits issued can safely exceed the number of spaces available without over-subscribing the parking facility. This is done through the observed behavior of parking users, some of whom, on any given day, are in travel status, absent due to illness or on annual leave, teleworking, etc.

### **5.4.4 DETERMINING PARKING NEEDS FOR NEW SPACE**

In the case of new construction of Federally owned facilities, the parking requirement is generally determined by first assembling the official needs (see 5.4.1 above), and then adding on for employee parking the amount required under local code. Even though the Federal Government, as the national sovereign, is not bound by local ordinances and zoning requirements, the Federal practice, as exemplified by 40 U.S.C. § 3312, is to provide parking in accordance with local zoning requirements.

In the case of new leases in pre-existing buildings, parking is normally made available by lessors up to the pro-rata share of the number of parking spaces in the facility that the government’s space lease bears to the total space in the facility. As with most agencies, in the case of leased space, DOC will generally only secure parking for official needs as part of the lease contract. For their privately owned vehicles, DOC employees may be able to purchase parking directly from the landlord’s parking operator, assuming there is not an exception for employee parking, as discussed above in section 5.4.2. In situations, such as rural locations, where there is no market value assigned to parking, parking is generally provided for free.

In the case of leases for build-to-suit facilities, lessors are bound by local ordinances and zoning as to the amount of parking they can furnish. Nonetheless, the general Federal leasing convention is to lease only those spaces required for official needs.



## **CHAPTER 6. GENERAL SERVICES ADMINISTRATION TRANSACTIONS, DELEGATIONS, AND PROSPECTUS LEVEL PROJECTS**

### **6.1 OVERVIEW OF GSA TRANSACTIONS, DELEGATIONS AND PROSPECTUS LEVEL PROJECTS**

This chapter addresses the following three principal components:  
(1) transactions with GSA for space, (2) GSA delegations of authority, and  
(3) prospectus level projects.

GSA is the Federal Government’s central space management agency, and is equipped with broad statutory powers. GSA has authority to acquire, own, lease, construct, repair, manage, and dispose of real property, as well as to assign real property to other agencies. GSA’s Public Buildings Service (PBS) is responsible for most of its real property related duties. PBS does not operate by direct appropriations; instead, PBS is authorized by 40 U.S.C. § 586 to charge Federal tenant agencies for furnishing space and services. Rental rates shall approximate commercial charges for comparable space.

### **6.2 TRANSACTIONS WITH GSA FOR SPACE**

GSA’s pricing policies for space and services are located in 41 C.F.R. part 102-85 and its *Pricing Desk Guide*.

#### **6.2.1 REQUESTS FOR NEW OR ADDITIONAL SPACE**

When an OU determines that new or additional space is needed, the OU prepares a GSA Space Needs Questionnaire and a *Request for Space*, Standard Form (SF) 81. The Space Needs Questionnaire identifies the location, amount, and type of space needed. The *Request for Space* needs to be signed by an appropriate requesting official, and co-signed by an official in the OU who can certify that funding is available. Further, requests need to include appropriate accounting/finance information.

The OU shall work with ORPP to ensure that the space request adheres to applicable policies and guidelines, such as “Freeze the Footprint” and DAO 217-21’s space utilization standards. Then, the OU submits both documents to a GSA Real Property Contracting Officer (RPCO).

If the space requirement meets the conditions for a delegation of leasing authority, and the OU and the RPCO both agree to seek such a delegation, then the OU sends a written request to ORPP for assistance with securing a delegation from GSA. Then, ORPP, the OU and RPCO will work together to submit the delegation request to GSA's National Office.

### **6.2.2 STATEMENT OF CONTINUING NEED**

For all privately owned, leased space, GSA sets the term (duration) of the occupancy agreement (OA) to correspond to the expiration date of the lease contract. Replacement lease actions may take twelve months or longer to execute. Therefore, approximately eighteen months prior to the lease expiration date, GSA will prompt the occupant agency to signal whether the need for the leased space will continue beyond the lease expiration date. For space assignments in Federally owned buildings, OA durations are often longer than in leased space, but are typically not greater than twenty years. Nonetheless, as with leased space, as the expiration of the OA approaches, GSA will request the occupant agency to indicate whether the space is needed beyond the current OA period. Agencies respond to these GSA requests with a document termed *Statement of Continuing Need*.

When prompted by GSA for a *Statement of Continuing Need*, OUs are advised to thoroughly review their space needs. In this regard, some of the things OUs should consider include space utilization policy, budget constraints, and any changes regarding where and how work will be performed.

### **6.2.3 OCCUPANCY AGREEMENTS**

Once GSA has received a *Request for Space* (SF-81) or *Statement of Continuing Need*, GSA will furnish the requesting agency with a draft occupancy agreement (OA) for use of the space. GSA routinely issues a series of draft OAs throughout the process, which allows agencies to remain apprised of the situation and receive the latest cost estimates.

The purpose of an OA is to document the terms governing the formal relationship between PBS and a tenant agency for a specific space assignment, whether or not the space is Federally owned. Additionally, an OA serves as a billing document for rent.

An OA needs to include the following four principal components:

- a. Description of the space and services,
- b. Acceptable terms and conditions,

- c. Signatures, and
- d. Accounting/finance information.

GSA has discretion to customize some of the terms and conditions of OAs; therefore, OUs may want to negotiate with GSA. OUs should be aware of the following factors, since they directly impact OAs.

#### **6.2.3.1 TENANT IMPROVEMENT ALLOWANCE**

GSA's *Pricing Desk Guide* provides detailed information on tenant improvements (TIs), and defines TIs as "the finishes and fixtures that typically take space from the shell condition to a finished, usable condition." GSA accords agencies a monetary allowance for new occupancies, set either on the basis of a pre-established tenant allowance amount per square foot for that agency or bureau, or, for larger space actions in which a program of requirements (POR) has been developed, an amount that will provide functional space for the assignment.

When an OU requires an unusual build-out, the OU may find it beneficial to fund, if possible, a POR in order to increase the probability that the TI allowance will be able to produce functional space, without the need for a large up-front, lump-sum contribution by the OU to cover the space build out costs which exceed the tenant allowance amount.

OUs can request a TI allowance for a succeeding occupancy at the same location. However, funding is likely to be very limited for succeeding occupancies in Federally owned space.

#### **6.2.3.2 TERM OF OCCUPANCY AND TERMINATION RIGHTS**

GSA typically uses the default setting of a 10 year term of occupancy in lease procurements. Therefore, OUs need to ensure that they have an appropriate term of occupancy for each location. The term is especially important because, generally, GSA policy no longer accords agencies the right to relinquish space upon four months' notice (with no further financial obligation on the tenant for the space). GSA may require an OU to sign a non-cancelable OA when the space is procured for the unique use of the OU and GSA could not easily reassign the space to another Federal agency. GSA's inability to reassign the space to another agency is generally due to the uniqueness of the space build-out, or to the lack of Federal tenants present in that location. On the other hand, GSA may solicit a long-term lease, but

negotiate termination rights (usually after an agreed upon period of time – a fixed term) for some or all of the space.

### **6.2.3.3 THE UNDERLYING LEASE**

When GSA leases private property, OUs should obtain and retain a copy of the underlying lease, as well as any supplemental lease agreements (SLAs). GSA should provide a copy of the document(s) upon request.

OUs should know and understand the lease, such as the roles and responsibilities of the landlord (e.g., initial delivery, operation and maintenance) and the rights of the tenant. The lease will also enable the OU to corroborate the rent charges, as shown in GSA's on-line tool – Rent-On-The-Web. GSA charges the end-user agency the cost of the underlying lease, plus a fee.

### **6.2.3.4 SPACE MEASUREMENT**

Accurate space measurement is of critical importance for ensuring that DOC is only paying for the space it occupies. GSA charges on a rentable square foot basis. Rentable area is the usable area plus “common” areas, such as corridors, elevator lobbies, public restrooms, and building engineering space. Usable area is the area available for a tenant’s personnel and furnishings.

Typically, space is measured when the space is accepted. GSA is responsible for generating the measurement that is used in the OA, which is used as the “charge basis” for the rent. OUs should verify that the stated space measurement is accurate. This verification can be done either from to-scale building plans via a Computer Assisted Design and Drafting (CADD) program, or from physical measurement of the space.

## **6.3 GSA Delegations of Authority**

### **6.3.1 OVERVIEW OF GSA DELEGATIONS OF AUTHORITY**

This subchapter addresses the processes that OUs must follow and the requirements that must be met—in terms of both GSA and DOC requirements and policies—when OUs desire to obtain and/or exercise a GSA delegation of real property authority.

The basic types of GSA delegations of authority include the following:

- a. Delegation of Leasing Authority;
- b. Delegation of Real Property Management and Operation Authority;
- c. Delegation of Individual Repair and Alteration Project Authority;
- d. Delegation of Lease Management Authority (Contracting Officer Representative Authority);
- e. Delegation of Administrative Contracting Officer (ACO) Authority;
- f. Delegation of Real Property Disposal Authority;
- g. Security Delegation of Authority; and
- h. Utility Services Delegation of Authority.

GSA's delegation program is addressed in detail in 41 C.F.R. parts 102-72 and 102-73.

### **6.3.2 BACKGROUND OF GSA DELEGATIONS OF AUTHORITY**

Pursuant to the Federal Property and Administrative Services Act of 1949, Pub. L. No. 81-152, 63 Stat. 377 (June 30, 1949), and the Public Buildings Act of 1959, Pub. L. No. 86-249, 73 Stat. 479 (Sept. 9, 1959), GSA was given broad authority to purchase, own, construct, lease, operate and maintain, repair and alter, and dispose of real property.<sup>6</sup> Pursuant to 40 U.S.C. § 121(d), GSA has the power to delegate its real property authority to other Federal agencies.

GSA has some standing delegations that convey authority to undertake certain listed actions, such as leases for specific special purpose space. Other delegations are case-specific, meaning that for each individual proposed action, the agency must seek a delegation from GSA before it is authorized to use GSA's authority. There are also periodic reporting requirements involved in the use of all GSA delegated authority, and preconditions that agencies must meet before they begin to execute a delegated action.

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<sup>6</sup> Most of the provisions of these two Acts, as amended, were located in title 40 of the United States Code. However, title 40 was codified into positive law in 2002 and these two Acts were basically repealed, with many of their provisions moved to different sections of title 40. Pub. L. No. 107-217, 116 Stat. 1062 (Aug. 21, 2002).

### **6.3.3 ROLES AND RESPONSIBILITIES**

#### **6.3.3.1 COORDINATING ROLE OF THE OFFICE OF REAL PROPERTY PROGRAMS**

All requests for delegation of GSA real property authority are to be coordinated through ORPP because they require CFO/ASA approval, except for the delegations specified in Section 2.3.1 of Chapter 2 and COR delegations. ORPP is responsible for assisting the Director of OFEQ with discharging the duties of the Senior Real Property Officer (SRPO), a position mandated by Executive Order 13327, as well as coordinating the delegation of all real property authority.

ORPP's role is to ensure the request's completeness, accuracy, and conformity to DOC strategic resource plans, and, as applicable, DOC portfolio management plans. ORPP will work with OUs to position delegation requests for GSA approval, providing assistance in drafting the request, including the mandatory section that addresses the "cost effectiveness" of the proposed delegation.

In this coordination role, ORPP will undertake the following:

- a. Review and make recommendations to the Director of OFEQ for requests for, and acceptance of, GSA real property delegations of authority, except for the delegations specified in Section 2.3.1 of Chapter 2 and COR delegations;
- b. Keep a log of all delegation requests and all approved delegations;
- c. Serve as the primary liaison with GSA Central Office for all delegation program matters, including issue response and resolution, summary reporting requirements, and annual budget coordination, both for building management delegations and ACO lease delegations entailing changes/adjustments to rental payments to lessors;
- d. Provide advice and assistance to the OUs on both the pursuit and execution of delegations;
- e. Participate in any GSA evaluation or oversight review of any specific delegation or the DOC delegation program as a whole;
- f. Keep OUs apprised of any changes to the GSA delegation program or to delegated activities; and

- g. Prompt OUs to enable timely submission of re-delegation requests, if desired.

### **6.3.3.2 ROLES OF THE OPERATING UNITS**

OUs are responsible for preparing initial requests for delegations, in accordance with GSA requirements, as summarized below. With regard to specific delegations, OUs are also responsible for operational, day-to-day coordination with GSA, as needed.

OUs are responsible for actual execution of the delegation, in accordance with GSA's applicable guidance. GSA's guidance varies by the type of authority delegated, and may take the form of a Memorandum of Understanding for an ACO lease delegation or Operating Procedures for a Management and Operation Delegation.

For any space acquired under a lease acquisition delegation, the OU is responsible for recording the space in the FRPM system and completing all required fields that ORPP uses to update the FRPP.

### **6.3.3.3 DELEGATED LEASE ACQUISITION AUTHORITY**

OUs leasing real property under a GSA delegation of authority need to follow GSA's real property regulations and policies regarding leasing, such as the General Services Acquisition Regulation (GSAR), the Federal Management Regulation, and FMR Bulletin C-2. GSA's delegated authority can be used for acquiring leases with terms of up to twenty years, unless specified otherwise, such as in the case of unimproved land. In addition, when GSA delegates its lease acquisition authority (40 U.S.C. § 585) to an OU, the delegation includes the ability to limit obligations related to a long term lease on a fiscal year basis without violating the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(B), subject to the OU's compliance with the conditions of the delegation.

Below is an overview of the types of GSA delegations related to lease acquisition:

- a. General Purpose Delegation: This is a standing delegation of authority under a GSA program known as "Can't Beat GSA Leasing." that the delegation allows agencies to lease up to 19,999 square feet of space for up to 20 years and below prospectus level requirements. This type of delegation must meet the conditions specified in 41 C.F.R. § 102-72.30 and FMR Bulletin C2;

- b. Categorical Space Delegation: This is a standing delegation of authority from GSA to Federal agencies to acquire specific types of space listed in 41 C.F.R. § 102-73.155. Some of the relevant types include the following: space to house antennas or transmission equipment, docks, piers and mooring facilities, specialized storage/depot facilities, and space for short-term use (such as conferences and meetings);
- c. No cost or nominal consideration leases, to the extent authorized by 41 C.F.R. § 102-73.140; and
- d. Special Purpose Space Delegation: GSA has standing delegations for specific Federal agencies for leasing special purpose space. Pursuant to 41 C.F.R. § 102-73.175, DOC is delegated authority to lease the following types of special purpose space:
  - i. Space required by the Census Bureau in connection with the decennial census (lease terms limited to 5 years including option periods);
  - ii. Laboratories for testing materials, classified or ordinance devices, calibration of instruments, and atmospheric and oceanic research (lease terms limited to 5 years including option periods);
  - iii. Maritime training stations;
  - iv. Radio stations;
  - v. Land (if unimproved, then only on a fiscal year basis); and
  - vi. National Weather Service meteorological facilities.

FMR Bulletin C-2 re-emphasized and updated the conditions, restrictions and reporting requirements applicable to GSA leasing delegations. For example, the Bulletin states that a requesting agency has pre-authorization submittal requirements for all General Purpose lease delegations and for Special Purpose lease delegation involving 2,500 or more square feet of such special purpose space.

In addition, the Bulletin states that agencies are not authorized to use the General Purpose delegation to enter into leases in excess of 19,999 usable square feet of space. However, if an OU desires to enter into a lease in excess of 19,999 usable square feet of space, GSA may, on a case-by-case basis and



when it is in the government's best interest to do so, grant special lease delegation authority.

#### **6.3.3.4 GSA REQUIREMENTS FOR THE LEASING DELEGATIONS**

The following checklist addresses each of the requirements GSA has established for delegated acquisitions regarding general space and special purpose space of 2,500 or more square feet.

The following is a checklist for all leasing delegations:

- a. Secure GSA written confirmation that suitable space is not available if relocating government employees from GSA-controlled owned or leased space;
- b. Ensure average net annual rent (gross rent minus operating expenses) is below prospectus level;
- c. Ensure that a properly trained and DOC warranted RPCO will execute the lease transaction;
- d. Ensure compliance with all applicable laws, Executive Orders, regulations, OMB Circulars, and Realty Services Letters governing warranted contracting officers;
- e. Ensure organizational capacity to support the delegated leasing activity, including legal review, cost estimation, construction, inspection, lease management, and program oversight. Assurance of this capability and accountability requires that each request is coordinated with the DOC SRPO;
- f. Make lease files available for GSA or a GSA IG audit;
- g. Under General Purpose delegations, notify GSA at least 18 months prior to lease expiration if there is continuing need for the space, and the intent is to use delegated acquisition authority to acquire the replacement lease; and
- h. Proceed only after receipt of a finding by GSA that no suitable GSA controlled space is available to meet the space need.

More information can be found at:

<http://www.gsa.gov/portal/content/102810>.

### **6.3.3.5 ADDITIONAL REQUIREMENTS FOR GENERAL PURPOSE LEASING DELEGATIONS AND SPECIAL PURPOSE LEASE DELEGATIONS INVOLVING ≥ 2,500 RENTABLE SQUARE FEET**

Prior to any new, superseding, renewal, extension or succeeding lease action for special purpose space involving 2,500 or more rentable square feet (RSF) or for any space to be leased under the General Purpose lease delegation category, a written request must be submitted to GSA addressing the information listed in the checklist below.

#### **CHECKLIST FOR WRITTEN REQUEST FOR GENERAL PURPOSE LEASING DELEGATION OR SPECIAL PURPOSE SPACE DELEGATION FOR SPACE ≥ 2,500 RSF**

1. Detailed narrative addressing why the delegation is in the best interests of the government, and how the agency's use of the delegation is "cost effective".
2. Name of the warranted DOC RPCO (meeting experience and training requirements of the DOC warrant program)
3. Acquisition Plan
4. Justification for the delineated area
5. A floodplain check
6. Sustainable location plan
7. Organizational structure and staffing plan to support the delegation
8. A plan for meeting or exceeding GSA's lease cost performance measure
9. Total amount of space required

FMR Bulletin C-2 provides further detail on post-award reporting requirements to GSA for General Purpose and Special Purpose space leases for 2,500 or more rentable square feet.

### **6.3.3.6 FRPM REPORTING FOR DELEGATED LEASE ACQUISITIONS**

OUs that acquire leased space under a delegation of authority from GSA shall include the leased space in the DOC real property inventory system (FRPM) within the fiscal quarter executed, so that DOC can accurately inventory its controlled property and report space annually for the FRPP.

#### **6.3.3.7 DELEGATED LEASE MANAGEMENT AUTHORITY**

A second type of GSA delegation of authority pertaining to leased space is lease management authority, also known as a Contracting Officer Representative (COR) delegation. This delegation generally provides the authority, after GSA awards the lease contract, to administer a lease contract under which the lessor has responsibility to provide operation and maintenance services. This authority principally consists of enforcing lease provisions with the lessor and contracting directly with the lessor for alterations. The COR delegation does not entail making any changes to the lease contract. In order to qualify for a COR delegation, DOC must occupy at least 90 percent of the leased space or have written concurrence from all of the rent-paying Federal occupants under the lease, and demonstrate the ability to perform the lease administration responsibilities. A COR delegation is similar to a management and operation delegation (discussed below), except that under the COR delegation all services are provided by the lessor and the COR is principally involved with lease enforcement, whereas a management and operation delegation entails arranging for the execution of the operation and maintenance services. The form of a COR delegation agreement is a Memorandum of Understanding executed by both GSA and the OU.

#### **6.3.3.8 DELEGATION OF ADMINISTRATIVE CONTRACTING OFFICER AUTHORITY**

A third type of GSA delegation of authority pertaining to leased space is the Administrative Contracting Officer (ACO) Delegation. This type of delegation conveys authority, after the lease acquisition process has been completed by GSA, to perform the contract enforcement duties that the lease management/COR delegation entails, as well as to pay the lessor directly, or withhold rent in the event of a lessor default, and to modify the lease in certain respects, but not to change the terms of the lease or the amount of square footage. As with lease management, this form of delegation is only available to DOC if it occupies at least 90 percent of the leased space or has written concurrence from all of the rent-paying occupants under the lease, and can demonstrate the ability to perform the ACO responsibilities. OUs shall work with the Office of General Counsel's Office of the Assistant General Counsel for Finance and Litigation prior to withholding rent or modifying a lease.

#### **6.3.4 DELEGATION OF OPERATIONS AND MAINTENANCE AUTHORITY IN GOVERNMENT OWNED FACILITIES**

There are two kinds of GSA facility management delegations in government owned facilities:

- a. Real property management and operation authority, and
- b. Individual repair and alteration project authority.

##### **6.3.4.1 DELEGATION OF REAL PROPERTY MANAGEMENT AND OPERATION AUTHORITY**

A delegation of authority to manage the day to day operations and the maintenance of Federally controlled space (owned as well as partially serviced leased buildings) is available from GSA, subject to the following conditions:

- a. DOC must occupy at least 90 percent of the space or secure written concurrence from all rent-paying Federal tenants in the property;
- b. DOC must demonstrate that it can operate and maintain the property, commensurate with GSA's level of service; and
- c. DOC must demonstrate that the cost is reasonable.

The request to GSA for the delegation must include a projected budget, including staffing levels and costs. The budget must address direct and indirect costs, and identify the levels of services that will be provided as standard and reimbursable.

##### **6.3.4.2 DELEGATION OF INDIVIDUAL REPAIR AND ALTERATION PROJECT AUTHORITY**

Project-specific delegations of authority are available from GSA to perform alteration and repair projects in Federally owned buildings. These delegation requests must be approved by the GSA Administrator; moreover, the GSA Regional Administrator and the PBS Commissioner must concur with the decision. Authority to approve these requests has not been re-delegated by the Administrator to lower GSA management officials. Under 40 U.S.C. § 3314, approval of proposed projects with an estimated cost under \$100,000 shall be given upon request, but for all other projects, authority may be

delegated if the Administrator determines that delegation will promote efficiency and economy.

Even though approval by GSA of delegations for projects less than \$100,000 is not discretionary, given the signatory levels for concurrence and approval, the likely time loss in awaiting approval of these low dollar value requests suggests that the effort in seeking the delegation may not be worthwhile. A larger-scale project, however, might warrant the effort to seek a delegation to self-perform the project.

### **6.3.5 DELEGATIONS OF REAL PROPERTY DISPOSAL AUTHORITY**

A delegation of disposal authority is available from GSA. GSA cautions that such delegations are infrequent and typically involve situations where there is a low value asset and the requesting agency has the technical expertise to perform the disposition. GSA's prerequisites for a disposal request are that the requesting agency occupies at least ninety percent of the asset, or has the written concurrence of one hundred percent of the rent-paying occupants of the asset. Chapter 11 provides a more in depth discussion of disposals.

### **6.4 PROSPECTUS LEVEL PROJECTS**

Pursuant to 40 U.S.C. § 3307, GSA must seek approval from Congress prior to expending funds for any lease, repair, alteration, or construction project that exceeds a certain dollar amount. The threshold dollar amount is subject to change annually, since it is tied to a composite construction cost index maintained by DOC. The GSA request takes the form of a prospectus, and Congressional approval takes the form of resolutions passed by the House of Representatives Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee, or their successors. The prospectus threshold is available at: <http://www.gsa.gov/portal/content/101522>.

The approval process for prospectus level projects is both long and arduous. All proposed prospectus projects are submitted to OMB, sometimes multiple times, before GSA is given permission to forward them to Congress. For construction, alteration, modernization and fee acquisition projects, OMB requires detailed thirty-year present value analyses of project alternatives, in accordance with OMB Circular A-94. Moreover, in the case of capital projects, since GSA funding levels are perennially challenged, OMB often directs that the project be funded incrementally, meaning that it is broken into phases, with each phase being a discreet, stand-alone project. Further, each project phase is a separate prospectus request to Congress.

With regard to lease projects, upon submission of the prospectus requests to Congress, GSA sometimes begins the lease procurement (especially in cases of expiring leases), even though GSA cannot award a prospectus level lease before both Houses of Congress have passed authorizing resolutions.

In terms of process time, it usually takes GSA, working with the occupant agency and OMB, the better part of a year to ready a prospectus request for submission to Congress, and, while it is difficult to generalize, it is usually six to nine months, or longer in the case of lease prospectus requests, from the date the prospectus request is received before both the House and the Senate have passed resolutions authorizing a prospectus project.

Accordingly, for any DOC prospectus level project with GSA, the process of scoping the project and assembling the prospectus request is often started two to three years before the fiscal year in which the project is planned to commence.

## **CHAPTER 7. CAPITAL PROJECTS**

### **7.1 OVERVIEW OF CAPITAL PROJECTS**

This chapter addresses capital projects undertaken by DOC for facilities that it owns or directly leases. Examples of capital projects include new construction, additions, modernizations, and major repairs and alterations.

Chapter 3 covers the planning process for determining whether to undertake capital projects. Chapter 6 covers capital projects for facilities that DOC occupies through agreements with the GSA, and the delegation process, since DOC can request a delegation from GSA to alter or repair facilities that GSA controls and DOC occupies. Chapter 8 covers selecting a site to construct a new facility.

In addition, GSA's *General Reference Guide for Real Property Policy* is a useful resource that provides a listing of relevant laws, regulations, and Executive Orders that OUs should be aware of when considering and implementing capital projects.

### **7.2 AUTHORITIES, EXECUTIVE ORDERS, POLICIES AND GUIDANCE**

#### **7.2.1 AUTHORITIES TO CONSTRUCT, ALTER AND REPAIR REAL PROPERTY**

DOC needs to have authority and an available appropriation before it can construct, alter or repair real property. Such requirements are typically met when there is an authorizing statute that is implemented through the normal budget and appropriations process. However, sometimes an appropriation itself may provide the authority. In addition, GSA may delegate its authority, but, even with such delegated authority, an available appropriation is still required. Below is a non-exhaustive list of possible DOC authorities.

- DOC, 15 U.S.C. §§ 313a and 1514
- DOC, 49 U.S.C. § 47302
- NIST, 15 U.S.C. § 278d
- USPTO, 35 U.S.C. § 2
- NOAA's Procurement, Acquisition, and Construction (PAC) Appropriations Account
- NOAA/National Weather Service, 15 U.S.C. § 325

Questions regarding authority and appropriations for constructing, altering or repairing real property should be conveyed to ORPP and OGC's Office of the Assistant General Counsel for Finance and Litigation.

### **7.2.2 IMPROVEMENT TO PROPERTIES NOT OWNED BY THE FEDERAL GOVERNMENT**

The general rule is that appropriated funds may not be used to make permanent improvements to property not owned by the Federal Government, unless authorized by law. This rule is based on the principle that no government official is authorized to give away government property without specific authority. However, based on decisions of the Comptroller General, a permanent improvement may be authorized if the following standards are met:

- a. The improvement is incident to and essential for the effective accomplishment of the authorized purpose of the appropriation;
- b. The amount of the expenditure is reasonable;
- c. The improvement is used for the principle benefit of the government;  
and
- d. The interests of the government in the improvement are protected.

*See, e.g.*, B-286457, (Jan. 29, 2001); 42 Comp. Gen. 480 (1963).

### **7.2.3 FEDERAL MANAGEMENT REGULATION PART 102-74 AND 102-76**

In the absence of OU specific policies and procedures, issued in coordination with ORPP, that covers the construction and alteration of public buildings, the OU shall perform such activities in accordance with the 41 C.F.R. part 102-74 (Facility Management) and 102-76 (Design and Construction).

### **7.2.4 ARCHITECTURAL BARRIERS ACT**

All DOC design, construction, and alteration projects subject to the Architectural Barriers Act should comply with the Architectural Barriers Act Accessibility Standard (ABAAS) defined in 41 C.F.R. § 102-76.65.



## **7.3 ROLES AND RESPONSIBILITIES**

### **7.3.1 OFFICE OF THE SECRETARY**

Within the Office of the Secretary, a number of people and offices play a role in policy making, project approvals, and budgeting for new construction, additions, modernizations, and major repairs and alterations. These people and offices may include the Secretary, the CFO/ASA, OFEQ (ORPP and OSEEP), the Office of the Budget, the OGC, and the Milestone Review Board (MRB). These offices may be available to support OUs with training personnel to understand applicable laws, policies, and regulations, and to assist with explaining how they apply to individual projects.

### **7.3.2 OPERATING UNITS**

OUs are responsible for ensuring that they have the authority to undertake proposed projects and have funds for that purpose.

Since OUs are responsible for accomplishing their mission, OUs should monitor the condition of their assets and keep them in good condition.

### **7.3.3 PROJECT APPROVAL PROCESS**

The *DOC Scalable Acquisition Project Management Guidebook* provides detailed guidance on the internal process for approving and monitoring high-level projects, as they are defined in the Handbook, as well as general guidance for less significant projects.

In addition, any acquisition that is at prospectus-level<sup>7</sup> requires the CFO/ASA's approval for its inclusion into the budget request as well as the prospectus request. The CFO/ASA reviews it in the same manner as other MRB projects at Phase 2 for requirements and approval of the prospectus package to be submitted to OMB prior to Phase 3 and commitment in the budget for the other costs at Phase 3.

When Congress has funded a project that has not been included in the President's budget request, requirements similar to an OU-initiated project apply. For these congressionally initiated projects, OUs shall not proceed with procurement contracts for the design or construction until a preliminary economic analysis has been completed and the CFO/ASA has

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<sup>7</sup> See Chapter 6 for a definition of a prospectus project.

completed the initial review. The economic analysis will seek various alternatives to *implement* the project. It is important to perform the analysis promptly after the Congressional appropriation or authorization is received. The reason is so that issues regarding the validity of the project may be quickly addressed and, if necessary, alternative options proposed. The initial analysis shall be submitted to the CFO/ASA within sixty calendar days of the Congressional project appropriation or authorization. Where the information is not complete, the request for the initial CFO/ASA review shall be submitted with the information that is readily available.

#### **7.3.4 BUILDING CONDITION ASSESSMENTS**

Condition inspections of owned properties are required by financial standards (FASAB 6) for generating a liability that is included in the financial statement of DOC. It is also a management process necessary for identifying and developing a preliminary cost and scope for repair and alterations project development. The purpose of this process is to produce a documented, verifiable, and repeatable determination of cost estimates for DOC's maintenance liability for all owned buildings and structures meeting the OU's capitalization threshold requirements.

Further, the condition inspection process is a useful tool for OUs to manage their facilities. In essence, the condition inspection establishes baseline data about the size and physical condition of its facilities in order to:

- a. estimate long and short-range maintenance and repair needs;
- b. develop preliminary cost estimates; and
- c. assign funding priorities for various projects.

Moreover, the development of life cycle analyses and disposal plans depends on the result of condition inspections. A standardized inspection cycle period can ensure a more consistent condition inspection program for DOC.

The OU Facility Manager is responsible for managing the Condition Inspection Process, which includes the following:

- a. Identification of owned assets, permitted space, and triple net leases where the OU is responsible for funding of maintenance of the real property;
- b. Setting an inspection cycle period of:

- i. At least once every three years for Mission Critical buildings,
  - ii. At least once every five years for all other buildings,
  - iii. At least once every five years for structures, and
  - iv. At least twice during the lease term (near mid-term and prior to last year) for leased assets;
- c. Conducting a survey using commercial practices/systems that are repeatable and verifiable; and
- d. Reporting total deficiencies identified in the FRPM inventory and reporting system for FRPP reporting.

OUs shall create and follow a process to convert facility deficiencies into prioritized projects, and they shall track changes in the level of deficiencies between surveys to record improvements and maintain reliable condition assessments. The Building Condition performance measure described in Chapter 4 serves as a useful tool for OUs and DOC to evaluate the overall condition of the portfolio over time.

Condition assessments must provide for the following:

- a. Inspection of all assets using applicable codes and accepted industry standards;
- b. A tailored approach based on facility status, mission and importance and the magnitude of the hazards within the facility;
- c. A valid estimate of deferred maintenance costs;
- d. A five-year maintenance plan based on projections of serviceability, economic life, the mission of facilities and projected funding for deferred maintenance reduction, and cost avoidance for environmentally preferable alternatives and efficiency improvements;
- e. Identification of safety and health hazards;
- f. Accurate and supportable information for budget planning and justification, including life cycle cost estimates that address cost avoidance for environmentally preferable alternatives and efficiency improvements;

- g. Comparison of conditions and costs between sites and programs, including a comparison of cost avoidance for environmentally preferable alternatives and efficiency improvements; and
- h. Supportable cost estimates for funding projects.

### **7.3.5 REPAIRS AND ALTERATIONS**

Facilities eventually wear out or become outdated and incapable of supporting mission needs. These facilities may be repaired, replaced, recapitalized, or disposed of.

Recapitalization extends the service life of facilities or restores lost service life, and consists of alterations and betterments needed to keep existing facilities modern and relevant in an environment of changing standards and missions. Recapitalization investments do not sustain facilities and will, therefore, be complemented by an effective operations and maintenance program to protect the facility investment. Reinvestments in these properties are intended to ensure that the asset can serve its housing purpose. The reinvestments can correct deficiencies, restore failed systems, and repair assets damaged by a natural disasters.

The process for determining whether a facility needs to be modernized, repaired, or altered shall begin with OU portfolio planning. Portfolio planning examines the OU's facilities needs and explores options for meeting them economically and in ways that further the OU's mission and the health and safety of employees, as outlined in Chapter 3. The Condition Inspection Process will be an important component of the analyses and planning, as will agency goals and directives for sustainability and climate adaptation.

For potential modernization, repair and alteration projects, the OUs should include these steps in preparing for repair and alterations projects:

- a. Prepare a return on investment analysis (when applicable);
- b. Discuss alternative housing and their costs to acquire new versus reinvestment needed in this asset;
- c. Prepare asset value analysis before the investment and after investment, using the life cycle costing approach;
- d. Prepare a re-lifing analysis and determine whether the investment will extend the life of the asset and, if so, by how much; include a lifecycle cost analyses that addresses cost avoidance for

environmentally preferable alternatives and efficiency improvements;  
and

- e. Confirm that the project will conform to environmental laws and regulations, adhere to DOC's sustainability and climate adaptation guidance, and further the agency's goals in those areas, where applicable.

Following the process above will help OUs develop sound and robust project plans for repairs and alterations, and reports to use to justify the proposed project in the budget process.

### **7.3.6 NEW CONSTRUCTION**

New construction projects, unless originated by Congress, shall be based on portfolio planning. Portfolio planning examines the OU's facilities needs and explores options for meeting them economically and in ways that further the OU's mission and the health and safety of employees, as outlined in Chapter 3. As with planning for major repairs, the OU shall examine options for meeting the space needs to determine if new construction is the most viable option when taking into account the space program, life cycle costs, sustainability and climate adaptation, and the OU's mission.

### **7.3.7 COMMISSIONING**

Commissioning is the process of verifying that buildings and building systems function as intended and support operational and energy performance goals. Commissioning is an ongoing process that, for new construction or major modernization, begins in the design phase and continues through construction and occupancy. Commissioning helps ensure systems are installed correctly, perform according to design specifications, meet the user's needs, are cost effective, and are understood by operators and maintenance personnel.

Each OU that is responsible for owned facilities or facilities where operations and maintenance have been delegated to the OU shall develop and implement a commissioning process. The commissioning process shall be tailored to the size and complexity of the asset and meet the intent of Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*. Adequate commissioning funding should be identified in project budgets.

In designing the commissioning process, OUs shall choose an appropriate process based on the project type. Processes to consider are included in the following table.

PROJECT TYPE	PROCESS
New Buildings and Major Modernizations	Ensures systems and equipment function properly through design reviews, functional testing, system documentation and training.
Existing Owned and Delegated Buildings	Re-commissioning and retro-commissioning involve testing and adjusting systems to confirm they continue to meet the design intent or to make necessary adjustments to optimize performance. Re-commissioning is especially appropriate in (1) a newer building when a pattern of increased energy intensity is observed; (2) an older building that never has been commissioned; and (3) an older building that has aging equipment that is expensive to operate and frequently fails to perform.
Operations and Maintenance (O&M)	Continuous commissioning may be used as an integral part of the O&M program for existing facilities. Most appropriate for large, complex facilities with advanced automated systems, high energy usage, robust preventive maintenance programs, and on site O&M personnel.
Opportunities with Short Payback	Value re-commissioning focuses on opportunities with the shortest investment payback. Value re-commissioning is a useful tool to support funding requests where the upfront investment is returned in the short term and costs savings are realized over the long term.

OUs shall address the following in their commissioning processes:

- a. Program and pre-design;

- b. Design;
- c. Construction;
- d. Acceptance;
- e. Post-acceptance; and
- f. Commissioning report.

### **7.3.8 REPORTING**

DOC construction Contracting Officers (COs), in coordination with appropriate OUs, shall prepare a GSA Form 2974, "Status Report for Federally Funded or Leased Buildings – Accommodation of Physically Handicapped," for all projects subject to the Architectural Barriers Act Accessibility Standard (ABAAS) for which DOC-funded construction is underway or for which lease contracts have been awarded. The form should be completed as provided in 41 C.F.R. part 102-71 to part 102-82. Reports should be sent to ORPP for Departmental coordination, and ORPP will forward them to GSA.

## **CHAPTER 8. ACQUISITION OF REAL PROPERTY**

### **8.1 OVERVIEW OF ACQUISITION OF REAL PROPERTY**

This chapter addresses the various ways in which DOC may use its authority to acquire real property and interests in real property, and the laws, policies, and procedures DOC and its OUs are required to follow. Examples of property rights that may be acquired include freehold estates, leasehold estates, and easements.

The decision to acquire real property generally flows from insightful portfolio planning, which is undertaken by OUs, with input and support from ORPP. OUs need to work with ORPP to see if there is any available and suitable Federal property before determining that an acquisition is the best method for satisfying their real property needs.

The *DOC Scalable Acquisition Project Management Guidebook* provides detailed guidance on the internal process for approving and monitoring high-level projects, as they are defined in the *Guidebook*, as well as general guidance for less significant projects. OUs also need to be aware of DOC's *Policy on Commerce Acquisition Project Management*.

Chapter 3 discusses portfolio planning and related budget processes. Chapter 6 addresses acquisitions using GSA and GSA delegated authority.

In addition, GSA's *General Reference Guide for Real Property Policy* is a useful resource that provides a listing of relevant laws, regulations, and Executive Orders that OUs should be aware of when considering an acquisition of real property.

### **8.2 AUTHORITIES, EXECUTIVE ORDERS, POLICIES, AND GUIDANCE**

#### **8.2.1 AUTHORITY TO ACQUIRE REAL PROPERTY**

OUs need to have authority and available appropriations before they can acquire real property. Such requirements are typically met when there is an authorizing statute that is implemented through the normal budget and appropriations process. However, sometimes an appropriation itself may provide the authority. In addition, GSA may delegate its authority, but, even with such delegated authority, an available appropriation is still required.



Below is a non-exhaustive list of possible DOC authorities.

- NIST, 15 U.S.C. §§ 276, 278c, and 278e
- NOAA, 16 U.S.C. § 1442
- NOAA's Procurement, Acquisition, and Construction (PAC) Appropriations Account
- PTO, 35 U.S.C. § 2

OUs should work with the Office of General Counsel's Office of the Assistant General Counsel for Finance and Litigation before using these authorities to acquire real property.

All DOC acquisitions of real property shall be executed by warranted RPCOs. All actions undertaken by an RPCO must be within the scope of his/her warrant. The authorities, responsibilities and limitations of RPCOs are addressed in DOC's Real Property Warrant Program Handbook.

In addition, OUs need consider the entire life cycle costs of real property assets during the acquisition process. In this regard, funds may need to be available for studies, designs, start-up costs, operation, maintenance, repairs, and disposal.

## **8.2.2 LAND ACQUISITION**

"Land may not be purchased by the Federal Government unless the purchase is authorized by law." 41 U.S.C. § 6301(c). In addition, "[p]ublic money may not be expended to purchase land or any interest in land unless the Attorney General gives prior written approval of the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property." 40 U.S.C. § 3111(a).<sup>8</sup>

## **8.2.3 DEPARTMENT ADMINISTRATIVE ORDER (DAO) 203-9, GIFTS AND BEQUESTS**

DAO 203-9 sets forth DOC's gift acceptance policies and procedures. To be acceptable as a gift of real property, the asset must meet all of the statutory, regulatory, and DOC policy requirements that are discussed throughout this Manual, except the requirements for competition in selecting real property. The CFO/ASA must review and approve the acceptance of the gift prior to its transfer. Examples of DOC's gift authority include 15 U.S.C. § 1522, 16 U.S.C. § 1442, and 47 U.S.C. § 1426.

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<sup>8</sup> OUs shall submit any proposed lease or easement with a term of 30 or more years to OGC/F&L for review and clearance.

#### **8.2.4 EASEMENTS**

OUs may acquire easements for specific limited purposes, such as for roads and utilities, and particularly when DOC will make improvements to another person’s land. However, OUs need to have authority and available appropriations (if funds will be obligated by the OU) before an OU can acquire an easement.

### **8.3 ENERGY, ENVIRONMENTAL AND CLIMATE ADAPTATION ISSUES**

Below is a discussion of a few of the relevant laws, Executive Orders, policies, and guidance documents relating to energy, the environment, and climate adaptation. Chapter 9 provides additional information regarding these issues.

#### **8.3.1 EXECUTIVE ORDER 13514, FEDERAL LEADERSHIP IN ENVIRONMENTAL, ENERGY, AND ECONOMIC PERFORMANCE (OCT. 5, 2009)**

Executive Order 13514 instructs agencies to “design, construct, maintain, and operate high performance sustainable buildings in sustainable locations; strengthen the vitality and livability of the communities in which Federal facilities are located . . . .” Agencies are to work with regional and local officials to take into account the local transportation infrastructure. In facility siting decisions, agencies must consider sites that “are pedestrian friendly, near existing employment centers, and accessible to public transit, and emphasizes existing central cities and, in rural communities, existing or planned town centers . . . .”

Executive Order 13514 also addresses climate change and requires each Federal agency to evaluate risks and vulnerabilities and address how it will manage the effects of climate change on its mission, programs, and operations. This includes, of course, siting facilities in vulnerable locations.

### **8.3.2 IMPLEMENTING INSTRUCTIONS-SUSTAINABLE LOCATIONS FOR FEDERAL FACILITIES, COUNCIL ON ENVIRONMENTAL QUALITY**

The Council on Environmental Quality (CEQ), working with an interagency group, issued implementing instructions for Executive Order 13514. The instructions direct Federal agencies to “Incorporate Principles for Sustainable Federal Location Decisions into applicable agency business practices, and agency Strategic Sustainability Performance Plans (SSPP)”. The instructions address:

- a. working with local and regional governments;
- b. seeking “location-efficient” sites;
- c. maximizing the use of existing resources, such as historic buildings;
- d. protecting the environment;
- e. maximizing the use of existing Federal space;
- f. reviewing workplace standards to become more efficient; and
- g. reducing parking demand.

### **8.3.3 DEPARTMENT ADMINISTRATIVE ORDER (DAO) 216-18, CLIMATE CHANGE ADAPTATION PLANNING**

DAO 216-18 was issued in order to implement Executive Order 13514 and CEQ’s instructions for climate adaptation planning. This DAO required DOC to develop a five-year climate change adaptation strategy and a one-year adaptation action plan. The strategy includes specific priority actions DOC will undertake to minimize risks and increase resilience in a changing climate. DOC’s *Climate Adaptation Plan* proposed strategies for mitigating climate adaptation impacts on real property by retrofit, relocation or adaptive reuse. In determining where to site a new or replacement facility, minimizing the risk of future climate adaptation impacts will be a paramount consideration.

### **8.3.4 EXECUTIVE ORDER 11988, FLOOD PLAIN MANAGEMENT (MAY 24, 1977)**

Executive Order 11988 directs agencies “to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains . . .” Other Federal agencies have implemented policies in their practices to minimize the impact of potential floods. For example, GSA issued the *Floodplain Management Desk Guide*, which states, among other things, that selection of a property within a one hundred-year floodplain is only to be made if there are no other practicable alternative. OUs are required to develop policies and procedures to comply with this Executive Order, such as a adopting a policy similar to GSA’s, which details responsibilities and an approval process. OUs may work with ORPP and OGC to develop such policies and procedures.

### **8.3.5 OTHER SELECT FEDERAL LAWS AND EXECUTIVE ORDERS**

Acquisitions must also comply with a number of other Federal laws and Executive Orders designed to protect the environment and historic resources, and environmental justice, which include, among others, the following:

- a. National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190 (Jan. 1, 1970) (42 U.S.C. § 4321 et seq.);
- b. National Historic Preservation Act of 1966, Pub. L. No. 89-665 (Oct. 15, 1966) (16 U.S.C. § 470 et seq.);
- c. Endangered Species Act of 1973 (ESA), Pub. L. No. 93-205 (Dec. 28, 1973) (16 U.S.C. § 1531 et seq.);
- d. Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. No. 94-580 (Oct. 21, 1976) (42 U.S.C. § 6901 et seq.);
- e. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Pub. L. No. 96-510 (Dec. 11, 1980), (42 U.S.C. § 9601 et seq.);<sup>9</sup>
- f. Executive Order 11990, Protection of Wetlands (May 24, 1977); and
- g. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Feb. 11, 1994).<sup>10</sup>

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<sup>9</sup> As amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (Oct. 17, 1986).

## 8.4 FEDERAL LOCATIONAL POLICY

Locational policy for the siting of a Federal facility involves an increasingly complex array of laws and policies, such as those discussed below.

- a. The Rural Development Act of 1972, Pub. L. No. 92-419 (Aug. 30, 1972) (7 U.S.C. § 2204b-1)
  - The Act directs that Federal agency heads give “first priority to the location of new offices and other facilities in rural areas . . . .” However, despite this law, agencies frequently justify a mission requirement to locate in an urban or suburban environment.
- b. Executive Order 12072, *Federal Space Management* (Aug. 16, 1978)
  - Executive Order 12072 directs that, for Federal facilities that need to be located in urban areas, “first consideration” be given to “a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials.”
- c. Executive Order 13006, *Locating Federal Facilities on Historic Properties In Our Nation's Central Cities* (May 21, 1996)
  - Executive Order 13006 states that “when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists.” GSA complies with this Executive Order in lease competitions by including General Services Acquisition Regulation (GSAR) clause 552.270-2 (Historic Preference), which provides historic properties with a price preference. It is DOC policy to include GSAR clause 552.270-2 in its solicitations for leases. However, OUs may deviate from this DOC policy, as long as they develop their own policy that still complies with the Executive Order; OUs may work with ORPP and OGC to develop such policy.

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<sup>10</sup> As amended by Executive Order 12948, Amendment to Executive Order 12898 (Jan. 30, 1995).

The site selection checklist below is a useful tool for assisting with compliance with the various policies and requirements.

CONSIDERATION	YES/NO	NOTES
Federal property available?		
Rural location possible?		
Central business district possible?		
Historic property possible?		
Historic district possible?		
Environmental constraints?		
Climate adaptation constraints?		

In addition, GSA’s *The Site Selection Guide* is a useful resource that provides an outline of the entire site selection process, as well as offers best practices.

## 8.5 ROLES AND RESPONSIBILITIES

### 8.5.1 OFFICE OF THE SECRETARY

Within the Office of the Secretary, a number of officers and offices play a role in real property acquisitions, including the Secretary, the CFO/ASA and OFEQ and its ORPP, the Office of the Budget, the OGC, and the MRB.

Chapter 2 documents the real property authorities that have been delegated by the Secretary and CFO/ASA, as well related roles and responsibilities.

#### 8.5.1.1 OFFICE OF FACILITIES AND ENVIRONMENTAL QUALITY AND OFFICE OF REAL PROPERTY PROGRAMS

ORPP, within the OFEQ, is responsible for reviewing, analyzing and making recommendations to the CFO/ASA on portfolio plans. ORPP works with the OUs to use portfolio management techniques to ensure the most economical option to meet DOC housing needs. This involves working with GSA to canvas the GSA portfolio of over 11,000 buildings in all US markets and territories in search for existing available Federal space or in enlisting GSA assistance for market information and field office expertise. It also involves reviewing what currently exists in the DOC portfolio that is available for co-locations or consolidation.

The OFEQ is the liaison with GSA on prospectus level projects per Department Organization Order (DOO) 10-5, *Chief Financial Officer and Assistant Secretary for Administration*. OFEQ submits to GSA the documents required to initiate the project and coordinates with the requesting OU on additional requirements. This ensures uniformity and standardization when communicating with GSA. It further gives OFEQ the ability to look at DOC real property requirements as a whole.

#### **8.5.1.2 OFFICE OF THE GENERAL COUNSEL**

The Office of General Counsel (OGC) is responsible for ensuring that all DOC acquisitions meet the requirements of Federal laws and regulations. As noted in the *DOC Scalable Acquisition Project Management Guidebook*, OGC's early involvement in the acquisition process will produce more successful acquisitions.

### **8.6 ACQUISITION BY FEE**

#### **8.6.1 COMPETITIVE PROCUREMENT**

If the real property asset is not a gift and more than one asset is suitable, OUs must follow the applicable Federal acquisition laws and regulations.

Whether or not the process requires a competition, a warranted Real Property Contracting Officer (RPCO) should provide input into the acquisition planning process; administer the competition, if any; lead the negotiations; and close the contract.

#### **8.6.2 DUE DILIGENCE**

Once a preferred site is identified, the OU shall undertake the appropriate due diligence. Due diligence is the research and investigation process whereby an OU obtains such needed information prior to completing a real property acquisition. Information gained through the due diligence process may pertain to environmental conditions, historic factors, physical conditions of land and buildings, security matters, legal considerations (such as zoning, building, and occupancy permits) and title conditions.

Environmental due diligence must be performed to identify potential issues, such as presence of hazardous substances and materials, underground storage tanks, wetlands, and flood plains. At a minimum, all acquisitions by fee purchase, or transfer from another agency, or donation are required to

complete a Phase 1 environmental assessment. Standards for performing a Phase 1 site assessment have been promulgated by the U.S. Environmental Protection Agency (EPA), and are based in part on the American Society for Testing and Materials (ASTM) Standard E1527-05 and E1527-13. See 40 C.F.R. part 312. If the Phase 1 indicates that there may have been hazardous substances stored or released on the site, a Phase 2 study is required in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. § 9601 et seq.).

The OU must ensure all that all issues regarding fire protection, life safety, and occupational safety hazards have been identified and addressed. The OU shall conduct a safety survey to review the operational safety history of the real property to identify potential hazards and concerns related to, but not limited to, facility safety, fire protection, radiation, confined spaces, exit access, explosives, and pressurized systems. Abatement actions may need to be completed prior to the actual property transfer.

The OU shall conduct a physical inspection and will prepare and maintain a file attesting to the conditions.

The OU shall obtain satisfactory evidence of good title to the real property being acquired. DOJ's *Title Standards 2001* provides useful guidance. The process of obtaining satisfactory evidence of good title should be started early in the acquisition process.

As previously noted, pursuant to 40 U.S.C. § 3111(a), no real property may be purchased or a permanent easement acquired until the Attorney General, or his/her designee (e.g., U.S. Army Corps of Engineers), has approved the title.<sup>11</sup> After an OU obtains an acceptable title document, the OU is required to submit the proposed acquisition to ORPP and OGC's Office of the Assistant General Counsel for Finance and Litigation (F&L) for clearance. When cleared, the OU will forward the title document to the DOJ's Environment and Natural Resources Division, or the appropriate designee, for examination and a preliminary title opinion. OGC's F&L and ORPP will be consulted throughout the title approval process. A final title assembly, prepared in accordance with DOJ Title Standards, should be submitted to the Attorney General or its delegatee by the OGC.

The OU is required obtain an appraisal for any acquisition of real property when the purchase price (fair market value) is estimated to exceed \$50,000. The appraisal must be performed by an independent, qualified appraiser and will provide documentation to support his/her conclusions in the event price

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<sup>11</sup> OUs shall submit any proposed lease or easement with a term of 30 or more years to OGC/F&L for review and clearance.



negotiations ensue. A useful resource is the *Uniform Appraisal Standards for Federal Land Acquisitions*, which was developed, promulgated, and adopted by the Interagency Land Acquisition Conference.

### 8.6.3 RISK ASSESSMENT

The OUs need to recognize that risk exists in all real property actions, and, therefore, it is beneficial to assess and document the level of risk. The Office of Program Evaluation and Risk Management (OPERM) works with all OUs, through a Risk Manager Officer, to develop policies and procedures to assess, document, mitigate and manage risks at the program level or enterprise wide. The Office also advises leadership on aspects of risks.

### 8.6.4 CLOSING AND POST CLOSING ADMINISTRATION

In this phase, the RPCO for the OU completes the contract administration and coordinates the contract action with OGC/F&L and with the buyer. The Acquisition Checklist below is helpful to ensure that all the necessary documentation is in place.

IN FILE?	DOCUMENTS
	Final signed sales agreement
	Final signed broker agreement (if any)
	Amendments
	Appraisal (if Fair Market Value >\$50,000)
	Legal boundary survey
	Title
	Other property specific real estate information
	Environmental records
	Legal review and approval
	Conditions precedent to closing
	Closing documents
	Deed

Subsequently, FRPM needs to be updated with relevant data on the new asset.

### 8.7 DIRECT LEASING PROCESS

The following guidance pertains to all direct leasing procurements undertaken by OUs.

## **8.7.1 PREREQUISITES FOR DIRECT LEASING**

### **8.7.1.1 DETERMINING IF LEASING IS THE BEST OPTION**

As a general principle, when an OU has a real property need, it should first consider existing Federally owned or leased asset (including repairing or altering a current asset), as well as acquiring a permanent interest in an asset (e.g., purchasing land or constructing a building). In this regard, the acquisition of a new leasehold interest in real property could be considered a strategy of last resort. Nevertheless, DOC, as well as other Federal agencies, frequently determines that a lease is the best option for satisfying a real property need.

For all new space requirements and expiring leases, OUs shall, with the coordination of ORPP, check with other OUs and GSA to determine if suitable space is available that can meet the need, and ensure that a capital-intensive real property solution (e.g., renovation, new construction) is not worthy of pursuit.

### **8.7.1.2 REAL PROPERTY CONTRACTING OFFICERS**

All DOC direct lease acquisitions must be executed by warranted RPCOs. All actions undertaken by an RPCO must be within the scope of his/her leasing warrant. The authorities, responsibilities and limitations of RPCOs are addressed in DOC's *Real Property Warrant Program Handbook*.

### **8.7.1.3 DEPARTMENT ADMINISTRATIVE ORDER (DAO) 217-21, SPACE ALLOWANCE AND MANAGEMENT PROGRAM**

All DOC direct lease acquisitions involving administrative/office space, including the exercise of renewal options, as well as replacement lease actions in which a succeeding lease is anticipated, must use "best efforts" to comply with DAO 217-21, which established efficient usage as a Departmental goal for office space, and calls for a utilization rate goal of 170 usable square feet per person for all DOC occupancies.

### **8.7.1.4 MAINTAIN OVERALL SIZE OF INVENTORY**

For all new space requirements for which leasing is contemplated, (excluding expiring lease replacement actions involving no space growth), the OU and RPCO must comply with OMB Memorandum M-12-12, *Promoting Efficient*

*Spending to Support Agency Operations* (May 12, 2012), which states that agencies will not increase the size of their real estate inventory. This policy was reinforced later by OMB Memorandum No. 2013-02, *Implementation of OMB Memorandum M-12-12 Section 3: Freeze the Footprint* (March 14, 2013), which, among other things, instructed agencies to not increase their office and warehouse space above their Fiscal Year 2012 level. Coordination with ORPP is necessary for any leasing action that would constitute a net increase in the size of DOC's real property portfolio.

#### **8.7.1.5 BUDGET PRE-VALIDATION AND REQUIRED BUDGET AUTHORITY FOR LEASES**

Prior to initiating a lease-procurement, it is necessary for the RPCO to ensure that sufficient funds are available to meet the lease contract payment obligations.<sup>12</sup> This is generally accomplished by a budget pre-validation process or check.

Appendix B to OMB Circular A-11, *Budgetary Treatment of Lease-Purchases and Leases of Capital Assets*, states the following:

“For *operating leases*, budget authority is required to be obligated up front in the amount necessary to cover the government's legal obligations, consistent with the requirements of the Anti-deficiency Act. This will include the estimated total payments expected to arise under the full term of the contract or, if the contract includes a cancellation clause, an amount sufficient to cover the lease payments for the first year plus an amount sufficient to cover the costs associated with cancellation of the contract. For each subsequent year, sufficient budget authority is required to be obligated to cover the annual lease payment for that year plus any additional cancellation costs.”

For leases undertaken by DOC using direct statutory leasing authority, the budgetary authority required to be available at the time of lease execution, even for an operating lease, will be the entire value of the lease over the contract firm term, unless the lease contains a termination clause, in which case, as per OMB Circular A-11, the budgetary authority required to be available at the point of lease execution is one year of lease payments plus the cost to invoke the termination clause.

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<sup>12</sup> When GSA delegates its lease acquisition authority (40 U.S.C. § 585) to an OU, the delegation includes the ability to limit obligations related to a long term lease on a fiscal year basis without violating the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(B), subject to the OU's compliance with the conditions of the delegation.

## **8.8 AWARD PREFERENCES AND SELECTION CRITERIA**

### **8.8.1 LOWEST PRICE OR BEST VALUE TRADEOFF**

Also, of critical importance to program managers with organizational units to be located in leased space is the method for selecting the property to be awarded the lease and the criteria used in the selection process. Generally, lease procurements should be awarded to the offeror with the proposal that provides the best value to the government, either on the basis of: (a) lowest price technically acceptable; or (b) best value tradeoff. GSA's *Leasing Desk Guide* provides useful guidance on the source selection process.

In a lowest price technically acceptable procurement, the government essentially establishes minimum technical requirements, and would award the lease to the offeror that submits the lowest priced proposal that meets the minimum technical requirements.

In a best-value tradeoff procurement, the government essentially establishes evaluation factors (including cost or price and past performance) and significant subfactors, with their relative importance, and would award the lease to the offeror that submits the proposal with the "best value" to the government.

Technical evaluation factors used in best value tradeoff lease procurements, in addition to cost or price and past performance, may include accessibility/proximity to public transportation and amenities, space layout, and energy efficiency.

### **8.8.2 HISTORIC PROPERTIES AND HISTORICALLY UNDERUTILIZED BUSINESS ZONE (HUBZONE) PRICE PREFERENCES**

For lease procurements, offered prices are adjusted by the government for evaluation purposes only in order to comply with two public policy directives: (1) Executive Order 13006, *Locating Federal Facilities on Historic Properties in Our Nation's Central Cities* (May 21, 1996), and (2) the HUBZone Act of 1997, Pub. L. No. 105-135, title VI, 111 Stat. 2592, 2627, as amended (15 U.S.C. §§ 632(p), 657a).

A Small Business Administration (SBA) qualified HUBZone small business concern receives a ten percent price adjustment (for evaluation purposes only) in competitive lease procurements. 15 U.S.C. § 657a. The principal office of the firm that owns the building needs to be located in a HUBZone, but the building offered for lease does not.

## **8.9 PROHIBITED ACTIONS OF DEPARTMENT OF COMMERCE EMPLOYEES**

Unless authorized in writing by the RPCO, officials and employees of DOC must at no time, either directly or indirectly, contact lessors, offerors or potential offerors for the purpose of making oral or written representations, commitments, or agreements with respect to agency needs or preferences, lease terms, occupancy of particular space, tenant improvements, alterations and repairs, or overtime services. This prohibition includes the period before and after a request for space is submitted to the RPCO, and after a lease is executed.

## **8.10 OTHER THAN FULL AND OPEN LEASE COMPETITIONS**

The Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369 (July 18, 1984) (codified, as amended, at 41 U.S.C. § 3301 et seq.), requires agencies to use full and open competitive procedures in Federal contracting, including the acquisition of leased space. CICA does provide for exceptions, but if full and open procedures will not be used, a Justification for Other Than Full and Open Competition needs prepared and approved.

## **8.11 SCORING OF PROPOSED LEASES AND LEASE TERMS**

The subject of scoring, a highly technical matter, is raised here only because the lease term (i.e., duration) can have a material impact on whether a lease is “scored” as an operating lease or a capital lease. Leases executed under a delegation of authority from GSA can be as long as twenty years. Long-term leases (generally thirteen years or more) present the prospect, in some cases, of a capital lease designation. Specifically, in some long-term leases, the present value of the rental payments over the lease term is greater than eighty percent of the leased asset’s value and thus would constitute a capital lease.

Program managers need to be aware of the potential impact on the scoring of the lease when they work with RPCOs to selection an appropriate lease term. Therefore, it is necessary to perform a scoring analysis at the inception of the procurement and directly prior to lease execution, as well as sometimes at other points in the acquisition process, when project parameters change. A useful resource is NOAA’s *Real Property Lease Handbook*.

## **8.12 LEASE ADMINISTRATION, MANAGEMENT AND FILES**

### **8.12.1 LEASE ADMINISTRATION**

The RPCO is responsible for administering all executed leases to ensure that lessors fully comply with the terms and conditions of the lease, such as providing required services (e.g., utilities and maintenance). Lease administration functions may be delegated to other employees. These delegated roles are the Contracting Officer Representative (COR) and Administrative Contracting Officer (ACO).

#### **8.12.1.1 DESIGNATION OF A CONTRACTING OFFICER REPRESENTATIVE (COR)**

The lease administration responsibilities of a COR include interpreting and enforcing lease provisions, and contracting through the lessor for space alterations. CORs should be appointed for all leased locations (including delegated GSA leases) housing DOC employees when the annual rental is more than a nominal amount, the space is 5,000 square feet or greater, and the space is fully serviced. Upon request by the RPCO, OU program managers must designate an individual to serve as a COR, and assist the RPCO in monitoring the lessor's performance. Generally, the RPCO has discretion whether or not to designate a COR when the government is responsible for the provision of building services and utilities.

#### **8.12.1.2 DESIGNATION OF AN ADMINISTRATIVE CONTRACTING OFFICER (ACO)**

The lease administration responsibilities of an ACO include all those of a COR, as well as authorizing rental payments and rental deductions for non-performance (after a notice and cure period), and processing adjustments (e.g., operating expense and real estate taxes).

#### **8.12.1.3 LETTERS OF DESIGNATION**

RPCOs may issue a letter of designation to a COR or ACO. The letter and its enclosures shall include instructions, guidance, a copy of the lease, all supplemental lease agreements (SLAs)/amendments, and, if applicable, the floor plan(s).

### **8.12.2 LEASE MANAGEMENT**

The RPCO, or his/her delegate (COR or ACO), is responsible for effectively managing the lease. Examples of lease management responsibilities include the following:

- a. Conducting day-to-day general monitoring of the lessor's provision of services required by the terms and conditions of the lease, such as maintenance and utilities;
- b. Conducting periodic in-depth inspections to ensure that the lessor fully complies with the terms and conditions of the lease;
- c. Documenting and notifying the lessor when any of terms and conditions of the lease are not being complied with, such as maintenance and utilities;
- d. Having OGC/F&L review all RPCO claim decisions before they are issued;
- e. Investigating tenant complaints and following up with the lessor, as needed, to make sure that they have been promptly resolved;
- f. Maintaining a complete lease file;
- g. Executing supplemental lease agreements (SLAs) (e.g., documenting operating expense or real estate taxes adjustments); and
- h. Documenting and taking appropriate action to resolve disputes with the lessor, in coordination with OGC/F&L.

### **8.12.3 LEASE FILES**

The RPCO is responsible for maintaining a complete file on the lease acquisition, and on the administration of the lease during the contract term. In general, the lease file must contain a complete record of the acquisition process (with sufficient detail and history to provide a basis for every decision made during each step of the procurement), all supplemental lease agreements (SLAs), correspondence, inspections, and all records on lease enforcement matters. DAO 205-1, *Records Management*, addresses the general requirements for establishing, maintaining, and disposing of contract files.

## CHAPTER 9. ENERGY CONSERVATION, SUSTAINABILITY, AND CLIMATE ADAPTATION

### 9.1 OVERVIEW OF ENERGY CONSERVATION, SUSTAINABILITY, AND CLIMATE ADAPTATION

This chapter covers the environmental and energy sustainability and climate adaptation considerations that DOC must address in all of its real property actions, including: portfolio and asset planning; location and site selection; leasing; acquisitions; disposals; new construction, renovations and modernizations; and operations and maintenance.

Over the past decades, Congress has enacted numerous laws to protect the environment and increase the energy efficiency of Federal facilities. At the end of the twentieth century and beginning of the twenty-first, Presidents issued several Executive Orders, and agencies created plans and policies with the goal of achieving environmentally sustainable environments and minimizing the impacts of climate change to the public at large and Federal operations generally.

DOC, in turn, has embraced environmental and energy sustainability and envisions meeting its mission “concurrent with exercising responsible stewardship for the environment by operating in sustainable facilities.”<sup>13</sup> Pursuant to that vision, DOC’s policy is to reduce greenhouse gas emissions, promote energy conservation and pollution prevention, promote comprehensive environmental compliance and natural resource conservation programs, and consider the environmental impacts in decisions related to real property.

DOC is also addressing matters pertaining to climate adaptation and the attendant risks to the Department’s ability to execute its mission in the face of climate change. DOC’s geographical diversity causes its infrastructure and facilities to be subject to a full range of climate change impacts, such as atmospheric, hydrological, oceanic, coastal, human health and society, ecosystems, and resources and infrastructure. Some of DOC’s infrastructure and facilities, and the considerable investment they represent, could be at risk. DOC has issued a *Climate Adaptation Plan* to identify and address climate changes and minimize its risks.

This Chapter supplements, but does not replace, the more comprehensive documents and manuals issued by DOC under the leadership of the Office of

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<sup>13</sup> *High Performance and Sustainable Buildings Handbook*, US Department of Commerce, Revised Feb. 15, 2011, page 4.



Sustainable Energy and Environmental Programs (OSEEP) in OFEQ, such as the *Energy and Environmental Management Manual* and the *Implementation Handbook for the Strategic Sustainability Performance Plan*. Also, additional guidance on sustainability and energy and resource conservation is contained in this Manual, with Chapter 8 focusing on acquisitions, and Chapter 10 focusing on facilities management.

## **9.2 SELECT LAWS, POLICIES AND GUIDANCE**

### **9.2.1 FEDERAL LEADERSHIP IN HIGH PERFORMANCE AND SUSTAINABLE BUILDINGS MEMORANDUM OF UNDERSTANDING**

In 2006, DOC entered into an agreement with many Federal agencies to establish and follow a common set of guiding principles aimed at transforming the Federal real property inventory into one characterized by high performance and sustainable buildings. The guiding principles address:

- a. Integrated design with a collaborative planning, design and delivery process; sustainability performance goals; and lifecycle costing and commissioning;
- b. Energy performance with energy efficiency targets for new construction and renovations;
- c. Measures to protect and conserve water indoors and out;
- d. Indoor environmental quality; and
- e. Reduction in the environmental impact of materials.

### **9.2.2 ENERGY POLICY ACT OF 2005**

Section 103 of the Energy Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58 (Aug. 8, 2005) (42 U.S.C. § 8253(e)), required all Federal buildings to be metered for electrical consumption by October 1, 2012. Advanced meters or metering devices must provide data at least daily and measure the consumption of electricity at least hourly.

### **9.2.3 ENERGY INDEPENDENCE AND SECURITY ACT OF 2007**

Section 432 of the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. No. 110-140 (Dec. 19, 2007) (42 U.S.C. § 8253(f)), established a framework for facility benchmarking that includes auditing a facility's energy and water use once every four years. Agencies must identify all "covered facilities" that constitute at least 75 percent of the agency's facility energy use.

### **9.2.4 EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT (JAN. 2007)**

Executive Order 13423 sets goals for energy efficiency, acquisition, renewable energy, toxics reductions, recycling, sustainable buildings, electronics stewardship, fleets, water conservation, and greenhouse gas emission reductions. The Executive Order requires agencies to use Environmental Management Systems to manage and improve sustainable practices.

Related instructions and guidance for this Executive Order include the following:

- a. *Instructions for Implementing Executive Order 13423* (Mar. 29, 2007), prepared by the White House Council for Environmental Quality (CEQ) and the Office of the Federal Environmental Executive (OFEE); and
- b. *High Performance and Sustainable Buildings Guidance* (Dec. 1, 2008), prepared by the Interagency Sustainable Buildings Working Group (ISWG).

### **9.2.5 EXECUTIVE ORDER 13524, FEDERAL LEADERSHIP IN ENVIRONMENTAL, ENERGY, AND ECONOMIC PERFORMANCE (OCT. 2009)**

Executive Order 13514 requires Federal agencies to develop and implement Strategic Sustainability Performance Plans (SSPPs). SSPPs are intended to help an agency evaluate risks from climate change and identify ways to manage the effects of climate change on the agency's mission and operations. The Executive Order also, among other things, required agencies to set a greenhouse gas emission reduction target, increase energy efficiency,

conserve water, reduce waste and leverage Federal purchasing power to promote environmentally sustainable products and technologies.

Related instructions and guidance for this Executive Order include the following:

- a. *Progress Report of the Interagency Climate Change Adaptation Task Force: Recommended Actions in Support of a National Climate Change Adaptation Strategy* (Oct. 5, 2010). The Report includes guiding principles, policy goals, and recommended actions for the Federal Government to adopt in addressing adaptability to climate change.
- b. *Federal Agency Climate Change Adaptation Planning: Implementing Instructions* (Mar. 4, 2011), prepared by CEQ. These instructions directed Federal agencies to do the following:
  - i. Establish an agency climate change adaptation policy;
  - ii. Increase agency understanding of how the climate is changing;
  - iii. Apply an understanding of climate change to agency mission and operations;
  - iv. Develop, prioritize, and implement actions; and
  - v. Evaluate and learn from other agencies' approaches.

#### **9.2.6 DEPARTMENT ADMINISTRATIVE ORDER (DAO) 216-18, CLIMATE CHANGE ADAPTATION PLANNING**

DOC issued DAO 216-18 in order to implement Executive Order 13514, the Task Force's October 2010 recommendations, and CEQ's implementing instructions for Executive Order 13514. The DAO states that "[i]t is the policy of the Department to undertake comprehensive climate change adaptation planning in order to ensure that the Department fulfills its mission and maintains its programs and operations in a changing climate." The DAO requires OUs to "consider current and projected climate change impacts when undertaking planning, setting priorities for scientific research and investigations, and making decisions regarding the Department's resources, programs, policies, and operations." In addition, the DAO notes that, as DOC moves forward with its climate change adaptation planning, DOC shall apply the guiding principles and planning framework for climate change adaptation found in the 2010 Interagency Climate Change Adaptation Task force Report.

## **9.2.7 CLIMATE CHANGE ADAPTATION STRATEGY AND ANNUAL PLAN**

As required by DAO 216-18 and CEQ's implementing instructions for Executive Order 13514, DOC is responsible for developing and publishing a *Climate Adaptation Plan* that analyzes its vulnerability to climate change and lays out DOC's approach for addressing its key vulnerabilities over the next five years. DOC also annually updates an action plan, which includes specific priority actions it will undertake to minimize its risks and increase its resilience in a changing climate.

## **9.2.8 EXECUTIVE ORDER 13653, PREPARING THE UNITED STATES FOR THE IMPACTS OF CLIMATE CHANGE (NOV. 1, 2013)**

Executive Order 13653 outlines Federal agency responsibilities in the areas of supporting climate resilient investment; managing lands and waters for climate preparedness and resilience; providing information, data and tools for climate change preparedness and resilience; and planning.

For facilities, Executive Order 13653 requires, among other things, Federal agencies to include in their Adaptation plans "a description how the agency will consider the need to improve climate adaptation and resilience, including the costs and benefits of such improvement, with respect to agency suppliers, supply chain, real property investments, and capital equipment purchases such as updating agency policies for leasing, building upgrades, relocation of existing facilities and equipment, and construction of new facilities . . . ."

## **9.2.9 IMPLEMENTING INSTRUCTIONS- SUSTAINABLE LOCATIONS FOR FEDERAL FACILITIES**

### **9.2.9.1 CEQ IMPLEMENTING INSTRUCTIONS FOR EXECUTIVE ORDER 13514**

CEQ, working with an interagency group, prepared the Implementing Instructions on Sustainable Locations for Federal Facilities to address the statement in Executive Order 13514 that "[i]t is . . . the policy of the United States that Federal agencies shall . . . design, construct, maintain, and operate high performance sustainable buildings in sustainable locations; [and] strengthen the vitality and livability of the communities in which Federal

facilities are located . . . .” The Implementing Instructions include a set of Guiding Principles that address advancing regional and local planning goals, maximizing existing resources, seeking location-efficient sites, and protecting the natural environment. Agencies are also required to reduce parking demand, maximize space utilization, and establish efficient workplace standards.

Agencies are required to evaluate the impacts of their location decisions and identify cost-effective strategies to optimize sustainable space utilization. The Secretary is required to incorporate Principles for Sustainable Federal Location Decisions into its business practices and its SSPP.

#### **9.2.9.2 IMPLEMENTING INSTRUCTIONS FOR EXECUTIVE ORDERS 13423 AND 13514**

DOC’s *High Performance and Sustainable Buildings Handbook* addresses how it will implement the sustainable buildings requirements of the Implementing Instructions and Executive Orders 13423 and 13514. The *Handbook* focuses on how DOC will meet the following key objectives:

- a. Ensure all applicable new facilities and major renovation projects implement design, construction, and operations and maintenance practices in support of the sustainable buildings goals of Executive Orders 13423 and EO 13514, as well as statutory requirements;
- b. Ensure at least 15 percent of DOC’s applicable existing buildings incorporate the Guiding Principles described in the *Handbook* by the end of FY 2015; and
- c. Ensure that DOC makes annual progress toward 100 percent conformance with the Guiding Principles.

#### **9.2.10 PRESIDENTIAL MEMORANDUM –IMPLEMENTATION OF ENERGY SAVINGS PROJECTS AND PERFORMANCE BASED CONTRACTING FOR ENERGY SAVINGS (DEC. 2011)**

The Presidential Memorandum directs agencies to implement and prioritize energy conservation measures consistent with real property and capital improvement plans, prioritizing those measures with the greatest return on investment. The Memorandum also requires that agencies incorporate plans for the energy conservation measures into their annual SSPPs, and includes

other directives regarding transparency, accountability, and reporting of progress in implementing energy and water conservation measures.

### **9.2.11 DEPARTMENT ADMINISTRATIVE ORDER (DAO) 217-16, ENERGY AND ENVIRONMENTAL MANAGEMENT**

DAO 217-16 includes policies and assigns responsibilities within DOC for implementing the agency's energy and environmental programs. It includes annual goals to reduce greenhouse gas emissions and directs OUs with owned and delegated leased facilities to obtain 25 percent of their electricity from renewable sources by 2025. The DAO also directs the implementation of numerous environmental statutes.

The *Energy and Environmental Management Manual* is an extension of DAO 217-16, and is used to comply with statutory or other energy and environmental regulations or considerations.

### **9.2.12 STRATEGIC SUSTAINABILITY PERFORMANCE PLAN (SSPP)**

OSEEP updates DOC's SSPP annually. The SSPP is used to explain DOC's energy and environmental sustainability priorities, performance targets, and planned investments and projects for the next five years. OSEEP works with ORPP on the elements in the SSPP that are related to facilities, such as onsite renewable energy generation projects and sustainability building assessments.

## **9.3 ROLES AND RESPONSIBILITIES**

### **9.3.1 OFFICE OF THE SECRETARY**

Within the Office of the Secretary, the Deputy Assistant Secretary for Administration (ASA), as the Senior Sustainability Officer, has the primary responsibility for implementing high-performance green building mandates and creating an agency-wide response to climate change.

The Director of OSEEP is the high performance sustainable design/green buildings program lead for DOC and is responsible for creating policy and guidance regarding sustainability and climate adaptation. Working with OUs and ORPP, OSEEP develops the annual SSPP and developed the *Energy and Environmental Management Manual*.

While DOC takes steps to minimize the risk to its facilities and operations from climate variability and change, it also needs to coordinate closely with GSA to ensure all facilities and infrastructure that GSA makes available to DOC are also resilient in a changing climate. ORPP works with GSA to identify leased properties that are vulnerable to climate change, beginning with those properties that OUs have determined are Mission Critical, as defined by the FRPP. DOC's strategy and plan are included in the *Instruction and Guidance Document* in the June 2012 *DOC Climate Change Vulnerability Analysis*.

### 9.3.2 OPERATING UNITS

OUs participate in policy development and planning undertaken by the Office of the Secretary, and they determine how best to implement the plans and objectives within their facilities, referring to the handbooks, manuals and plans of DOC. OSEEP and ORPP consult with and support OUs in this process.

OUs are responsible for ensuring that the agency's sustainability goals are incorporated into all stages of a building's lifecycle. In planning for their portfolios and individual assets, OUs shall use lifecycle cost estimating and return-on-investment measures to weigh options. As noted in the SSPP for 2011, "High-performance green building initiatives are well suited for economic lifecycle assessment because the economics of such capital projects often improve when operating and maintenance costs are included."

In accordance with the SSPP, OUs are also responsible for:

- a. Complying with the *Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings* in all new construction, major renovation, repair and alteration of Federal buildings;
- b. Incorporating sustainable practices into agency policy and planning for new Federal facilities and leases, and into lease renewal strategies; and
- c. Target reduction in energy and water consumptions and reduction in deferred maintenance costs when performing the following in existing buildings:
  - i. Operations and Maintenance, and
  - ii. Minor repair and alterations.

Similarly, OUs shall consult the annual *Climate Adaptation Plan* for the most current guidance for identifying and addressing facilities that are vulnerable

to climate change. OUs shall take into account the effects of a changing climate in a comprehensive approach to facilities planning and siting to reduce and/or to avoid, impacts to property.

OUs are responsible for regularly reporting to the CFO/ASA on progress toward meeting DOC's goals, such as energy and water conservation and creating climate change mitigation plans. The type and frequency of reports is defined in various environmental documents, such as the *Energy and Environmental Management Manual*.



## **CHAPTER 10. FACILITY MANAGEMENT**

### **10.1 OVERVIEW OF FACILITY MANAGEMENT**

This chapter synthesizes laws, regulatory guidance, and best practices for the property management of government owned and leased facilities. DOC may have responsibility for one or more aspects of the management of a facility. DOC's facility management may be a consequence of ownership; a delegation from GSA; or a DOC direct lease that is not fully serviced. Examples of facilities include buildings, unimproved land, improved land (e.g., land with roads), docks, piers, and mooring facilities.

Chapter 6 more fully addresses delegations of GSA authority. Chapter 7 discusses alterations to base building elements (core and shell), since they are not part of conventional facilities management duties, repair projects that exceed the prospectus threshold, and comprehensive facility condition assessments. Chapter 9 provides a more in depth discussion of laws, policies, and guidance regarding environmental and energy sustainability and climate adaptation.

### **10.2 GSA DELEGATED AUTHORITY**

Pursuant to the Federal Property and Administrative Services Act of 1949, Pub. L. No. 81-152, 63 Stat. 377 (June 30, 1949), and the Public Buildings Act of 1959, Pub. L. No. 86-249, 73 Stat. 479 (Sept. 9, 1959), GSA was given the authority to acquire, construct, manage, operate, alter, and repair "Public Buildings," as well as the ability to delegate that authority to other executive agencies.<sup>14</sup>

### **10.3 ROLES, RESPONSIBILITY, AND SCOPE**

Facility management is DOC's responsibility when the asset is:

- a. Federally owned and in the custody of DOC;
- b. Federally owned and primarily in the custody of GSA, but GSA has delegated facility management responsibility to DOC;

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<sup>14</sup> Most of the provisions of these two Acts, as amended, were located in title 40 of the United States Code. However, title 40 was codified into positive law in 2002 and the two Acts were basically repealed, with many of their provisions moved to different sections of title 40. Pub. L. No. 107-217, 116 Stat. 1062 (Aug. 21, 2002).

- c. Leased by DOC and the lease is not fully serviced (e.g., landlord does not provide all operation and maintenance services); or
- d. Leased by GSA and the lease is not fully serviced (e.g., landlord does not provide all operation and maintenance services), but GSA has delegated facility management responsibility to DOC.

DOC's responsibility will vary depending on the specific type of real property asset and the level of DOC custody, and may consider having the applicable services covered by a contract. The responsibility could include any or all of the following: operating and maintaining building systems and components (e.g., heating, ventilation, air conditioning, electrical, fire protection and annunciator, lighting, elevators, plumbing, and security), custodial, grounds and landscape maintenance, solid waste management and recycling, pest control, snow removal, parking management, energy and resource conservation management, alterations, minor repairs, and ensuring the provision and payment of all utilities.

The OU having custody of a real property asset is responsible for the management of that facility. When multiple OUs have custody, responsibility is to be determined on a case-by-case basis in consultation with ORPP; however, the presumption is that the OU with the majority custody of the asset will be responsible for the facility management.

In the case of the Herbert C. Hoover Building (HCHB), OFEQ's Office of Space and Building Management (OSBM) is responsible for facilities management under a GSA delegation of authority.

#### **10.4 GENERAL STANDARDS FOR FACILITY MANAGEMENT**

It is DOC policy that facility management services comply with the following:

- a. Are cost effective and energy efficient;
- b. Are adequate to meet the agency's missions;
- c. Meet nationally recognized standards; and
- d. Are at an appropriate level to maintain and preserve the assets, consistent with available funding.

In addition, ORPP recommends that OUs consider adopting GSA's regulations on facility management, which are located in 41 C.F.R. part 102-74. Should an OU desire to establish policies and/or guidance that differs from 41 C.F.R. part 102-74, the OU will need to work with ORPP and OGC (F&L) to establish

such policies and/or guidance. However, OUs operating under, or subject to, GSA authorities need to follow GSA's real property regulations and policies regarding facility management.

#### **10.4.1 TENANT ALTERATIONS**

Tenant alterations are space changes to interior areas of a building, occupied or occupiable by end-users, and occur after the initial occupancy. Tenant alterations typically consist of changes to the layout of the tenanted space, and may involve the following: partitions or walls; doors; lighting; raised flooring; built-in cabinetry; laboratory range hoods; and electrical, telephone and computer outlet locations. Tenant alterations in leased space need to comply with the terms and conditions of the lease. Additional guidance regarding alterations in leased space is provided in 48 C.F.R. subpart 570.5 (Special Aspects of Contracting for Lease Alterations).

#### **10.4.2 MINOR REPAIRS**

DOC distinguishes a minor repair from a major repair based on prospectus threshold, with minor repairs falling below the prospectus threshold and major repairs at or above the prospectus threshold. The prospectus threshold is adjusted annually by GSA, and posted on GSA's website at: <http://www.gsa.gov/portal/content/101522>.

### **10.5 ENERGY, RESOURCE SUSTAINABILITY AND CONSERVATION GUIDANCE**

Many energy and resource sustainability and conservation laws and policies address Federal facilities. The goals of these laws and policies are to reduce energy and water consumption, increase the use of renewable energy, lower carbon emissions, minimize construction (including tenant alterations), reduce waste, and execute climate adaptation strategies.

Chapter 9 contains a more detailed summary of the laws, policies, and guidance regarding environmental and energy sustainability and climate adaptation.

#### **10.5.1 ENERGY POLICY ACT OF 2005**

Section 103 of the Energy Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58 (Aug. 8, 2005) (42 U.S.C. § 8253(e)), required all Federal buildings to be metered for electrical consumption by October 1, 2012. Advanced meters or

metering devices must provide data at least daily and measure the consumption of electricity at least hourly.

## **10.5.2 ENERGY INDEPENDENCE AND SECURITY ACT OF 2007**

Section 432 of the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. No. 110-140 (Dec. 19, 2007) (42 U.S.C. § 8253(f)), established a framework for facility benchmarking. In this regard, the Act states that agencies must identify all "covered facilities" that constitute at least 75 percent of the agency's facility energy use. An energy manager must be designated for each of these covered facilities. Each facility energy manager is responsible for the following:

- a. Completing comprehensive energy and water evaluations of twenty-five percent of covered facilities each year, so that an evaluation of each facility is completed at least once every four years;
- b. Following up on implemented measures, including fully commissioning equipment, putting operations and maintenance (O&M) plans in place, and measuring and verifying energy and water savings;
- c. Using a Web application from DOE to certify and track compliance for energy and water evaluations, project implementation and follow up measures, and estimated cost and savings; and
- d. Entering energy use data for each metered building into a benchmarking system, such as the DOE's ENERGY STAR Portfolio Manager.

In addition, the Act states that "[t]he term 'facility' means any building, installation, structure, or other property (including any applicable fixtures) owned or operated by, or constructed or manufactured and leased to, the Federal Government." 42 U.S.C. § 8253(f)(1)(C)(i). Also, the definition of "facility" in this section excludes "any land or site for which the cost of utilities is not paid by the Federal Government."

Additional guidance for these sustainability requirements can be found at the DOE Federal Energy Management Program (FEMP) website:

<http://energy.gov/eere/femp/Federal-energy-management-program>. The FEMP website also contains useful guidance on the structuring of an overall O&M program and provides details on each of five major program components or functions: Operations, Maintenance, Engineering, Training, and Administration, which, in aggregate, constitute a cohesive and comprehensive approach to operations, management and execution. FEMP's

*O&M Best Practices Guide* is a useful resource that focuses on energy efficiency and natural resource conservation.

### **10.5.3 FEDERAL BUILDINGS PERSONNEL TRAINING ACT OF 2010**

DOC staff and contractors performing facility operations and maintenance functions in Federal facilities, be it owned or leased, are required to meet core competencies, per the Federal Buildings Personnel Training Act of 2010, Pub. L. No. 111-308 (Dec. 14, 2010) (40 U.S.C. § 581 note). Section 2(a) of the Act states that GSA is required to “identify the core competencies necessary for Federal personnel performing building operations and maintenance, energy management, safety, and design functions to comply with requirements under Federal law.” The law further directs GSA to identify a course, certification, degree, or license that will impart each core competency, and requires that individuals, whether Federal employees or contractors, performing duties in these skill areas in Federal buildings, must demonstrate each core competency not later than one year after the core competency is identified, or one year after the date of hire. The law also requires development of a curriculum relating to facility management and operation of high performance buildings.

### **10.6 PLANNING AND BUDGETING FOR REPAIRS AND REPLACEMENTS**

The OU charged with facility management responsibility shall identify anticipated repairs and/or replacements. If the cost of these repairs and/or replacements cannot be accommodated within the annual operating budget for the facility, the OU shall advance a budget request so that these repairs and/or replacements can be timely executed.

In order to ensure a well-maintained facility, a best practice in facilities management is to establish a maintenance management program or system that enables the identification, costing, prioritizing, and scheduling of maintenance activities and contracts. Periodic facility condition assessments are, in part, a tool to validate the performance of a maintenance management system.

### **10.7 PHYSICAL SECURITY**

The Department of Homeland Security’s Federal Protective Service (FPS) may provide basic security services and security vulnerability assessments for Federally owned and leased property under the custody of GSA. These services are provided on a mandatory fee basis and the OU occupying the

space is billed directly. If a delegation from DHS to the DOC Office of Security (OSY) has been executed, building-specific security services may be provided by FPS on a reimbursable basis or be provided under a service contract. Examples of such services include fixed post and roving guards, perimeter or suite-level alarms, and camera surveillance.

DOC OSY provides basic physical security services and conducts facility security assessments for DOC owned and leased facilities. Sites where OSY is resident and based upon agreement between OSY and the OU(s), OSY may manage the facility physical security program. Additional information on security services is located in the DOC's *Manual of Security Policies and Procedures*.

The Interagency Security Committee (ISC) is responsible for developing standards, policies, and best practices regarding physical security in, and the protection of, buildings and nonmilitary Federal facilities in the United States. The ISC guidance identifies a process for determining appropriate security "counter-measures" based upon a threat-based assessment that is facility-specific. More specific guidance is available at: <http://www.dhs.gov>.

## **CHAPTER 11. DISPOSAL OF REAL PROPERTY**

### **11.1 OVERVIEW OF DISPOSAL OF REAL PROPERTY**

This chapter applies to government owned real properties that are in the custody of DOC.<sup>15</sup> It is DOC policy to dispose of real properties that are not needed for fulfilling its mission, which encourages sound portfolio and asset management by promoting economical use of space. The following are examples of when a property may no longer be needed for a mission: the property's accumulated repair needs render it unfit and beyond salvaging, the mission being carried out in the property is terminated, there is consolidation of various missions into one property.

Chapter 3 addresses portfolio and asset management in greater detail, including a discussion of underutilized assets.

### **11.2 AUTHORITIES, REGULATIONS, EXECUTIVE ORDERS, POLICIES, AND GUIDANCE**

DOC and its OUs currently do not have permanent authority to dispose of real property. However, disposal authority may occasionally be authorized for a specific asset.

Below is a list of some of the applicable laws, regulations, policies, and guidance documents regarding the disposal of government owned real property.

- a. 40 U.S.C. Chapter 5, Subchapter III – Disposing of Property.
- b. 41 C.F.R. part 102-75 – Real Property Disposal.
- c. Executive Order 13327, *Federal Real Property Asset Management* (Feb. 4, 2004).
- d. Presidential Memorandum, *Disposing of Unneeded Federal Real Estate—Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency* (June 10, 2010).

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<sup>15</sup> For direct leases that have underutilized or not utilized real property, the OU should consider terminating the lease as soon as possible, according to the terms and conditions of the lease, or negotiating a discounted rental rate. For occupancy in GSA leases space, the OU should work with GSA.

- e. OMB Memorandum M-12-12, *Promoting Efficient Spending to Support Agency Operations* (May 11, 2012).
- f. OMB Memorandum No. 2013-02, *Implementation of OMB Memorandum M-12-12 Section 3: Freeze the Footprint* (Mar. 14, 2013).
- g. GSA's *General Reference Guide for Real Property Policy* (Oct. 2010).
- h. GSA's *Customer Guide to Real Property Disposal*.
- i. DOC's *Energy and Environmental Management Manual* (Sept. 2012).

### **11.3 UNDERUTILIZED, NOT UTILIZED, AND EXCESS REAL PROPERTY**

“Underutilized means an entire property or portion thereof, with or without improvements, which is used– (a) Irregularly or intermittently by the accountable Executive agency for current program purposes of that agency; or (b) For current program purposes that can be satisfied with only a portion of the property.” 41 C.F.R. § 102-75.50.

“Not utilized means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable Executive agency, or occupied in caretaker status only.” 41 C.F.R. § 102-75.45.

“The term ‘excess property’ means property under the control of a Federal agency that the head of the agency determines is not required to meeting the agency's needs or responsibilities.” 40 U.S.C. § 102(3).

Through the Portfolio Ten Year Plans (PTYP) process, OUs are required to identify and report assets that are underutilized or not utilized in FRPM,<sup>16</sup> which is uploaded into FRPP.

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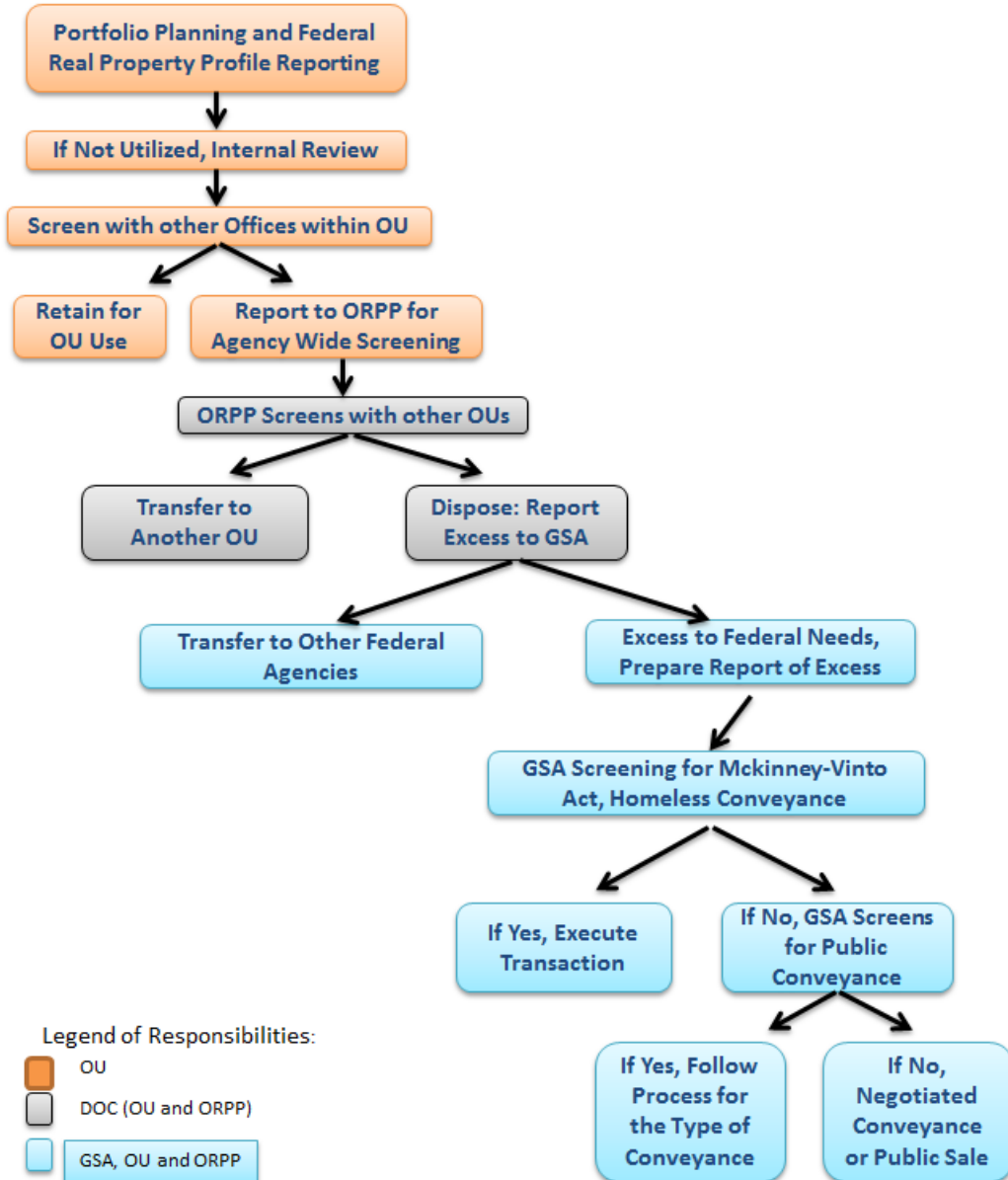
<sup>16</sup> This reporting requirement also pertains to real property assets that are directly leased by DOC.



### 11.3.1 DISPOSAL PROCESS

The diagram below outlines the usual DOC process for disposing of real property.

#### DOC Disposal Process



Note 1 Inventory systems must be updated during the appropriate step(s) of this process.

### **11.3.2 INTERNAL DEMAND FOR REAL PROPERTIES CONSIDERED FOR DISPOSAL**

When an OU contemplates disposing of a real property asset, it should first determine whether the asset could be used by another office within the OU, and assess how the disposal would impact the OU's real property portfolio plan. Then, if the property is not needed by any office within the OU, the OU shall report the real property asset to ORPP. ORPP will then offer the asset to other OUs. The asset may be transferred to one OU or shared among OUs. ORPP, in coordination with the Office of General Council, will recommend to the CFO/ASA transfers of real property assets between OUs. If DOC, including all of its OUs, no longer desires the real property asset, the OU in control of the asset and ORPP will work with GSA to dispose of the excess asset.

### **11.3.3 ROLES OF DOC AND GSA IN THE DISPOSAL OF EXCESS REAL PROPERTY**

Generally, in the absence of independent authority to dispose of real property, DOC turns to GSA to manage its disposals of excess real property.<sup>17</sup> The roles of DOC, including the OU, and GSA are interrelated and interdependent. ORPP coordinates DOC's disposal transactions with GSA.

GSA's disposal process is discussed in detail in 41 C.F.R. part 102-75 and its *Customer Guide to Real Property Disposal*. Below is a general overview of the usual process, as well as a discussion of a few of the regulations.

Pursuant to 41 C.F.R. § 102-75.80, prior to requesting a transfer of excess real property, DOC (the OU and ORPP) must:

- a. Screen its own property holdings to determine whether the new requirement can be met through improved utilization of existing real property; however, the utilization must be for purposes that are consistent with the highest and best use of the property under consideration;
- b. Review all real property under its accountability that has been permitted or outleased and terminate the permit or lease for any

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<sup>17</sup> Federal agencies may also request a delegation of disposal authority from GSA; however, this type of delegation is seldom granted. Under certain conditions found in 41 C.F.R. § 102-75.180, landholding agencies may transfer excess real property without notifying GSA. The conditions generally pertain to leases and licenses with a term of less than nine months remaining or for space of 2,500 square feet or less.

property, or portion thereof, suitable for the proposed need, if termination is not prohibited by the terms of the permit or lease;

- c. Utilize property that is or can be made available under § [102-75.80\(a\)](#) or [\(b\)](#) for the proposed need in lieu of requesting a transfer of excess real property and reassign the property, when appropriate;
- d. Confirm that the appraised fair market value of the excess real property proposed for transfer will not substantially exceed the probable purchase price of other real property that would be suitable for the intended purpose;
- e. Limit the size and quantity of excess real property to be transferred to the actual requirements and separate, if possible, other portions of the excess installation for possible disposal to other agencies or to the public; and
- f. Consider the design, layout, geographic location, age, state of repair, and expected maintenance costs of excess real property proposed for transfer; agencies must be able to demonstrate that the transfer will be more economical over a sustained period of time than the acquisition of a new facility specifically planned for the purpose.

Upon the completion of these requirements and determining that the property is excess to DOC, OUs, with ORPP assistance, first must complete a *Report of Excess Real Property* (Standard Form 118 and, if required, also a Standard Form 118A, 118B, and 118C).

OUs also need to complete all required analyses and reports (e.g., survey, title report, environmental assessment), and should create a schedule for completing the documentation and, if needed, a decommissioning process. OUs also need to budget for the costs of completing the disposition process. ORPP will then submit the required documentation to GSA.<sup>18</sup>

Pursuant to 41 C.F.R. § 102-75.340, where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the *Report of Excess Real Property* (Standard Form 118) information provided (see §§ [102-75.125](#) and [102-75.130](#)), the disposal agency must incorporate this information into any offer to purchase and conveyance document. In any offer to purchase and conveyance document, disposal agencies, generally, must also address the following (specific recommended language that addresses the following issues can be found in GSA's *Customer Guide to Real Property Disposal*):

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<sup>18</sup> Subject to the approval of GSA, agencies may withdraw the *Report of Excess Real Property* prior to disposition.

- a. Notice of all hazardous substance activity identified as a result of a complete search of agency records by the landholding agency;
- b. A statement, certified by a responsible landholding agency official in the Report of Excess Real Property, that all remedial actions necessary to protect human health and the environment with regard to such hazardous substance activity have been taken (this is not required in the offer to purchase or conveyance document in the case of a transfer of property under the authority of section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §§ 9601 - 9675), or the Early Transfer Authority, or a conveyance to a “potentially responsible party”, as defined by CERCLA (see § 102-75.345);
- c. A commitment, on behalf of the United States, to return to correct any hazardous condition discovered after the conveyance that results from hazardous substance activity prior to the date of conveyance; and
- d. A reservation by the United States of a right of access in order to accomplish any further remedial actions required in the future.

OUs that hold properties that may be contaminated by radioactive or hazardous substances shall prepare guidance for a decommissioning process to be implemented as part of disposing of such facilities. The guidance shall conform to relevant laws, such as CERCLA, and identify the extent of the problem and a method for preparing a decommissioning plan to correct the problem.

After GSA determines that the *Report of Excess Real Property* and related documentation have been satisfactorily completed, GSA accepts the property in its disposal process. Then, GSA conducts a screening to determine if any Federal agency, mixed-ownership government corporations, or the municipal government of the District of Columbia wants to acquire the excess property. Prior to a transfer to one of these entities, GSA must make certain determinations in accordance with 41 C.F.R. § 102-75-175, such as that the transfer is in the best interests of the government and that the transfer will maximize the use of the property. GSA works with ORPP and the OU throughout the disposal process.

When real property is transferred from one agency to another, 41 C.F.R. § 102-75.190 provides that the transferee agency must pay fair market value for the property, subject to delineated exceptions, which are addressed in 41 C.F.R. §§ 102.75.205 – 235.

GSA must screen the property for use to benefit the homeless under the McKinney-Vento Homeless Act, and GSA may screen the property for a Public Benefit Conveyance (PBC) to state and local governments and certain non-profit organizations. These types of conveyances are for very specific purposes. As a PBC, the property can be substantially discounted in price (up to 100 percent reduction in fair market value) if it is used for a specific public use that qualifies for a PBC through a partner Federal agency. GSA will also contact the state and local government where the asset is located to determine if they have a need for the asset. If so, the property must be conveyed at fair market value.

If the screening process described above does not result in identification of a new owner, GSA puts the property on the market. In certain instances, GSA may engage in a negotiated conveyance, as outlined in 41 C.F.R. part 102-75. Generally, GSA makes the property available through a public sale, and the award is made to the bidder whose bid will be most advantageous to the government.

Generally, sale proceeds are deposited by the U.S. Treasury Department in the Land and Water Conservation Fund, and DOC and its OUs receive none of the proceeds.

#### **11.4 INTERIM USE OF EXCESS PROPERTY**

41 C.F.R. § 102-75.240 addresses when real property reported as excess may be temporarily assigned or reassigned to another Federal agency. Also, 41 C.F.R. § 102-75.245 addresses when a landholding agency can grant rights for non-Federal interim use of excess property that has been reported to GSA. GSA has general supervision, direction, and approval authority over interim use of such properties pending final transfer or disposal. GSA generally limits interim use to one year with a right to cancel on thirty-day notice from GSA.

The interim use of excess DOC property is coordinated amongst GSA, the ORPP and the OU. In no case will an interim use be allowed that conflicts or interferes with the mission of the OU.

#### **11.5 DEMOLITION**

Demolition usually occurs when a structure is deemed obsolete, beyond its useful life and no longer meets the agency's mission. DOC structures are generally demolished to make way for rebuilding on the same site.

41 C.F.R. part 102-75 allows an agency to demolish a property it controls subject to certain conditions. Pursuant to 41 C.F.R. § 102-75.990, the real property must have no commercial value or the cost to care for the property must exceed the estimated proceeds of a sale.

The first step in the process is identifying an asset for demolition. Identification occurs in an OU's PTYP and BAP, along with justification for the proposed demolition and supporting documentation demonstrating the building's condition. When the overall plan is to replace a demolished structure with a new structure, the proposed action may need to go through the Scalable Acquisition Process.

Pursuant to 41 C.F.R. § 102-75.1005, the decision to demolish must be made by a duly authorized official who is not directly accountable for the property. Pursuant to 41 C.F.R. § 102-75.1000, that official must state in writing that the property either has no commercial value or its care exceeds the commercial value. If the property is valued at more than \$50,000, the Director of OFEQ must approve the determination before the property may be demolished.

## **11.6 EASEMENTS**

41 C.F.R. part 102-75 addresses the disposal of easements. Pursuant to 41 C.F.R. § 102-75.936, an easement may be released to the owner of the land subject to the easement when it is no longer needed by an agency. Pursuant to 41 C.F.R. § 102-75.937, if the easement was acquired at "substantial consideration," the agency must determine the fair market value of the easement and negotiate the highest obtainable price with the owner of the land subject to the easement.

## **11.7 POST-CLOSING ADMINISTRATION**

Once the disposal real property has been completed, the OU is responsible for updating the real property records, including data in the FRPM Building Asset Plan, and such other property files as the OU keeps.<sup>19</sup> OUs shall develop internal processes for updating real property records in a timely way.

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<sup>19</sup> This updating requirement also pertains to real property assets that are directly leased by DOC.

## **CHAPTER 12. USE AGREEMENTS**

### **12.1 OVERVIEW OF USE AGREEMENTS**

A use agreement is a real property instrument that typically allows one entity to occupy and use the space of another entity, and usually takes the form of a permit or license. Generally, permits are used between Federal agencies, and licenses are used between a Federal agency and a non-Federal entity (e.g., state or local government, non-profit institution, university, and business). Use agreements can allow another entity to use DOC's space or DOC to use another entity's space. Before an OU uses another Federal entity's space that has been obtained by GSA or using GSA delegated authority, the OU shall confirm, either with GSA or the other Federal agency that GSA has authorized or is aware of the OUs intended use of the space.

Use agreements should include applicable terms and conditions, as well as define the space. Use agreements should be revocable, meaning that termination is subject to the will of either party. In this regard, unlike other real property instruments (e.g., leases and easements), use agreements are not to be used to convey a property interest.<sup>20</sup> In addition, use agreements need to include a start date and termination date.<sup>21</sup> OUs shall not execute use agreements that allow for another entity to use the OU's space for an indefinite period of time.

The Office of General Counsel's Office of the Assistant General Counsel for Finance and Litigation is available to assist OUs with drafting and reviewing use agreements.

### **12.2 GRANTING OF USE AGREEMENTS**

Before executing a use agreement, OUs shall consider the following issues:

- a. Portfolio management (e.g., whether the asset is underutilized or not utilized and consolidation or disposal is more appropriate);
- b. Public health and safety;

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<sup>20</sup> OUs need to have authority in order to outlease real property under its control. OUs shall work with the Office of General Counsel's Office of the Assistant General Counsel for Finance and Litigation before outleasing real property.

<sup>21</sup> It is acceptable for use agreement to have as the start date "when signed," which is interpreted as meaning the last date of signature of the parties.

- c. Effects on historic districts, sites, buildings, monuments, structures, or other objects;
- d. Protection of natural and cultural resources;
- e. Compliance with environmental laws, such as the National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190 (Jan. 1, 1970) (42 U.S.C. § 4321 et seq.);
- f. If with a private individual, business, or entity, the appearance of favoritism or an endorsement;
- g. Restoration;
- h. Security, access, and technology controls (e.g., compliance with Department Administrative Order (DAO) 207-12, *Foreign National Visitor and Guest Access Program*);
- i. Aesthetics; and
- j. Any additional site specific requirements.

In addition, when determining whether a private individual, business, or entity may use space, the OU shall make decisions on a fair, reasonable, and nondiscriminatory basis. Also, the private use of DOC space shall serve some beneficial or useful purpose to DOC and not injure the space.

OUs are responsible for timely updating applicable real property records, such as the FRPM. Records should be updated after a use agreement is executed, as well as when it expires or terminates.

### **12.3 COSTS AND USER CHARGES**

Generally, use agreements do not involve the payment of typical rent, since no real property interest is being conveyed. However, the use of space may still require payment for costs incident to the use of the space, such as operating, maintaining, and protecting the space. When OUs provide space, they need to charge the user for the OU's actual costs incident to the use of the space, unless otherwise provided by law.

Usually, the real property instrument (e.g., permit or license) should be a separate document from the funds obligating or transfer document.<sup>22</sup>

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<sup>22</sup> If the funds obligating or transfer document is an agreement, OUs need to comply with DOC's *Agreements Handbook*. The *Agreements Handbook* states that OGC/Admin is



When the use agreement (permit) is with another Federal agency, the Economy Act, 31 U.S.C. § 1535, is a common authority used for reimbursement of actual costs incident to the use of the space. However, the Economy Act should only be used when a more specific authority does not exist, such as 16 U.S.C. § 1442(e).

When OUs provide space to a private individual, business, or entity, reimbursement is normally governed by OMB Circular No. A-25, *User Charges*. In this regard, Section 6a of the Circular states, in part, the following:

“When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price).”

Pursuant to 31 U.S.C. § 3302(b), user charges received from a private individual, business, or entity shall be deposited in the general fund of the Treasury as miscellaneous receipts, unless otherwise provided by law.

## **12.4 DEPARTMENT ADMINISTRATIVE ORDERS (DAOs)**

DAO 206-5, *Occasional Use of Public Areas in Public Buildings*, provides guidelines and rules with regard to allowing the occasional use of public areas in DOC-controlled public buildings as meeting places for cultural, educational, and recreational activities, as provided by the Public Buildings Cooperative Use Act of 1976, Pub. L. No. 94-541 (Oct. 18, 1976). In accordance with DAO 206-5, DOC has a template license, Form CD-411A, *Revocable License for Non-Federal Use of Real Property*.

DAO 217-19, *Use of Department of Commerce Facilities for Proprietary or Non-proprietary Research Purposes*, provides policies, procedures, and responsibilities for authorizing and managing the use of DOC facilities by other Federal agencies, state and local governments, educational institutions, and the private sector for proprietary or non-proprietary research. Exhibit 1 of DAO 217-19 provides example terms and conditions for use agreements that involve DOC space being used for proprietary research.

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responsible for providing legal review and clearance of all agreements and amendments, including “no-cost time extensions,” unless otherwise advised by OGC/Admin. In addition, the U.S. Department of the Treasury and OMB has developed a Standard Interagency Agreement (IAA) template to be used between Federal agencies, which consist of two forms. FMS Form 7600A sets forth General Terms and Conditions (GT&C), and FMS Form 7600B sets forth specific Order Requirements and Funding Information (Order).

## E-APPENDIX AND RESOURCES

1. Administrative Contracting Officer (ACO) Delegation  
<http://www.acquisition.gov/gsam/current/html/Part542.html>
2. American Society for Testing and Materials (ASTM) Standard E1527-05 and E1527-13 <http://www.astm.org/Standards/E1527.htm>
3. Department Administrative Order (DAOs) and Department Organization Orders (DOOs) <http://www.osec.doc.gov/opog/dmp/default.htm>
4. DOC Administrative Order 217-21, SPACE Allowance and Management Program  
[http://www.osec.doc.gov/opog/dmp/daos/dao217\\_21.html](http://www.osec.doc.gov/opog/dmp/daos/dao217_21.html)
5. DOC High Performance and Sustainable Buildings Handbook  
[http://www.osec.doc.gov/ofeq/OSEEP/Docs\\_Newsletters.html](http://www.osec.doc.gov/ofeq/OSEEP/Docs_Newsletters.html).
6. DOC Manual of Security Policies and Procedures  
<http://home.commerce.gov/osy/SecurityManual/Security%20Manual%20Chapters/Security%20Manual.pdf>
7. DOC Real Property Warrant Program Handbook  
[http://www.osec.doc.gov/ofeq/ORPP/RPWarrant\\_Handbook.html](http://www.osec.doc.gov/ofeq/ORPP/RPWarrant_Handbook.html)
8. DOC Scalable Acquisition Project Management Guidebook (2 July 2012)  
<https://login.max.gov/cas/login>
9. DOJ Title Standards 2001 <http://www.justice.gov/enrd/2001-title-standards.pdf>
10. Employee Health Services Handbook <http://www.opm.gov/policy-data-oversight/worklife/reference-materials/employee-health-services-handbook/>
11. Energy and Environmental Management Manual  
[http://www.osec.doc.gov/ofeq/OSEEP/Docs\\_Newsletters.html](http://www.osec.doc.gov/ofeq/OSEEP/Docs_Newsletters.html).
12. Executive Order 13327 <http://www.gpo.gov/fdsys/pkg/FR-2004-02-06/pdf/04-2773.pdf>
13. Federal Real Property Council (FRPC)  
<http://www.gsa.gov/portal/category/21274>

14. Federal Real Property Profile (FRPP)  
<http://www.gsa.gov/portal/content/104199#2>
15. OMB Memo 2013-02 Freeze the Foot Print and  
<http://www.whitehouse.gov/sites/default/files/omb/financial/memos/implementation-of-freeze-the-footprint-guidance.pdf>
16. GAO reports underutilized properties <http://www.gao.gov/products/GAO-12-645>
17. General Reference Guide for Real Property Policy  
[http://www.gsa.gov/graphics/ogp/guide to fed regs R2J68S OZ5RDZ-i34K-pR.pdf](http://www.gsa.gov/graphics/ogp/guide%20to%20fed%20regs%20R2J68S%20OZ5RDZ-i34K-pR.pdf)
18. GSA Bulletin C-2  
[http://www.gsa.gov/portal/mediaId/186579/fileName/Delegation\\_Lease\\_Auth\\_Bulletin\\_FMR\\_C-2.action](http://www.gsa.gov/portal/mediaId/186579/fileName/Delegation_Lease_Auth_Bulletin_FMR_C-2.action)
19. GSA Customer Guide to Real Property  
[http://www.gsa.gov/graphics/pbs/Guide to Real Propertybookmarked2002\\_R2E-c-pK OZ5RDZ-i34K-pR.pdf](http://www.gsa.gov/graphics/pbs/Guide_to_Real_Propertybookmarked2002_R2E-c-pK_OZ5RDZ-i34K-pR.pdf)
20. GSA Form 2974 <http://www.gsa.gov/portal/forms/download/116610>
21. GSA Pricing Desk Guide  
[http://www.gsa.gov/graphics/pbs/Pricing Desk Guide 4th Edition.pdf](http://www.gsa.gov/graphics/pbs/Pricing_Desk_Guide_4th_Edition.pdf)
22. GSA prospectus level <http://www.gsa.gov/portal/content/101522>
23. GSA Rent Projections Exhibit 54 <http://www.gsa.gov/portal/content/103753>
24. GSA Site Selection Guide  
[http://www.gsa.gov/graphics/pbs/GSA Site Selection Guide R2-sY2-i OZ5RDZ-i34K-pR.pdf](http://www.gsa.gov/graphics/pbs/GSA_Site_Selection_Guide_R2-sY2-i_OZ5RDZ-i34K-pR.pdf)
25. GSA's Leasing Desk Guide <http://www.gsa.gov/portal/category/105079>
26. DOC Implementation Handbook for the Strategic Sustainability Performance Plan [http://www.osec.doc.gov/ofeq/OSEEP/Docs\\_Newsletters.html](http://www.osec.doc.gov/ofeq/OSEEP/Docs_Newsletters.html).
27. NOAA's Real Property Lease Handbook  
[http://www.ago.noaa.gov/acquisition/docs/personal\\_property\\_lease\\_handbook.pdf](http://www.ago.noaa.gov/acquisition/docs/personal_property_lease_handbook.pdf)
28. OMB Circular A-11 (Appendix B)  
[http://www.whitehouse.gov/sites/default/files/omb/assets/a11\\_current\\_year/app\\_b.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/app_b.pdf)

29. OMB Circular No. A-25 [http://www.whitehouse.gov/omb/circulars\\_a025](http://www.whitehouse.gov/omb/circulars_a025)
30. OMB Circular No. A-94  
<http://www.whitehouse.gov/sites/default/files/omb/assets/a94/a094.pdf>
31. OMB Memorandum M-12-12  
<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-12.pdf>
32. Performance measurement <http://www.performance.gov>
33. *Policy on Commerce Acquisition Project Management*  
[http://www.osec.doc.gov/oam/documents/Interim%20Acquisition%20Policy%20Memo%20\(signed%206%20Nov%202012\).pdf](http://www.osec.doc.gov/oam/documents/Interim%20Acquisition%20Policy%20Memo%20(signed%206%20Nov%202012).pdf)
34. Presidential Memorandum--Disposing of Unneeded Federal Real Estate  
<http://www.whitehouse.gov/the-press-office/presidential-memorandum-disposing-unneeded-federal-real-estate>
35. Prospectus Level Projects <http://www.gsa.gov/portal/content/101522>
36. Report of Excess Real Property SF118  
<http://www.gsa.gov/portal/forms/download/115666>
37. Request for Space, SF 81 <http://www.gsa.gov/portal/forms/download/116366>
38. SFFAS 6 <http://www.fasab.gov/pdffiles/sffas-6.pdf>