



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF ADMINISTRATIVE OFFICER

OCT 24 2005

MEMORANDUM TO: Deputy Assistant Administrators
Corporate Office Directors
Chief Financial Officers

FROM: *William F. Broglie*
William F. Broglie

SUBJECT: Roles and Responsibilities for Real Property Leases

During FY 2005, my Office undertook a 100 percent review of NOAA's real property leases (some 2130 leases) to determine whether we were compliant with applicable laws and regulations, including compliance with the requirements of the Anti-Deficiency Act (ADA). That review identified a number of long-standing technical violations of the ADA that had to be corrected, and reported by the Department of Commerce to Congress.

As we examined the underlying causes for these violations, it was clear there needed to be tighter management controls to ensure compliance with the key roles and responsibilities for real property lease acquisition as identified in the Department of Commerce Real Property Management Manual (RPM) dated July 2003, and to mitigate against a recurrence of the factors leading to many of the technical violations identified in these prior leases.

Real property acquisitions, while subject to a different set of regulatory authorities than contracts subject to Federal Acquisition Regulations, have similar roles and responsibilities that distinguish actions only individuals certified and delegated the authority as contracting officers may perform, from the roles and responsibilities of program officials within the Line and Corporate Offices. Specifically, only warranted Real Property Contracting Officers (RPCOs) are authorized to negotiate and execute contracts—including lease agreements—for the acquisition of land and facilities. The role of the RPCO is to conduct the acquisition and manage the real property lease contract. As part of the acquisition development process, the RPCO works with the Line/Corporate Office to quantify facility requirements and prepare the acquisition plan. The RPCO is obligated by regulation to analyze market costs, solicit offers, negotiate, execute, and manage the performance of the lease contracts under the authority provided them by the DOC's real property warrant program. The RPM specifically directs that

“...to assure compliance with all statutes, regulations, policies and orders pertaining to the acquisition of real property, officials or employees of OUs [Operating Units], including NOAA field components, shall refrain from directly or indirectly making contact with landowners, lessors, offerors, or potential offerors. Non-warranted employees shall refrain from making oral or written representations commitments or agreements with respect to potential



occupancy, price, rent, terms, particular space, tenant improvements, alterations and repairs unless coordinated through the Warranted Real Property Contracting Officer....”

Pre-Acquisition Responsibilities. While there are clear restrictions on the actions that may be taken with respect to real property acquisitions by individuals who are not RPCOs, there are also clear roles and responsibilities for the Line and Corporate Offices in such lease acquisitions. The Line/Corporate Office is responsible for:

1. Submitting to the Real Property Management Division requests for real property services and identifying the basic requirements to be satisfied (location, duration of lease, size, features, desired occupancy date, mission justification, etc.).
2. Developing with the RPCO an acquisition plan and schedule that provides sufficient time for required acquisition steps to be accomplished. These can include a Request for Interest (RFI) or advertisement in a newspaper, a market survey, solicitation for offers (SFO), review of offers, discussion with offerors, final offers, NEPA, pre-award negotiations, and time included for alterations after award. For NOAA to acquire general purpose space (office, storage, and laboratory space), it must present the plan and receive written approval from GSA to use its delegation of authority.
3. Since leases are required by regulation to be acquired competitively, whenever there is a mission reason that would require limiting the area of consideration (to a specific site or set of sites), sufficient information to justify a noncompetitive acquisition must be provided.
4. Certification of available funding for the lease acquisition. To be able to initiate the leasing process, Line and Corporate Offices are expected to have sufficient funds to cover rent and related acquisition expenses, in addition to the costs of operations (utilities, maintenance, janitorial); construction; repairs; restoration of damage, and alterations to the leased property. Some of these costs will not be fully known until negotiations are completed, so ongoing coordination of financial requirements with the RPCO is to be expected throughout the leasing process.

In addition to these requirements, to comply with OMB Circular A-11, NOAA has developed a new lease determination worksheet. This worksheet must be completed for all new leases to determine if the lease is a capital or operating lease. The data from this worksheet will be used by your staffs to determine the costs associated with the acquisition and the required level of budget authority to be committed at lease award.

To better manage the lease acquisition process in the future, we will be implementing an advanced acquisition planning process, similar to that implemented by the Acquisition and Grants Office for acquisitions, for FY 2007. Further details about that process will be forthcoming. In the interim, any new lease acquisitions planned for FY 2006 should be immediately identified, using the attached form and submitted to Andrew Duran, Director, Real Property Management Division in headquarters.

This acquisition planning process does not obviate the need for Line/Corporate Offices and Mission Goals/Programs to identify new facility requirements as part of the PPBES process, and to respond to the annual call letter for such requirements.

Post-Acquisition Responsibilities. After the lease is awarded, the Line/Corporate Offices are responsible for timely reporting lease management issues to a RPCO for action, since RPCOs cannot be present at all lease locations. A representative designated by the Line/Corporate Office needs to participate in the acceptance of facilities, including verification of square footage, and inspection of the premises. About twenty months before the expiration of most leases, your staff will be asked to determine if there is a continuing need for the leased premises. This determination is needed especially for general purpose leases to meet the new GSA requirements for an acquisition plan. And finally, Line Offices are expected to perform their real property responsibilities within the framework of applicable statutes, regulations, orders, and DOC rules, policies and procedures; including completing facility condition assessment requirements under the new integrated facility inspection process implemented in FY 2005.

To ensure compliance with legal and regulatory requirements concerning lease acquisitions, I am requesting that you share this memorandum with your managers and staffs in the field. If your staff has questions concerning the roles and responsibilities outlined above, they should contact Andrew Duran (Director, Real Property Management Division in headquarters).

Attachment

cc: Stella S. Fiotes



REAL PROPERTY SPACE REQUEST
For Lease or Purchase with a Cost of Less than Prospectus (\$2.3M)

1. What type of space is needed?

- Office
- Storage
- Tower/ Roof
- Housing
- Lab
- Warehouse
- Land
- Pier/Dock
- Other: _____

2. What type of action is being requested?

- New Lease (*new or relocation of existing site*)
- Succeeding Lease (*continuing mission need at existing site*)
- License (*only access is needed and no Federal improvements will be made*)
- Acquisition (*purchase*)
- Not sure

3. Can more than one location meet the programmatic need?

- Yes
- No: Then location needs to be based on programmatic requirements, please attach a written explanation to justify restricting competition.

4. What is the delineated area?

Describe the general location capable of meeting your mission-related space requirements, using area streets and/or buildings and landmarks to define the boundaries. If available, please attach a map of the local area. _____

5. How much space and/or parking (*fed and employee*) are needed?

Estimate for minimum square footage required _____ (*for office use 250 gsf per person*).
 Number of parking spots _____. Information on any special purpose needs or space requirements (*conference, files, servers, security*)

6. When do you need the space and for how long?

Space is required by _____. Duration needed is ____Years. (*A long lease term may result in a capital lease.*)

REQUESTOR'S NAME: _____

LINE OFFICE: _____

E-MAIL: _____

PHONE NO: _____

CERTIFICATION OF FUNDS AVAILABLE

I have reviewed the information contained in this request for space in view of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). I certify that I have considered the impact of the Act and that agency funds are available.

Accounting Data: _____

Typed Name of Agency Certifying Official: _____

Signature of Certifying Official

Date

A capital lease (see definition below) is [] is not [] an acceptable outcome of this acquisition. (If not acceptable, the lease term identified earlier may have to be reduced.)

Capital Lease

A Capital lease means any lease other than a lease-purchase that does not meet the six OMB criteria of an operating lease in A-11 Appendix B. Budget authority will be scored in the year in which the authority is first made available in the amount of the net present value of the Government's total estimated legal obligation over the life of the contract. The Budget Outlay is an amount equal to the annual lease interest payments over lease term.

PLEASE SUBMIT YOUR REQUEST TO:

National Capital Region

DOC/NOAA/CAO/REAL PROPERTY MANAGEMENT DIVISION
ATTENTION: INDAR SCHABRA
1305 EAST WEST HIGHWAY, BLDG SSMC4, ROOM 5412
SILVER SPRING, MD 20910-3281

Eastern Region

DOC/NOAA/CAO/REAL PROPERTY MANAGEMENT DIVISION
ATTENTION: NANCY KING
601 EAST 12th ST. ROOM 1749
KANSAS CITY, MO 64106-2817

Western Region

DOC/NOAA/CAO/REAL PROPERTY MANAGEMENT DIVISION
ATTENTION: DAVID GARTON
7600 SANDPOINT WAY, NE
SEATTLE, WA 98115-6349