

**Department of
Veterans Affairs**

Memorandum

Date: December 22, 2017

From: Associate Executive Director, Office of Real Property

Subj: Real Property Policy Memorandum 2018-~~02~~⁰⁶ – Adoption of General Services Administration (GSA) Leasing Desk Guide (LDG)

To: All VA Leasing Officials

1. In my capacity as senior accountable official and Appointing Official for VA's leasing program, I am hereby adopting the GSA LDG for use by VA for all real property lease procurements, subject to the attached VA Supplement to the GSA Leasing Desk Guide. To the extent GSA updates the LDG, those updates should be implemented unless this office issues guidance to the contrary.
2. Adoption of the GSA LDG does not relieve VA leasing officials from their responsibilities to comply with applicable laws and regulations, or policy memoranda issued by VA pertaining to lease procurements.
3. If you have any questions regarding this policy, please contact Caitlin Cunningham, Acting Deputy Director, Office of Real Property, at Caitlin.Cunningham@va.gov or (202) 407-5463.

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**U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)
SUPPLEMENT
TO
GENERAL SERVICES ADMINISTRATION (GSA)
LEASING DESK GUIDE**

I. OVERVIEW

VA's Office of Real Property (ORP), within the Office of Construction & Facilities Management, is the dedicated office within VA that issues policies and procedures for VA's leasing program nationwide. To the extent practicable, VA leasing officials should follow the GSA Leasing Desk Guide (LDG), as supplemented by this document. Occasionally, GSA releases Leasing Circulars or other guidance to clarify aspects of the LDG. VA adopts those documents subject to clarification as to their applicability to VA's own leasing program and the needs of medical facilities. Specific questions regarding leasing policy or procedure should be referred to ORP at [insert email].

This supplement is specific to Veterans Health Administration (VHA) leases. Leases for other administrations or staff offices may be addressed differently than described herein.

II. INTRODUCTION: General Information, Lease Authorities, and Responsibilities

A. It is VA policy that facilities be located in areas that best serve Veteran populations, as supported by patient demographics and projected growth and service needs. While VA strives to locate in urban and rural settings, VA's mission may require it to locate a facility outside of the Central Business Area. VA provides a mission-centric justification to GSA as part of its delegation request. (LDG Introduction, Section 3)

B. Organizational Roles – The responsibility for managing the lease acquisition program is vested in the Office of Real Property, at the Central Office level, and in Network Contracting Offices (NCOs) at the regional level.

1. Responsibilities of the Office of Real Property – In addition to its program policy and management responsibilities, ORP may advise on specific lease transactions when requested by a regional office or as otherwise required. ORP also undertakes lease procurements for all prospectus-level leases.
2. Responsibilities of the Network Contracting Offices – NCOs undertake below-prospectus lease procurements and administration and management of all lease contracts. (LDG Introduction, Section 6.a.)

For more detailed information, please see Appendix 1 attached to this supplement.

C. Laws, Statutes, Executive Orders, and Regulations Governing VA Lease Acquisitions – Please see Appendix 2 attached to this supplement for clarification and guidance on this topic.

III. LDG CHAPTER 1 – REQUIREMENTS DEVELOPMENT

A. Pricing – VA does not follow the GSA Pricing Desk Guide for leases procured by VA under delegation of authority from GSA. (Section 2.b.)

B. Location Factors – While the location factors described by GSA are also important for VA to consider, VA's policy is that facility location should primarily serve VA's mission of providing services to Veterans. (Section 2.e.)

C. Developing Strategic Requirements – The subsections entitled Strategic Requirements Tools and Workplace PMO Workplace Needs Assessment Interview Tool are not applicable to leases procured by VA under delegation of authority from GSA. (Section 2.f.)

D. Team Resources – This section is not applicable to leases procured by VA under delegation of authority from GSA. (Section 2.g.)

E. Operational Requirements Development – The PBS National Intake Program Guide is not applicable to leases procured by VA under delegation of authority from GSA. (Section 3.a.) However, leasing officials must have sufficient training and experience to effectively manage the size and scope of leasing projects they are executing. These requirements are further defined in VA's guidance related to the VALCP.

F. Request for Space – Note that VA has adopted ANSI/BOMA Office Area square feet as the standard method of space measurement for its leased medical facilities. This change was effectuated Office of Real Property Policy Memorandum 2018-5, Quantification of Space & Form of Advertisement, dated December 21, 2018. The GSA National Business Space Assignment Policy does not apply to leases procured by VA under delegation of authority from GSA. (Section 3.f.)

G. Consultation with FPS – ORP will be issuing specific guidance on physical security requirements for leased facilities in the near future. VA's guidance supplants GSA protective services guidance. (Section 3.g.)

H. Delineated Area – While the delineated area guidelines described by GSA are also important for VA to consider, VA's policy is that facility location should primarily serve VA's mission of providing services to Veterans. The delineated area for a facility that serves Veterans must be supported by patient demographic data. (Section 4)

I. Funding – The user group must confirm that funds will be available for obligation of any lump sum payment in the fiscal year of lease award and for rent in the fiscal year of acceptance. For succeeding leases, the first year of rent must be confirmed as available. (Section 6.b.)

IV.LDG CHAPTER 2 – NEW OR REPLACING LEASE Part 1:

Acquisition Planning/Pre-Solicitation Requirements

A. Lease Acquisition Models and Templates – VA leasing officials are to utilize GSA’s models and templates for leases of existing space. For leases where lease construction is probable, the VA Request for Lease Proposals (RLP) shall be utilized. (Section 2)

B. System Requirements – VA’s utilization of GREX is limited to the delegation request submission and the post-award lease contract submission. VA is not required to manage the lease procurement, or contract administration, within GREX. (Section 3)

C. Electronic Files – Note that VA’s official system of record for lease contract files is the Electronic Contract Management System (eCMS). (Section 4)

D. Acquisition Planning – Leveraging Resources – The Automated Advanced Acquisition Program is not applicable to leases procured by VA under delegated authority from GSA. (Section 5.a.)

E. Acquisition Plan Development – The following thresholds and approving officials are applicable to Acquisition Plans for VA leases procured through delegation from GSA:

Threshold (including all options)	Approving Official
Below the SLAT defined in GSA Part 570.102	Lease Contracting Officer and Project Manager/Realty Specialist (if applicable)
From the SLAT up to and including \$5.5 Million in total contract value	One level above Lease Contracting Officer
Over \$5.5 Million up to and including \$20 Million in total contract value	Network Contracting Office Director (VHA) or Director of Lease Execution (ORP)
Over \$20 Million up to and including \$50 Million in total contract value	Director of Lease Execution
Over \$50 Million in total contract value	Associate Executive Director, Office of Real Property

Legal review of Acquisition Plans is not required for leases procured by VA under delegation of authority by GSA.

At this time, VA leasing officials are not required to implement a Project Management Plan, though doing so represents best practices for project management. In the future, ORP is likely to issue guidance on Project Management Plans specific to leasing. (Section 5.b.)

F. Full and Open Competition – In addition to the full and open competition requirements enumerated in the LDG, VA leasing officials are required to comply with the U.S. Supreme Court decision in *Kingdomware*, which clarified that the “Vets First” statute is applicable to all VA contracts. VA currently interprets this decision to apply to facility leases. Therefore, leasing officials must satisfy the “Rule of Two” and obtain Office of Small and Disadvantaged Business Utilization clearance of leases where there are not two capable Veteran-owned Small Businesses or Service Disabled Veteran-owned Small Businesses who can develop the facility at a reasonable price. (Section 5.b.)

G. Funding Considerations – VHA leases are typically funded from operations dollars administered at the VISN or Medical Center level. Prior to beginning a lease procurement, the leasing official must ensure that the requesting service is aware of the estimated amount that will need to be obligated and the fiscal year in which obligation is likely to be needed. The leasing official should request a confirmation that the requesting service will make funds available in an estimated amount as a prerequisite to beginning the lease procurement process. Similarly, prior to award, the leasing official must ensure that funds have been obligated for any items to be paid in lump sum. Prior to lease acceptance, funds must have been obligated for annual rent from the date of acceptance through September 30 of that fiscal year.

For additional information on funding, please refer to the Memorandum entitled *Guidance on Obligating New Leases and Correcting Existing Leases for Fiscal Year (FY) 2015 and FY 2016 (VAIQ 7698818)*, issued by the Interim Assistant Secretary for Management and Interim Chief Financial Officer on May 19, 2016. (Section 5.d.)

H. Prospectus Requirement – As described in more detail in Appendix 1 to this Supplement, VA’s prospectus submission goes to Congress as part of VA’s annual budget request. Pursuant to 38 U.S.C. Sec. 8104, Congressional authorization is required for all leases whose average annual unserviced rent is over \$1 Million. A requesting office should not submit a requirements package to the VA leasing official or request lease procurement until after VHA has obtained any required approvals, including Strategic Capital Investment Planning (SCIP) approval, and, for prospectus-level projects, a prospectus is finalized and made part of VA’s budget request. Leasing officials may advertise for a prospectus-level requirement only after the prospectus has been cleared by the Office of Management and Budget (OMB) and included in VA’s annual budget request

ORP is the office responsible for all prospectus-level lease procurements. (Section 5.e.)

I. Schedules – It is a best practice for lease procurements that VA leasing officials prepare a project schedule that includes a baseline, estimated dates, and actual dates. This schedule should be revisited and updated as necessary throughout the lease procurement so that stakeholders and the requesting service can be proactively notified

if the project is running ahead of or behind schedule. This data must be updated routinely in the Office of Management's Enterprise Lease Management Tool (known as ELMT) so that future years' budgets can be accurately forecast. (Section 5.g.)

Part 2: Market Survey Process

A. Importance of a Market Survey – VA leasing officials are required to undertake market research in addition to the market survey. Market research is required as part of the “Rule of Two” process to determine whether there are two capable VOSBs or SDVOSBs who can perform the project at a reasonable price. Leasing officials are recommended to undertake this market research step in tandem with the advertisement for expressions of interest by requesting capabilities statements along with potential existing buildings or sites. (Section 2)

B. Reviewing and Confirming the Delineated Area – Please refer to Appendix 1 for descriptions of how VA applies the requirements for location in CBAs and rural areas. (Section 3.b.)

C. Advertising and Identification of Potential Competition Sources – VA Leasing officials should contact ORP to obtain a template advertisement for use in Fedbizopps.gov or utilize the template located in eCMS, edited as necessary. (Section 4)

D. Market Survey Report Requirements – VA leasing officials may utilize the GSA market survey report forms or contact ORP to obtain that office's template market survey report. (Section 5)

E. Central Office Review for Lease Construction Below Prospectus – ORP does not require any additional approvals for VHA officials to undertake below- prospectus build-to-suit leases, but VHA may implement its own requirements in this regard. At minimum, VHA leasing officials should ensure that their supervisors are aware that a build-to-suit lease is possible or likely and aware of the implications for cost, construction schedule, and budgetary treatment as an operating lease under OMB Circular A-11. (Section 6.b.)

F. Floodplain Check – Because of VA's mission to provide medical facilities in proximity to Veteran populations, the floodplain requirements described in the LDG are not applicable. VA leases shall not be located in the 100-year floodplain unless there is no practicable alternative (for instance, where the delineated area primarily lies within the 100-year floodplain). This determination can be made by the Contracting Officer with the memorandum to the file. Leased facilities within the 500-year floodplain are allowable and are not subject to the additional analysis described in the LDG. (Section 7)

Part 3: Solicitation Process

A. Overview – VA leasing officials should use the GSA RLP for existing space leases. If a build-to-suit lease is likely, then VA leasing officials should utilize the VARLP. (Section 1)

B. Compiling the RLP and Lease Boilerplate – Significant deviations from the template language should be reviewed by the appropriate leasing policy office. (Section 2.b.)

C. RLP Review and Approval by Legal Counsel – Leases procured by ORP are not subject to legal review prior to solicitation publication. VHA may implement its own legal review requirements for leases procured by VHA leasing officials. (Section 2.f.)

D. RLP Distribution – While individual letters to all interested parties is good business practice, in the interest of time publication of the solicitation package on FedBizOpps.gov together with email notification of interested parties is sufficient for distribution of the RLP.

Part 4: Pre-Negotiation/Negotiations Process

Reserved.

Part 5: Award Determination

A. Price Negotiation Memorandum – In lieu of a Price Negotiation Memorandum, the leasing official may draft an Award Decision Memorandum. (Section 3.c.)

B. Successful Offer – The fully executed lease contract and all other required award documentation must be uploaded to GREX in compliance with the GSA delegation of authority as well as to eCMS. (Section 5.a.)

Part 6: Design, TI and BSAC Negotiations, and Notice to Proceed

Note that this Part primarily is applicable to existing space leases and below-prospectus build-to-suit leases. For prospectus leases, ORP utilizes its own post-award design and construction process, which will be detailed in future written guidance.

VA leasing officials should interpret this Part in the context of VA funding procedures and modify as necessary to account for the fact that there is no “tenant agency” or occupancy agreement.

Part 7: Construction Phase

For leases procured by ORP, upon acceptance of the facility, the NCO will designate an Administrative Contracting Officer (ACO) at the NCO, and ORP will delegate limited authority to the ACO to administer the lease contract. ORP will also submit a transfer and acceptance document to local leadership to signify the turnover of the facility to the local user group. As part of this turnover and ACO designation process, ORP will also transfer the eCMS lease file to the ACO.

Part 8: Lease Commencement and Closeout

A. Processing Lease Payment and Client Billing – Lease payments are obligated and paid in arrears by a Contracting Officer at the NCO. VA payment obligation and expenditure procedures must be followed.

B. Close-out of Existing Lease – The VA Capital Asset Inventory and ELMT must be updated to reflect the closeout of any existing lease(s) and the acceptance of the new lease. This is the responsibility of the VHA ACO or leasing official to complete.

V. LDG CHAPTER 3 – SIMPLIFIED LEASE ACQUISITION

Part 1: Overview

Reserved.

Part 2: Definitions

Reserved.

Part 3: Purpose

Reserved.

Part 4: Policy

Reserved.

Part 5: Procedures

Acquisition Planning for Leases – Please refer to the Acquisition Plan Development section in the New and Replacing Leases chapter above.

Part 6: Market Survey

Reserved.

Part 7: Competition

Reserved.

Part 8: Other than Full and Open Competition

Reserved.

Part 9: Soliciting Offers

Reserved.

Part 10: Negotiation, Evaluation, and Award

Reserved.

Part 11: Provisions and Clauses

Reserved.

VI. LDG CHAPTER 4 – SIMPLIFIED LEASE ACQUISITION

Part 1: Overview

Reserved.

Part 2: Client Engagement

Reserved.

Part 3: Advertising

Reserved.

Part 4: Solicitation Phase

Reserved.

Part 5: Security Requirements and Security Unit Price List

Reserved.

Part 6: Alternative Approaches to Tenant Improvement Pricing

Reserved.

Part 7: Fire Protection and Life Safety Requirements

Reserved.

Part 8: Successful Offer and Award Determination

Reserved.

Part 9: Other Post-Award Steps

Reserved.

VII. LDG CHAPTER 5 – SUCCEEDING LEASE, SUPERSEDING LEASE

Part 1: Overview

Reserved.

Part 2: Definitions and Applicability

Reserved.

Part 3: Succeeding/Superseding Lease and the Global Templates

Reserved.

Part 4: Statutory Authority

Reserved.

Part 5: Timing and Leverage

Reserved.

Part 6: Acquisition Planning Analysis

Acquisition Planning for Leases – Please refer to the Acquisition Plan Development section in the New and Replacing Leases chapter above.

Part 7: Occupancy Agreement

This Part is not applicable to VA leases.

Part 8: FedBizOpps Posting and Newspaper Advertisement

Reserved.

Part 9: Market Survey

Reserved.

Part 10: Additional Procurement Resources

This Part is not applicable to VA leases. Should real estate broker services be needed, leasing officials should contact ORP.

Part 11: Cost-Benefit Analysis

Reserved.

Part 12: Justification for Other Than Full and Open Competition (Justification)

Legal counsel concurrence is required on all Justifications.

Part 13: Request for Lease Proposals Package and Offer Forms

Reserved.

Part 14: Negotiations and Fair and Reasonable Determination

Reserved.

Part 15: Final Certification of Funds

The leasing official must receive a certification that funds are available prior to award of the lease. There is no particular form required as long as the information described in this Part of the LDG is included.

Part 16: Space Acceptance and Rent Commencement

Lease payments are obligated and paid in arrears by a Contracting Officer at the NCO. VA payment obligation and expenditure procedures must be followed.

Part 17: Final Tips

Reserved.

VIII. LDG CHAPTER 6 – CHANGE IN SQUARE FOOTAGE – EXPANSION AND REDUCTION

Part 1: Expansions

When is an Expansion Considered? – The leasing official may undertake a space expansion once all necessary approvals have been obtained, including SCIP approval, if applicable. The leasing official should counsel the user group as to the remaining lease term, costs, and other considerations to ensure that an expansion is in the best interest of the Government, the taxpayer, and Veterans, and that a succeeding or superseding lease is not a better option to pursue. (Section 1)

Part 2: Reductions

A. Reduce the Footprint - Note that warehouse and office space leases must comply with this policy, and leasing officials should only procure as much space as is actually needed, as evidenced through internal approvals and SCIP approval. (Section 1)

B. The Space Relinquishment Process – This Section is not applicable to VA direct leases. However, should a space reduction occur, leasing officials should communicate with other local VA offices and Federal agencies for potential space sharing and backfilling opportunities. (Section 2)

C. Vacant Space Mitigation – Backfilling, partial or total termination of the lease, and holding the vacant space are the only options available to VA. VA may not sublet or assign space to the private sector. No formal mitigation plan or process is required, though undertaking these steps is a good business practice. (Section 4)

D. Space Relinquishment Decision Tool – Leasing officials should request a copy of the Space Relinquishment Decision Tool from GSA. Subleasing and assignment are not options for VA to pursue in direct leases. (Section 5)

E. Reporting the Outcome and Results – Upon completion of the reduction action, the leasing official is responsible for updating the VA Capital Asset Inventory and ELMT, as well as uploading all necessary documents to eCMS.

IX. LDG CHAPTER 7 – LEASE EXTENSIONS

Part 1: Policy

Reserved.

Part 2: Requirements Development

Administrative Requirements – The leasing official must obtain a copy of any required internal approvals or SCIP approval prior to commencing the extension action. (Section b.)

Part 3: Acquisition Planning

Reserved.

Part 4: Market Analysis

Reserved.

Part 5: Justification

Reserved.

Part 6: Negotiation and Award

Certification of Funds - The leasing official must receive a certification that funds are available prior to award of the lease. There is no particular form required as long as the information described in this Part of the LDG is included. (Section d.)

X. LDG CHAPTER 8 – ALTERATIONS IN LEASED SPACE

Part 1: Overview

Method of Funding Alterations – Alterations in VA leases are funded by means of a lump sum payment for the work. Amortization of alteration costs should be avoided unless the LCO can save documentation to the contract file to prove that the increase in rental rate would not yield a capital lease or cause the lease to exceed the prospectus threshold. (Section d.)

Part 2: The Standard Alterations Process

Pre-proposal and Proposal Phase – If at any time a proposal is submitted that would cause the unserviced rent to exceed the prospectus threshold, the leasing official should contact the VHA Office of Capital Asset Management and Engineering Service (OCAMES). (Section b.)

Part 3: Administrative Best Practices

Reserved.

XI. LDG CHAPTER 9 – RENEWAL OPTIONS

Part 1: Overview

Reserved.

Part 2: Renewal Option Definition

Caution: Prospectus-level Options – If the net annual rent for any option exceeds the prospectus threshold, the leasing officials should contact OCAMES. (Section a.)

Part 3: Steps for Exercising an Evaluated Option

Reserved.

Part 4: Steps for Exercising an Unevaluated Option

Reserved.

**XII. LDG CHAPTER 10 – LEASE HOLDOVERS, STANDSTILL AGREEMENTS,
AND CONDEMNATIONS**

Part 1: Understanding Holdovers, Standstill Agreements, and Condemnation

Reserved.

Part 2: Rental Payments During Holdovers

Reserved.

XIII.LDG CHAPTER 11 – PROSPECTUS-LEVEL LEASES

Part 1: Introduction

The Office of Real Property, part of Office of Construction & Facilities Management, is the office within VA that conducts prospectus-level lease procurements. Please see Appendix 1 and Appendix 2 to this Supplement to review roles and responsibilities and authorities related to prospectus-level leasing by VA.

Part 2: Statutory Authority

Please see Appendix 1 and Appendix 2 to this Supplement to review roles and responsibilities and authorities related to prospectus-level leasing by VA.

Part 3: Prospectus-Level Lease Types

Reserved.

Part 4: Prospectus Requirement

A. VA's current prospectus threshold is \$1 Million in average annual unserviced rent. VA leases that exceed GSA's threshold are subject to receipt of resolutions from GSA's committees as a prerequisite for delegation from GSA.

B. Facilities that anticipate needing a prospectus-level lease should contact OCAMES as soon as possible to begin the required approval and planning process.

Part 5: Prospectus-Level Lease Construction

Reserved.

Part 6: Advertising

Leasing officials may advertise for a prospectus-level requirement only after the prospectus has been submitted to Congress.

Part 7: Adopted Resolutions

VA prospectus-level leases must receive Congressional authorization. Once authorization has been granted, VA may enter into the lease agreement, subject to availability of funds.

Part 8: Conformity With the Committees' Resolutions

Reserved.

Part 9: Postaward Monitoring

Any of the listed changes require consultation with the Director of Lease Execution before any action may be taken.

Part 10: Interim Leasing

Reserved.

Part 11: Scoring Risks

Reserved.

Part 12: Prospectuses for Alterations in Leased Space

This Part is not applicable to VA leases.

XIV. LDG CHAPTER 12 – DISASTER LEASING

Part 1: Overview

VA does not undertake leasing activities for other agencies, but the guidelines in this chapter should be followed generally as to process for leases procured in response to a disaster declaration, particularly related to a justification for other than full and open competition.

Part 2: Basis for Disaster Leasing

Reserved.

Part 3: Acquisition Planning/Pre-solicitation Requirements

Reserved.

Part 4: Market Survey Process

Reserved.

Part 5: Solicitation and Negotiations

Reserved.

Part 6: Award

Reserved.

Part 7: Lease Administration and Management

Reserved.

XV. LDG CHAPTER 13 – SOURCE SELECTION

Overview

Because VA medical and specialty care facilities are mission-driven in location and requirements, the Lowest-Price Technically Acceptable (LPTA) procurement methodology is not ideal for use in those projects. LPTA is best used for non-medical office space, warehouse space, and other space types that do not directly provide services to Veterans. Best value source selection procedures (tradeoff process), with technical merit approximately equal to price, is the preferred procurement method for leases with mission-related requirements, though LPTA may be used if in the best interest of the Government and Veteran patients.

When evaluating proposals, leasing officials should note VA's responsibility to adhere to the "Vets First" statute in giving consideration to Veteran-owned businesses as set forth in Procurement Policy Memorandum 2016-5.

Part 1: Lease Acquisition with the Tradeoff Process

Reserved.

Part 2: Using Award Factors Other Than Price

Reserved.

Part 3: Source Selection Organization in Best Value Tradeoff Procurements

Reserved.

Part 6: Source Selection Plan

Reserved.

Part 7: Developing Evaluation Criteria

Reserved.

Part 8: Communicating the Requirement

Reserved.

Part 9: Evaluating Proposals

Reserved.

Part 10: Negotiations

Reserved.

Part 11: Final Proposal Revisions

Reserved.

Part 12: Final Evaluation

Reserved.

Part 13: Notification and Debriefing of Unsuccessful Offerors

Reserved.

XVI. LDG CHAPTER 14 – LEASE CONSTRUCTION

Part 1: Overview

A. Request for Lease Proposals – VA utilizes the VA Request for Lease Proposals (VARLP) as the solicitation document for lease construction (also called “build-to-suit” or BTS leases). Leasing officials should contact the Office of Real Property to ensure they are using the most up-to-date version of the VARLP. Because updates and corrections are periodically made to the VARLP template, leasing officials should always start with a “fresh” document and not re-use a VARLP used in a prior procurement. (Section 1.b.)

B. Turnkey Projects – For leases procured by ORP, the user group must submit a request memorandum with a checklist of items attached in order for ORP to begin the procurement process. The current template for this request can be found on ORP’s Sharepoint portal at <https://vaww.vaco.portal.va.gov/sites/CFM/RealProperty/Portal/SitePages/Home.aspx>. For BTS leases procured by VHA leasing officials, the NCO may establish user group request requirements as necessary. (Section 1.b.)

C. Assignable Purchase Option – At this time, VA does not pursue assignable purchase options for its BTS lease projects. Rather, VA engages in a “one-step” procurement process where offerors bring their own site to the procurement instead of VA prescribing that a particular site be used. (Section 1.b.)

D. Other Standards and Requirements – Note that the Green Leasing requirements set forth in the LDG have been updated by GSA since the issuance of this chapter of the LDG. Leasing officials should ensure they are referring to the most recent set of Green Leasing requirements, as standards change over time. See Leasing Alert LA- FY17-03 Green Building Rating Certification for New Construction and Tenant Interiors: LEED and Green Globes, issued in December 2016. (Section 1.e.)

Part 2: Lease Construction Process

See the process set forth in Appendix 3 to this Supplement.

Part 3: Requirements Development

A. Delivery Options Development – By the time lease construction is selected as the procurement method, the leasing official should have already checked for available space in other Federal facilities. The options for Federal delivery or lease delivery are therefore not applicable in this chapter. (Section 3.c.)

B. Solicitation Options for Lease Construction – Leasing officials should disregard the section on Two-Phase Design-Build Selection and instead utilize the single-phase methodology described in the VARLP. (Section 1.e.)

C. Lease Construction RLP Paragraphs – Leasing officials should disregard this section and instead follow the instructions for use of the VARLP included with that document. (Section 1.e.)

D. Prospectus Development – VA prospectus descriptions are included in VA's annual budget submission to Congress and are authorized with VA's budget. Leasing officials cannot publish an advertisement until after a request for delegation has been submitted to GSA. This typically occurs after VA's annual budget request has been submitted to Congress and Congress has authorized the project. (Section 1.f.)

E. Design Excellence in Lease Construction – This section does not apply to VA lease construction. (Section 1.g.)

F. Best Value, Low Price/Technically Acceptable – Please see Section XV of this Supplement, above.

Part 4: Approval of Lease Construction Review Package

A. Review for Lease Construction Below Prospectus Level – For BTS leases procured by ORP, no additional approvals are needed prior to solicitation publication beyond the required Quality Assurance reviews. For BTS leases procured by VHA leasing officials, NCOs may implement their own required approvals. (Section 4.a.)

B. Approval Process – Subject to Part 4.A. above, this section is not applicable to VA leasing. (Section 4.b.)

Part 5: Select Option Site

Language in this Part related to an assignable option is not applicable to VA leasing.

Part 6: Procurement

A. General Pre-Award Survey of Prospective Contractor – This subsection is not applicable to VA leasing. (Section 6.d.)

B. Exercising Assignable Option – This section is not applicable to VA leasing. (Section 6.e.)

Part 7: Construction Management

A. Projects managed by ORP shall follow the guidance to be issued in the forthcoming manual for leasing Resident Engineers and the process set forth in the VARLP. For projects managed by VHA leasing officials, the guidelines in the VARLP should be followed, with the GSA LDG as a secondary source of guidance, since Resident Engineers are generally not involved in projects procured by VHA.

B. Advance Payments – VA does not make any advance payments to the lessor. The first payment made to the lessor is the lump sum payment made upon lease acceptance, or if there is no lump sum payment, the rent payable in arrears. (Section 7.k.)

C. Final Contract Documents – Acceptance of the facility is documented in a Lease Amendment signed by VA and the lessor. OPR or the NCO, as applicable, should also have executed a custody transfer and receipt form as administration and/or occupancy of the facility is turned over to the local users. (Section 7.n.)

D. Cost Management – This section is not applicable to VA leasing. (Section 7.o.)

Part 8: Occupancy

Note that the contract file must be uploaded to eCMS after acceptance. Additionally, VHA officials are responsible for inputting or updating the project in ELMT and the CAI. Language regarding Occupancy Agreements and client agencies in this Part are not applicable to VA leasing.

XVII. LDG CHAPTER 15 – HOTELLING

Part 1: Policy

Reserved.

Part 2: Forms

Reserved.

XVIII. LDG CHAPTER 16 – NATIONAL BROKER CONTRACT LEASES

ORP has a National Broker Service Contract (NBSC) in place and has allowed NCOs to procure their own broker services contracts pursuant to Policy Memorandum 2017-03. ORP routinely uses contract brokers to assist in leases procured by ORP. Should broker assistance be needed by NCOs, leasing officials should contact ORP for guidance on implementing their own broker services contracts.

XIX. LDG CHAPTER 17 – LEASE ADMINISTRATION

Part 1: Overview

Note that VA leasing does not involve Lease Administration Managers (LAM), a Realty Transaction Survey, or an International Facility Management Association survey. However, the Contracting Officer's Representative or Administrative Contracting Officer undertakes the duties described for a LAM.

Additionally, there is currently no Procurement Management Review function in VA, though ORP and/or NCOs may implement similar reviews in the future. The Management Analysis Review System is not applicable to VA leases.

Part 2: Definitions

Reserved.

Part 3: Contracting Officer's Representative Coordination

Reserved.

Part 4: Lease Administration Manager Responsibilities

Reserved.

Part 5: Contract Reviews

Reserved.

Part 6: Services and Maintenance Schedules

Reserved.

Part 7: Enforcement Management and Failure in Performance

Reserved.

Part 8: Operating Cost Escalation

Reserved.

Part 9: Tax Escalation

Reserved.

Part 10: Central Contractor Registration Management

The Central Contractor Registration has been replaced by the System for Award Management, SAM.gov.

Part 11: Legal Instruments

Reserved.

Part 12: Minor Alterations

Reserved.

Part 13: Reimbursable Work Authorizations

This Part is not applicable to VA leasing.

Part 14: Postaward Security Requirements

Reserved.

Part 15: Parking

Reserved.

Part 16: Designation of Authority for Alterations by Client Agency

This Part is not applicable to VA leasing.

Part 17: Customer Service – Occupancy Management

This Part is not applicable to VA leasing.

Part 18: Adjustment for Vacant Premises

Reserved.

Part 19: Lease Expiration

Reserved.

XX. LDG CHAPTER 18 – SUSTAINABILITY AND ENVIRONMENTAL CONSIDERATIONS

Part 1: Overview

Note that VA will be issuing its own guidance on application of the GSA Public Buildings Service's NEPA Desk Guide (<http://www.gsa.gov/portal/content/101194>) to VA's leasing program in the future. At this point, VA has not adopted GSA's NEPA Desk Guide.

Part 2: Energy and Sustainable Business Practice Requirements

Reserved.

Part 3: Use of Green Building Certification Systems to Meet Sustainability Requirements in Lease Procurements

Reserved.

Part 4: Energy Star for Lease Acquisition

Reserved.

Part 5: Executive order 13514

Reserved.

Part 6: National Environmental Policy Act Compliance

Reserved.

Part 7: Sustainable Location Policy for Leases

Reserved.

Part 8: Asbestos

Reserved.

Part 9: Radon in Air

Reserved.

Part 10: Radon in Water

Reserved.

Part 11: Indoor Air Quality

Reserved.

Part 12: Mold

Reserved.

Part 13: Recycling and Reuse

Reserved.

Part 14: Other Environmental Considerations

Reserved.

Part 15: Green Purchasing Plan

Reserved.

XXI. LDG CHAPTER 19 – SECURITY

Overview

This chapter outlines lease security standards for new and replacement space.

Succeeding and superseding lease actions must also follow the requirements of this chapter. For renewal and extension actions, the leasing official must work with the VA Office of Operations, Security and Preparedness (VAOSP) to determine if any changes to the security requirements are needed.

Part 1: Definitions

Security organization: This refers to the Government agency or internal agency component identified by statute, interagency agreement, or policy responsible for physical security for the specific facility. VAOSP is the designated security organization for all VA lease projects.

Part 2: General Security Framework

Project teams must follow the procedures set forth in the “Real Property Policy Memorandum 2018-02 Physical Security Standards for Leased Facilities (Existing Space and Lease Construction Projects)” (hereinafter referred to as the Security Memo).

This supplements Part 2 in its entirety. Project teams can reference this part of the LDG for a general understanding of the ISC process.

Part 3: The Lease Process

a. Interagency Security Committee Standards and Lease Reform

VA has adopted Facility Security Level (FSL) II for all leases in accordance with the Security Memo. The Security Memo also highlights the process for identifying additional threats that could require higher levels of protection.

b. Security-Related Steps for Facility Security Levels I and II

The VA has adopted FSL II for all leases in accordance with the Security Memo. Real Property Specialist must follow the process in the LDG while incorporating any process modifications adopted through the Security Memo.

c. Security-Related Steps for Facility Security Levels III and IV

Not applicable to VA leases.

Part 4: Federal Protective Service Participation

Not applicable to VA leases.

Part 5: Costs

a. Pricing Components

Any reference to FPS is replaced with VAOSP.

b. Application During the Lease Process

Only FSL I and II apply to VA leases.

Part 6: Request for Lease Proposals, Lease Security Paragraphs, and Security Unit Price List

No changes.

Part 7: Background Investigations in Leased Space

Follow the procedures described in the VA Lease template.

Part 8: Guard Services

Not applicable to VA leases unless recommended by an ISC risk and threat assessment and approved by VAOSP.

XXII. LDG CHAPTER 20 – ON-AIRPORT LEASING FOR TSA AND OTHER AGENCIES

This Chapter does not apply to VA leasing.

XXIII. LDG CHAPTER 21 – WAREHOUSE LEASES

Part 1: Introduction

Reserved.

Part 2: When to Use the Warehouse Lease Model

Reserved.

Part 3: Component Documents

Reserved.

Part 4: Warehouse versus Standard Lease

Reserved.

Part 5: Establishing Requirements

Reserved.

Part 6: Tenant Improvement Pricing

Reserved.

Part 7: Operating Costs

Reserved.

Part 8: Non-Fully Serviced Leases: Service Contracts

Reserved.

Part 9: Other Considerations

Reserved.

**XXIV. LDG CHAPTER 22 – AUTOMATED ADVANCED ACQUISITION PROGRAM
(AAP)**

This Chapter does not apply to VA leasing.

APPENDIX 1

VA ROLES AND RESPONSIBILITIES, AUTHORITY

I. VA Leasing Policy and Programs.

The Office of Construction & Facilities Management (CFM) has the overall responsibility for issuing policies and procedures for VA's nationwide leasing program, and for managing VA's Lease Credentialing Program, which includes leasing certifications and warrants. CFM formulates and implements policy in compliance with Federal regulations for the acquisition and management of VA leasehold interests in real property. ORP is the major operational point of contact pertaining to leasing of real property, and the Real Property Policy and Programs Service (RPPPS) within ORP is the primary office who issues policies and procedures for VA's leasing program. VA's Office of Management has responsibility for budgetary treatment of leases under OMB Circular A-11 and policy related thereto.

II. GSA Authority and Delegation.

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. §§ 101 et seq.), as amended, authorizes the Administrator of GSA to acquire leasehold interests in real property for use by Federal agencies. The authority is limited to leases for buildings and improvements that bind the Government for periods not exceeding 20 years. (48 CFR § 570.103(a)).

Under 41 CFR § 102-72.10, the Administrator of GSA may delegate leasing authority to heads of Federal agencies.

The authority to lease granted by the delegations may only be exercised by a warranted LCO who has met the experience and training requirements as specified in section 501.603 of the GSAM (as may be further revised by GSA Acquisition Letter).

Agencies using GSA leasing delegations are responsible for compliance with all laws, executive orders, regulations, and OMB Circulars governing Federal space acquisition activities and warranted LCOs, as well as any specific conditions or requirements set forth in individual delegation letters. VA's Office of Management has responsibility for managing the GSA delegation process for VA.

III. VA Leasing Authority.

The 2014 interpretations of VA's leasing authority have left the Department with a conundrum – while VA has authority to undertake leasing, VA does not have the authority to obligate money on an annual basis (which would allow for multi-year lease contracts), and it does not have a fund to cover potential termination costs. Both of these aspects are necessary in order for VA to undertake an effective leasing program.

For this reason, VA must seek project-specific delegations of authority from GSA, which allows VA to enter into multi-year lease contracts and have the protection of GSA's Public Buildings Fund. This is discussed in more detail below.

Title 38 U.S.C. § 8101. This section provides the definitions for "Construct" and "Alter", as well as "Medical Facility" as they apply to VA's authority to procure and dispose of medical space, for which VA has the authority to conduct its own lease actions.

The terms "Construct" and "Alter", with respect to a medical facility, include such engineering, architectural, legal, fiscal, and economic investigations and studies and such surveys, designs, plans, construction documents, specifications, procedures, and other similar actions as are necessary for the construction or alteration, as the case may be, of such medical facility and as are carried out after the completion of the advanced planning (including the development of project requirements and design development) for such facility.

"Medical Facility" means any facility or part thereof which is, or will be, under the jurisdiction of the Secretary for the provision of health-care services (including hospital, nursing home, domiciliary care, or medical services), including any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, abutting sidewalks, accommodations for attending personnel, and recreation facilities associated therewith.

Title 38 U.S.C. § 8103 grants the Secretary of VA the authority to lease as necessary for use as a medical facility.

38 U.S.C. § 8104, as amended. This section requires the Secretary of VA (00) to submit to Congress a prospectus for any "new major medical facility lease" having an average annual unserviced (minus the cost of services and utilities) rent of \$1,000,000 or more. Such a lease is called a "prospectus-level lease" or "major lease."

38 U.S.C. § 8109. This section authorizes the Secretary of VA to lease parking facilities for employees, visitors, and other individuals having business at VA medical facilities.

FMR Bulletin C-2 established general conditions for all lease delegations from GSA. In addition, in accordance with FMR Bulletin C-2, VA must submit a delegation request to GSA through the G-REX delegation management system that includes:

- Detailed narrative, including cost estimates, describing why the request is in the best interests of the Government and how the Agency's delegation is cost effective for the Government
- Name of the warranted LCO and copies of warrants and certifications
- Acquisition Plan for the procurement in accordance with GSAR 507.1

- Justification for the Delineated Area in accordance with applicable laws and Executive Orders
- A Floodplain check in accordance with Executive Order 11988
- An organizational structure and staffing plan to support the delegation
- A plan for meeting or exceeding GSA's performance measures for the cost of leased space relative to industry market rates (see <http://www.whitehouse.gov/omb/expectmore/detail/10001157.2005.html>)
- The total amount of space required, any special requirements, and parking requirements
- Certification that the proposed space action is consistent with the OMB "Freeze the Footprint" policy.

Within 30 days after lease award, VA must submit the following into G-REX:

- The fully executed lease document and all attachments;
- The RLP and any modifications issued during the procurement;
- The RLP ad posted on FedBizOpps or in a local publication;
- If a sole source contract over the simplified lease acquisition threshold (SLAT) of \$150,000 average annual rent, a Justification for Other Than Full and Open Competition (JOTFOC) in accordance with section 6.303 of the Federal Acquisition Regulation (FAR);
- If a sole source contract under the SLAT of \$150,000 average annual rent, lease file documentation explaining the lack of competition may be submitted in lieu of a JOTFOC in accordance with GSAM section 570.203-2;
- The market survey data identifying properties considered in connection with the space need, including historic buildings considered in accordance with Executive Order 13006;
- Documentation of compliance with the National Environmental Policy Act of 1969 (NEPA), as amended in accordance with 40 CFR §1508.9;
- Documentation that vending facilities will be provided in accordance with the Randolph-Sheppard Act;
- The final scoring evaluation in accordance with OMB Circular A-11 (2012);
- The Price Negotiation Memorandum, prepared in accordance with GSAM section 570.307 and section 15.406-3 of the FAR;
- Documentation that the building is in compliance with all applicable fire and life safety requirements (GSA Form 12000 or a Certificate of Occupancy);
- Documentation that the building is in compliance with the seismic requirements of the RLP (seismic certification and representation or exemptions);
- Documentation of compliance with the floodplain management requirements of Executive Order 11988;
- Copy of the Post-Award Synopsis posted in FedBizOpps;

- The small business subcontracting plan, if required, in accordance with section 19.702 of the FAR;
- Documentation that the Excluded Parties List (also known as the Debarred Bidders List) was checked;
- The pre-occupancy final inspection report verifying measurement of the demised space as shown on a computer-aided design floorplan, correction of deficiencies and punch-list items;
- A Funds Availability Statement signed prior to lease award by a budget official with the requesting agency; and
- Documentation that the negotiated rental rate is within the prevailing market rental rate for the class of building leased in the delegated action. If the negotiated rental rate exceeds the market range, provide information as to why the market rate was exceeded.

Re-delegation by the Secretary of VA. The Secretary of VA may re-delegate leasing authority to any officer, official, or employee of VA. Currently, CFM has authority to undertake higher-risk leases, while VHA leasing officials may undertake lower-risk leases.

Note that VA Policy Memorandum “Rescission of Requirement for Delegation of Authority for Existing Space Leases Procured by Veterans Health Administration (VHA) Leasing Officials (VAIQ 7687472), dated June 2, 2016, rescinded the requirement for local VHA leasing officials to obtain delegations of authority from CFM and ORP in order to procure, expand, or extend leases, or to enter into standstill agreements for existing-space leases, below the prospectus threshold of \$1,000,000 in annual unserved rent.

Authority to Execute Leases. VA’s Lease Credentialing Program (VALCP) is managed by ORP and consists of two components, a leasing certification and a leasing warrant.

APPENDIX 2

LEGAL REQUIREMENTS

I. LAWS, REGULATIONS, AND EXECUTIVE ORDERS

VA's real property leasing program is guided by a number of Federal statutes, Executive Orders, agency regulations, directives, and policies. Decisions by the Civilian Board of Contract Appeals, the Department of Justice, the Comptroller General, and other Federal agencies and courts also provide guidance. This Chapter outlines the primary laws, regulations, and Executive Orders that define the statutory environment in which VA's real property leasing program is implemented.

To the extent the following laws, regulations, and executive orders apply to a particular lease procurement, the leasing official should complete a checklist prior to lease award to be saved to the contract file to memorialize compliance. More detail on the lease award process can be found in the "Lease Award" Chapter in this Manual.

A. LAWS

1. Anti-Kickback Act of 1986 (41 U.S.C. §§8701-8704).

This Act prohibits a contractor from soliciting or receiving kickbacks from subcontractors in return for subcontract awards. The requirements of this Act are not applicable to contracts below the Simplified Lease Acquisition Threshold (SLAT). See the summary for the Federal Acquisition Streamlining Act of 1994 (FASA) (P.L. 103-355, October 13, 1994) for a description of the SLAT. Language on this Act appears in the GSA General Clauses in Form 3517B, so no additional action is necessary on the part of the leasing official as long as this form is attached to the lease contract.

2. Anti-Lobbying (18 U.S.C. § 1913).

This statute prohibits the use of appropriated funds to lobby Congress. A certification to this effect is included in GSA Form 3518 Representations and Certifications. If this form is signed by the lessor and attached to the lease contract, then the lease is in compliance.

3. Appropriations Approval (PL 112-74, Title II, Section 211).

This Public Law requires that VA submit a written report/notification to, and obtain approval within thirty (30) days from, the Committee on Appropriations of Congress prior to the use of appropriated funds for any new lease of real property exceeding \$1,000,000. The notification require is automatically fulfilled

for medical facility leases by means of VA's submission of annual budget requests. However, for leases for non-medical space (which do not require Congressional authorization unless they exceed GSA's prospectus threshold) VA must provide a notification to the Senate and House Committee on Appropriations. Leasing officials should ensure this has been completed prior to awarding a lease of non-medical space that exceeds GSA's prospectus threshold.

4. Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157).

This Act requires that buildings financed with Federal funds are so designed and constructed as to be accessible to everyone. This law requires all construction, renovation, or leasing with Federal funds to meet minimum accessibility standards as implemented through the Architectural Barriers Act Uniform Federal Accessibility Standard. This requirement is set forth in the GSA Lease Template (L100) as well as the VA Request for Lease Proposals (VARLP), so no additional action is necessary on the part of the leasing official as long as this language has not been altered or removed from these templates.

5. Assignment of Claims Act of 1940 (31 U.S.C. §§ 3727).

This Act allows contractors to assign rights to payment, including rent, to established financing institutions. Language on this Act appears in the GSA General Clauses in Form 3517B, so no additional action is necessary on the part of the leasing official as long as this form is attached to the lease contract.

6. Balanced Budget Act of 1997 (2 U.S.C. §§ 900 et seq.).

This Act implements budget sequestration. Leasing officials should ensure they are working closely with the VHA budget and finance offices to ensure funding for each project is within sequestration limitations.

7. Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.).

This Act requires each Federal agency conducting or supporting activities directly affecting a designated coastal zone to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved State management programs. This Act is not referenced in GSA's LDG or contract documents. The leasing official should determine whether the delineated area lies within a NOAA designated coastal zone and, if so, contact the State for further information.

8. Competition in Contracting Act of 1984 (CICA) (41 U.S.C. §§ 3101 et seq.).

This Act requires that procurements be achieved through full and open competition unless an exception can be justified. This Act must be followed when acquiring leasehold interests in real property. Exceptions must be justified in writing, prepared pursuant to FAR 6.303, signed by the LCO, and approved in accordance with VAAR 806.304. VA's leasing process and policies automatically align with CICA. As long as the leasing official has undertaken all required procurement steps and followed VA leasing policy, the requirements under CICA should be automatically satisfied.

9. Contract Disputes Act of 1978 (41 U.S.C. §§ 7101-7108).

This Act requires disputes arising from Federal contracts to be adjudicated by established process and procedures. Language on this Act appears in the GSA General Clauses in Form 3517B, so no additional action is necessary on the part of the leasing official as long as this form is attached to the lease contract.

10. Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. §§ 3701-3708).

This Act imposes a 40-hour workweek and time-and-a-half overtime requirements on certain contracts. This Act is potentially applicable to lease acquisitions when an Offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the Government. The Act does not apply to contracts below the SLAT. This Act is referenced in FAR 52.222-4, the GSA L100, and the VARLP, so no additional action is necessary on the part of the leasing official as long as this language has not been altered or removed from these templates.

11. Copeland Act of 1934 (18 U.S.C. § 874; 40 U.S.C. § 3145(a)).

This Act makes it unlawful for a contractor to force a kickback from any person employed in the construction or repair of a public building or public work. The Act also requires contractors and subcontractors to furnish compliance statements with respect to wages paid to employees. This Act is potentially applicable to lease acquisitions when an Offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the Government. This Act is referenced in FAR 52.222-6, the GSA L100, and the VARLP, so no additional action is necessary on the part of the leasing official as long as this language has not been altered or removed from these templates.

12. Covenant Against Contingent Fees (41 U.S.C. § 3901(a)).

This covenant requires that no individuals other than full-time bona fide employees or established bona fide agents maintained by the contractor have been retained to solicit or obtain a Federal contract. This requirement is not

applicable to contracts below the SLAT. Language on this Act appears in the GSA General Clauses in Form 3517B, so no additional action is necessary on the part of the leasing official as long as this form is attached to the lease contract.

13. Davis-Bacon Act of 1931 (40 U.S.C. §§ (40 USC3141-3148)).

This Act establishes wage determination and payment procedures for laborers and mechanics on construction, alteration, or repair of a public building or public work when the cost of such action is anticipated to be \$2,000 or more.

It has been determined that VA leased space qualifies as a “public building or public work” within the scope of this Act. The Act is applicable to lease acquisitions when an Offeror proposes to construct a building or completely reconstruct or rehabilitate an existing building for the predominant use of the Government. Further, this Act applies to any alternation, repair, or improvement anticipated to cost \$2,000 or more made within VA occupied space, regardless of the amount of space occupied. The leasing official must obtain current rates for the project’s geographical area from the Department of Labor and must include them with the solicitation. This Act is referenced in FAR 52.222 and specifically included in the VARLP, and the FAR Part is referenced in the GSA RLP, so no additional action is necessary on the part of the leasing official as long as this language has not been altered or removed from these templates.

14. The Debt Collection Improvement Act of 1996 (P.L. 104-134, April 26, 1996).

This Act requires payments be made by electronic funds transfer. As long as the leasing official ensures that language requiring electronic funds transfer for payments made to the lessor is included in the lease contract, then the contract is compliant.

15. Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

This Act requires contractors to make certifications regarding actions taken to reduce the possibility of drug use at the site of the performance of work. The requirements of the Act do not apply to contracts below the SLAT. Language on this Act appears in the GSA General Clauses in Form 3517B, so no additional action is necessary on the part of the leasing official as long as this form is attached to the lease contract.

16. Earthquake Hazards Reduction Act of 1977 (42 U.S.C. §§ 7701 -7706).

This Act requires adoption of standards for assessing the seismic safety of existing buildings, constructed for or leased by the Government, which were designed and constructed without adequate seismic design and construction

standards. As long as the leasing official complies with GSA's seismic requirements for leased buildings in preparation of the solicitation and procurement of the lease (<https://www.gsa.gov/portal/content/101286>), then no additional action is necessary.

17. Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. § 17091).

This Act reinforces the important energy reduction goals for all Federal agencies put forth in Executive Order 13423. It requires that buildings leased by the Federal government are energy efficient and promote the use of renewable energy sources.

Section 438 requires Federal agencies to reduce storm water runoff from federal development and redevelopment projects to protect water resources. Storm water management must comply with EPA publication "Technical Guidance on Implementing Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act." EISA also requires reporting of Federal facility project-level energy data in accordance with Section 432. Refer to VA Directive 0012, "VA Investments in Energy and Water Efficiency and Renewable Energy," (July 6, 2015) for additional information. As long as the leasing official complies with GSA's sustainability requirements for leased buildings in preparation of the solicitation and procurement of the lease, and utilizes the sustainability language in the GSA L100 or the VARLP, then no additional action is necessary.

18. Energy Policy Act of 1992 (42 U.S.C. § 8253).

This Act requires Federal agencies to implement programs that reduce energy consumption in Federal facilities. This includes Federally-leased space. As long as the leasing official complies with GSA's sustainability requirements for leased buildings in preparation of the solicitation and procurement of the lease, and utilizes the sustainability language in the GSA L100 or the VARLP, then no additional action is necessary.

19. Energy Policy Act of 2005 (P.L. 109-58, August 8, 2005).

This Act amended the Energy Policy Act of 1992, creating new energy performance standards for Federal buildings and requiring sustainable design principles to be applied to the design and construction of all new and replacement buildings. As long as the leasing official complies with GSA's sustainability requirements for leased buildings in preparation of the solicitation and procurement of the lease, and utilizes the sustainability language in the GSA L100 or the VARLP, then no additional action is necessary.

20. Examination of Records (41 U.S.C. § 4706).

This statute authorizes the head of an agency and the Comptroller General to inspect records of Federal contractors. This authority is not applicable to contracts below the SLAT. Language on this Act appears in the GSA General Clauses in Form 3517B, so no additional action is necessary on the part of the leasing official as long as this form is attached to the lease contract.

21. Federal Acquisition Streamlining Act of 1994 (FASA) (P.L. 103-355, October 13, 1994).

This Act provides Federal Executive agencies with increased simplicity and greater flexibility in the procurement of supplies and services including leasehold interests in real property. This Act, as implemented in General Services Administration Acquisition Regulation (GSAR) Change 65, accomplishes the following:

- Eliminates the small purchase threshold of \$25,000 total contract value and establishes a simplified lease acquisition threshold (SLAT) of \$100,000 average annual rental. GSA Acquisition Letter MV-11-01 raised the SLAT to \$150,000 on October 8, 2010. The SLAT can be found in FAR 2.101
- Grants greater flexibility when using over 30 GSAR clauses and provisions
- Raises the threshold for cost or pricing data from \$100,000 to \$500,000. GSA Acquisition Letter MV-11-01 raised the threshold to \$700,000 on October 8, 2010
- Redefines competition for leases that fall within SLAT
- Grants COs flexibility with regard to promoting competition for leases within SLAT
- Replaces the Expedited Procedures of August 26, 1991

VA may execute lease contracts for up to five (5) years using this Act without a project specific delegation from GSA, provided that the use of this Act is clearly documented in the file and the entire contract value of the lease is obligated up-front from a single appropriation year, and as long as termination costs are also considered and obligated.

Because this Act provides flexibility to leasing officials and does not necessarily govern or restrict activities, no action is required for leasing officials to comply with this Act other than documenting its use in the contract file and award decision memorandum.

22. Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. §§ 101 et seq.).

This Act authorizes GSA to acquire, by purchase, condemnation, or otherwise, real estate and interests therein and to enter into leases of real property not

exceeding 20 years' duration and to repair, alter and improve rented premises, to condemn interests in real estate, and to assign and reassign space in leased buildings to other Federal tenants. GSA delegates relevant aspects of this authority to VA leasing officials on a project-by-project basis. As long as leasing officials procure space within the conditions and limitations set forth in the GSA delegation, they will be in compliance with this Act.

23. Federal Urban Land Use Act (40 U.S.C. §§ 531 et seq.).

This Act provides for consultation with planning agencies and local elected officials to coordinate Federal projects, such as lease construction, with development plans of the state, region, and local community. For VA's purposes, a lease construction project is defined as a lease where the offeror would not have constructed the facility but for VA's solicitation. In other words, when the offeror is pursuing the project with the primary intention of satisfying VA's space needs, the procurement would be lease construction (also known as "build-to-suit"). During the market research and market survey process, leasing officials should contact and/or meet with local government officials to inform them of VA's planned project, particularly regarding the size, scope, and delineated area. By making this contact, leasing officials are in compliance with this Act.

24. Federal Water Pollution Control Act of 1972 (Clean Water Act), as amended. (33 U.S.C. §§ 1251-1263 and elsewhere).

This Act requires Federal agencies to develop a comprehensive program for the control of pollutants to water. Federal agencies must consider the environmental impact of their actions so as to avoid water pollution. As long as the leasing official complies with NEPA requirements and undertakes the proper level of NEPA review, the lease contract will be in compliance with this Act.

25. Fire Administration Authorization Act of 1992 (15 U.S.C. §§ 2227).

This Act requires that an entire building be sprinklered or an equivalent level of life safety be provided when Federal funds are used to lease 35,000 square feet or more of space in a building (under one or more leases) and some portion of the leased space is on or above the 6th floor. It also requires that all hazardous areas be sprinklered in all Government leased space. The requirements in this Act are addressed in GSA L100. Leasing officials using this form will be in compliance with the Act. For build-to-suit leases, the leasing official should consult with the project team as to whether the proposed lease triggers the requirements under the Act, and if so, language from the GSA L100 should be incorporated as appropriate in order to achieve compliance.

26. Intergovernmental Cooperation Act 1968 (40 U.S.C. §§ 901-905).

Requires VA to consult with planning agencies and local elected officials and to coordinate Federal projects (usually large projects requiring congressional prospectus approval) with development plans and programs of the State, region, and locality where the project is to be located. During the market research and market survey process, leasing officials should contact and/or meet with local government officials to inform them of VA's planned project, particularly regarding the size, scope, and delineated area. By making this contact, leasing officials are in compliance with this Act.

27. Leasing Authority (40 U.S.C. § 585).

This statute authorizes the Administrator of General Services to enter into lease agreements to accommodate Federal agencies in buildings (or improvements) that are existing or will be constructed by the Lessor. The lease agreement may not bind the Government for more than 20 years. The Administrator may further delegate this leasing authority. The Administrator has delegated leasing authority to GSA Regional Commissioners, who, as Heads of Contracting Activities, further delegate the authority by issuing warrants to Lease Contracting Officers (LCO).

The Administrator may also delegate leasing authority to the head of a Federal agency or designee. Agency heads are required to exercise the delegated authority per all applicable laws, Executive Orders, regulations, Office of Management Budget circulars and other GSA policy, as established in the GSA PBS Desk Guide and other policy documents. GSA delegates relevant aspects of this authority to VA leasing officials on a project-by-project basis. As long as leasing officials procure space within the conditions and limitations set forth in the GSA delegation, they will be in compliance with this Act.

28. The National Defense Authorization Act for Fiscal Year 2008, Section 844 (P.L. 110-181, January 28, 2008), relevant sections of which are codified at 41 U.S.C. § 253(j)(1)(A).

This Act requires the head of an Executive agency to make certain that justification and approval documents relating to the use of noncompetitive procedures in contracting are publically available the justification and approval documents within 14 days of the contract award on the website of the agency and on a government-wide website. In the event a leasing official awards a lease contract using a noncompetitive procedure, publishing the award and justification documents on FedBizOpps.gov within the mandated timeframe should satisfy this notification requirement.

29. National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. §§ 4321 et seq.).

30. This Act requires Federal agencies to consider the effects of all actions on the environment, to consider alternatives that reduce impacts, and to prepare detailed statements for public and Federal agency review where significant impacts may occur. Real estate actions, such as leasing, are among the actions that must be reviewed. Leasing officials must take the necessary steps to undertake analysis of the proposed leasing action either by issuing a Categorical Exclusion (CATEX), conducting an Environmental Assessment (EA) and issuing a Finding of No Significant Impact (FONSI), or conducting an Environmental Impact Statement (EIS) and issuing a Record of Decision. Note that to date VA has not engaged in a leasing project that rose to the level of EIS analysis. A vast majority of VA leasing actions can be assessed through the CATEX process. Saving the CATEX or final EA and FONSI to the contract file evidence the leasing official's compliance with NEPA.

31. National Historic Preservation Act (NHPA) of 1966, as amended, (16 U.S.C. §§ 470-470w-6).

This Act requires Federal agencies to manage historic properties under their jurisdiction or control. Historic properties include buildings, structures, districts, sites, and objects included or eligible for inclusion in the National Register of Historic Places. It also requires Federal agencies to consider the effects of their actions, including real estate actions, on such properties regardless of ownership. To the extent the leasing official conducts a Phase 1 Cultural Resource Study and engages in consultation with the SHPO, and takes any required actions to mitigate adverse impacts, the analysis required under NHPA is complete. This would be considered a mandatory step in a NEPA Environmental Assessment, which is standard for leases of 75,000 gross square feet (GSF) or more. For leases under 75,000 GSF, where a CATEX is contemplated, leasing officials are strongly encouraged to, at minimum, perform preliminary research into whether the project is likely to impact historic properties. If so, it is recommended that leasing officials engage in an official "Section 106 Consultation" with the SHPO to ensure the analysis required under NHPA has been conducted.

32. Occupational Safety and Health Act of 1970 (OSHA) (29 U.S.C. §§ 651-678).

This Act requires VA to ensure that space leased and assigned to the agency provides safe and healthful working conditions, including building features such as lighting, guardrails, indoor air quality, fire-safety conditions, and emergency elevator requirements. GSA's L100 contains some language on OSHA, and the VARLP specifically addresses OSHA requirements. As long as OSHA requirements are not deleted or substantively edited, inclusion of this language should satisfy the requirements of the Act by requiring the Lessor's performance.

33. Officials Not to Benefit (41 U.S.C. § 6306).

This section prohibits any member of Congress from receiving any benefit arising from a Federal contract. A certification to this effect is included in GSA Form 3518 Representations and Certifications. If this form is signed by the lessor and attached to the lease contract, then the lease is in compliance.

34. Prohibitions on Use of Appropriated Funds to Influence Federal Contracting (31 U.S.C. § 1352).

These prohibitions require certifications from contractors that funds have not and will not be paid to any person to influence the award of a Federal contract. A certification to this effect is included in GSA Form 3518 Representations and Certifications. If this form is signed by the lessor and attached to the lease contract, then the lease is in compliance.

35. Prompt Payment Act (31 U.S.C. §§ 3901-3907).

This Act requires Federal payments to contractors to be made in an expeditious manner, provides penalties for late payment by the Government, and requires that the Government be entitled to discounts for early payment. As long as payments are made to the Lessor according to the timelines set forth in the Act in the acceptance process and lease administration, then the leasing official has complied with the Act.

36. Prospectus Authority (GSA) (40 U.S.C. § 3307).

This Act requires Congressional approval of any proposed project to construct, alter or acquire any building which involves a total expenditure over the Prospectus Threshold established. The current GSA Annual Prospectus Threshold is available at the following website:

<https://www.gsa.gov/portal/content/101522>. In order for VA to receive a delegation of authority from GSA to pursue a VA lease that is over GSA's Prospectus Threshold, GSA must first obtain resolutions from its House and Senate committees

37. Prospectus Authority (VA) (38 U.S.C. § 8103-8104).

This Act requires Congressional authorization of any major medical facility lease, meaning any lease with an average rent of over \$1 Million. VA leasing officials may undertake planning activities like solicitation development and conceptual design while authorization is pending, but authorization is required for VA to publish an expressions of interest advertisement, submit a delegation of authority request to GSA, and, subsequent to receipt of GSA delegation, issue the solicitation. Additionally, only VA's Office of Real Property undertakes prospectus-level lease procurements.

This Act also requires that VA provide notification to Congress no less than thirty (30) days before obligation of funds for award of a major medical facility lease. Notifications must be provided to the Committees on Veterans' Affairs of the Senate and the House of Representatives and must include (A) notice of the Secretary's intention to enter into the lease; (B) a detailed summary of the proposed lease; (C) a description and analysis of any differences between the prospectus submitted and the proposed lease; and (D) a scoring analysis demonstrating that the proposed lease fully complies with Office of Management and Budget Circular A-11. Should the terms of the lease change between the notification and lease award, VA has thirty (30) days after the lease award to notify the Congressional committees of those changes.

38. Public Buildings Act of 1959, as amended, (40 U.S.C. §§ 601-619).

This Act requires Congressional committee approval of leases with a certain annual rental, excluding services and utilities. Although this annual rental is considerably higher for GSA and is indexed to change every fiscal year, the prospectus approval level applicable to VA (per 38 U.S.C. § 8104, as amended) is \$1,000,000. This Act also places limits on GSA's ability to lease space for computers or courtrooms and imposes certain rules for buildings constructed for lease to the United States, including the use of detailed construction specifications and the use of competitive procedures for lease and construction projects.

39. Public Buildings Cooperative Use Act of 1979 (40 U.S.C. §§ 490(a)(16)-(19) 601a and 612a).

This Act authorizes GSA to enter into leases of certain space in public buildings with persons, firms, or organizations engaged in commercial, cultural, education, or recreational activities or to make such space available on an occasional (temporary) basis (or by lease) to persons, firms, or organizations engaged in cultural, education, or recreational activities. This Act also encourages GSA to acquire and use buildings of historic, architectural and cultural significance. Unless the requirement to comply with this act is enumerated in a delegation of authority from GSA, VA leasing officials should endeavor to comply with the spirit of the Act as they engage in leasing projects and lease administration, especially with Veteran-focused or Veteran-owned/run organizations. GSA delegations do not typically enumerate this requirement.

40. Randolph-Sheppard Act, as amended (20 U.S.C. §§ 107 et seq.).

This Act requires that priority be given to licensed blind vendors to operate vending facilities on any Federal property, including leased buildings. The Act requires the Secretary of the Department of Education to promulgate regulations

establishing a national program to place visually impaired vendors in vending operations within facilities owned by the Federal government, as described in the following paragraphs. The Secretary must also designate an agency in each state to license blind vendors to operate vending machines on Federal properties. These are referred to as state licensing agencies.

Under the Act, priority is given to such licensed blind vendors (including assignment of vending machine income pursuant to section 107d-3 of this title to achieve and protect such priority), and one or more vending facilities are to be established on all Federal properties to the extent that any such facility or facilities would not adversely affect the interests of the United States. Any limitation on the placement or operation of a vending facility based on a finding that such placement or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary, who shall determine whether such limitation is justified. A determination made by the Secretary pursuant to the provisions of the Randolph-Sheppard Act shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination, along with supporting documentation, in the Federal Register.

Provisions of the Randolph-Sheppard Act are applicable on leases of greater than 15,000 square feet wherein there will be more than 100 Federal employees during normal working hours. The Randolph-Sheppard Act does NOT apply under the following circumstances:

- When the Secretary and the state licensing agency determine that the number of people using the property is or will be insufficient to support a vending facility, or
- To any privately owned building, any part of which is leased by any department, agency, or instrumentality of the U.S. and in which, (i) prior to the execution of such lease, the Lessor or any of his tenants had in operation a restaurant or other food facility in a part of the building not included in such lease, and (ii) the operation of such a vending facility by a blind person would be in proximate and substantial direct competition with such restaurant or other food facility except that each such department, agency, and instrumentality shall make every effort to lease property in privately owned buildings capable of accommodating a vending facility.

VA should coordinate with state licensing agencies whenever VA plans to occupy, acquire, relocate, or substantially renovate or alter a building so that a satisfactory site for the location and operation of a vending facility can be made available for use by a blind vendor. For further information, refer to VA Directive 7632, "Compliance with Randolph-Sheppard Act," (May 5, 2011); VHA Directive 1037, "Randolph-Sheppard Act Compliance," (February 24, 2014); and VA Policy

Memorandum, "Delegation of Authority - Compliance with Randolph-Sheppard Act," (March 4, 2002).

41. Reorganization Plan No. 18 of 1950 (40 U.S.C. §§ 490 note).

This plan transferred all functions with respect to acquiring space in buildings by lease and all functions with respect to assigning and reassigning space in buildings to GSA. VA achieves compliance with this Act by means of us obtaining delegations of authority from GSA on a project-by-project basis.

42. Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 690).

This law established guidelines for the proper management of hazardous and non-hazardous solid waste materials. Both the GSA L100 and VARLP include sustainability requirements that the lessor must meet, which puts them in compliance with the Act. The leasing official will be in compliance as long as this language is not deleted or substantively altered.

43. Rural Development Act of 1972 (7 U.S.C. § 2204b-1).

This Act requires Federal agencies to give first priority to rural areas in locating facilities. See also Executive Order 12072 regarding the location of Federal facilities in urban areas. The location of VA leased medical facilities is mission-based. VA complies with the Act and Executive Order 12702 by making a significant effort to improve access to VA services for Veterans living in rural areas. VA gives the highest priority in locating its new facilities to areas where Veterans requiring health care services are currently underserved. These determinations are made through demographic studies and VA's access guidelines (which establish maximum travel time and distance goals for Veterans to obtain healthcare). The leasing official should include a memo to be saved to the lease contract file that contains this explanation, and the same explanation is required by GSA as part of the delegation request process. A copy of suggested language will be provided by ORP on request.

44. Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.).

This Act establishes standards for drinking water quality and regulates activities affecting drinking water supplies. Both GSA's L100 and the VARLP include the requirement that the lessor comply with the Environmental Protection Agency's drinking water standards. As long as this language is not deleted or substantively altered, the leasing official will be in compliance with the Act.

45. Small Business Act, as amended, (15 U.S.C. §§ 631 et seq.).

This Act requires a positive effort by Federal contractors to place subcontracts with small and small disadvantaged business concerns. The Act also requires publication of Federal procurement requirements, requires large businesses to submit small business subcontracting plans, and provides for liquidated damages for failure to meet subcontracting plan goals. While VA strives to involve small businesses in its contracts, its primary concern, besides providing opportunities to Veteran-owned businesses, is maximizing competition.

46. Telecommunications Act of 1996 (47 U.S.C. §§ 332 note).

This Act authorizes, to the extent that it does not interfere with Federal agency programs or missions or security issues, Federal agencies to make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services and authorizes agencies to charge reasonable fees for the use of such property, rights-of-way, or easements. This Act allows VA to provide its own telecommunications services and wiring in a leased facility, including the installation of antennas and other devices on the facility roof. GSA L100 includes language that can be utilized in the VARLP if VA desires to include its own telecommunications infrastructure.

47. Toxic Substance Control Act (15 U.S.C. §§ 2601 et seq.).

This Act regulates specific chemical substances, including polychlorinated biphenyls (PCBs) and asbestos, and requires labeling, notice, and/or remediation if there is a danger to public safety. VA's solicitation for build-to-suit leases addresses the Act. However, the GSA L100 does not directly address this Act. The lessor is required to comply with the Act regardless of VA's involvement in the project, so no affirmative action is required on the leasing official's part to ensure compliance.

48. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. §§ 4651-4655).

This Act requires the payment of relocation benefits to persons displaced as a result of Federal actions. This Act is potentially applicable to persons displaced as a result of VA's lease-construction projects on sites designated by the Government. Both the GSA L100 and VARLP include requirements related to the Act, which puts them in compliance with the Act. The leasing official will be in compliance as long as this language is not deleted or substantively altered.

49. Veterans First Contracting Program (38 U.S.C. §§ 8127-8128).

Under 38 U.S.C. § 8127(d), VA must set aside procurements for competition among Veteran-owned small businesses (Service-Disabled Veteran-Owned

Small Businesses (SDVOSBs) or Veteran-Owned Small Businesses (VOSBs)) when a contracting officer has a reasonable expectation, based on market research, that two or more firms listed as verified in the Vendor Information Pages (VIP) database are likely to submit offers and an award can be made at a fair and reasonable price that offers best value to the United States. This is known as the “VA Rule of Two.” The two exceptions referenced in the statute (8127 subsections (b) and (c)) allow the VA to make sole source awards to Veteran-owned companies under certain circumstances. Nothing in the statute provides exception for orders off the GSA Schedule, or under any other government-wide acquisition contract. This requirement was reinforced through the June 16, 2016, decision of the U.S. Supreme Court in *Kingdomware Technologies, Inc. v. United States (Kingdomware)*. Leasing officials should consult Procurement Policy Memorandum 2016-05 – “Implementation of the Veterans First Contracting Program” as to procedures that should be followed to ensure appropriate Veteran engagement.

B. FEDERAL REGULATIONS

The following are Federal regulations that pertain to VA's leasing program. They are listed in order of importance and level of authority over VA leasing actions. Note that as a condition of its acceptance of delegation of authority from GSA, VA is required to comply with applicable GSAR and FAR requirements in procuring leasehold interests in real property.

1. General Services Administration Acquisition Manual (GSAM), including General Services Administration Acquisition Regulation (GSAR) (48 CFR Chapter 5).

Chapter 5 of Title 48 CFR sets forth the GSAR. The GSAR incorporates many FAR requirements and clauses but is a stand-alone regulation that governs leasing activities. GSAR Part 570 describes procedures and policies regarding the acquisition of leasehold interests in real property. GSA created this part of the GSAR due to the unique aspects of procuring leasehold interests in real property. GSAR covers subject matter other than leasing, so leasing officials should ensure that the sections they are referencing are lease-specific. GSAR rules applicable to acquisitions of leasehold interests in real property are contained in the following Parts and Subparts:

Relevant GSAR Parts and Subparts

Citation	Title
501	GSA Acquisition Regulation System
502	Definitions of Words & Terms
503	Improper Business
504.5	Electronic Commerce in Contracting
505	Publicizing Contract Actions
509.4	Debarment, Suspension, and Ineligibility
514.201-7(b)	Contract Clauses – Examination of Records
514.407	Mistakes in Bids
515.204-1	Uniform Contract Format
515.209-70	Examination of Records by GSA Clause
515.305	Proposal Evaluations
517.202	Use of Options
517.207	Exercise of Options
519.7	The Small Business Subcontracting Program
519.12	Small Disadvantaged Business Participation Programs
522.8	Equal Employment Opportunity
532.1	Non-Commercial Item Purchase Financing
532.908	Prompt Payment – Contract Clauses
533	Protests, Disputes, and Appeals
536.271	Project Labor Agreements

Citation	Title
537.2	Advisory and Assistance Services
537.3	Solicitation Provisions and Contract Clauses
537.4	Forms
552.215-70	Examination of Records by GSA
552.236-71	Authorities and Limitations
552.243-71	Equitable Adjustments
552.270-1	Instructions to Offerors—Acquisition of Leasehold Interests in Real Property
552.270-2	Historic Preference
552.270-3	Parties to Execute Lease
552.270-5	Subletting and Assignment
552.270-6	Maintenance of Building and Premises—Right of Entry
552.270-7	Fire and Casualty Damage
552.270-8	Compliance with Applicable Law
552.270-9	Inspection—Right of Entry
552.270-10	Failure in Performance
552.270-11	Successors Bound
552.270-12	Alterations
552.270-13	Proposals for Adjustment
552.270-14	Changes
552.270-15	Liquidated Damages
552.270-16	Adjustment for Vacant Premises
552.270-17	Delivery and Condition
552.270-18	Default in Delivery—Time Extensions
552.270-19	Progressive Occupancy
552.270-20	Payment
552.270-21	Effect of Acceptance and Occupancy
552.270-22	Default by Lessor During the Term
552.270-23	Subordination, Nondisturbance and Attornment
552.270-24	Statement of Lease
552.270-25	Substitution of Tenant Agency
552.270-26	No Waiver
552.270-27	Integrated Agreement
552.270-28	Mutuality of Obligation (must also include 552.270-4 Definitions)
552.270-29	Acceptance of Space
552.270-30	Price Adjustment for Illegal Improper Activity
552.270-31	Prompt Payment
552.270-32	Covenant Against Contingent Fees

2. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

Title 48 of the Code of Federal Regulations (CFR) sets forth the FAR to codify and publish uniform acquisition policies and procedures for procurements of supplies and services by all executive agencies. The FAR is prepared, issued, and maintained jointly by the Secretary of Defense, the Administrator of GSA, and the Administrator of the National Aeronautics and Space Administration. Specific agency procurement regulations are found in subsequent chapters of Title 48 of the CFR. For example, the procurement regulations specific to GSA are contained in Chapter 3, while procedures and policies unique to VA are found in Chapter 8. Policies and procedures not specifically covered under agency regulations may be governed by other sections of the FAR or the CFR. The FAR deliberately excludes the acquisition of land or interests in land from the definition of “supplies.” Consequently, leases are not defined as “acquisitions” in the FAR and the FAR is only applicable to lease acquisitions to the extent that FAR regulations are cited within the GSAR. Please note, however, that the FAR does apply to service contracts that are undertaken to support of leasing activities (for instance, broker and architect contracts).

3. Federal Management Regulations (FMR) (41 CFR, Chapter 102).

FMR Part 102-73 contains the regulatory policy applicable to the acquisition of leasehold interests in real property for all Federal agencies operating under or subject to the authorities of the Administrator of General Services. To the extent leasing officials have questions regarding leasing policy that are not specifically covered in the GSAR or FAR, the FMR can serve as a useful tool. Leasing officials should note that not all of the policies and procedures described in the FMR are applicable to VA’s leasing policies and procedures, or compatible with VA’s mission. If leasing officials have questions regarding the content of the FMR, they should reach out to Real Property Policy and Programs Service at RPSRequests@va.gov.

4. VA Acquisition Regulation (VAAR) (48 CFR Chapter 8).

Chapter 8 of Title 48 CFR sets forth the VAAR. The acquisition of leasehold interests in real property, whether by purchase or by lease, is not specifically addressed in the VAAR. Therefore, leasing officials will not refer to the VAAR often and rather will follow those policies and procedures prescribed by the GSAR. The one aspect of leasing that is covered by the VAAR is the process and approval levels for ratification actions. Please note, however, that the VAAR does apply to service contracts that are undertaken to support of leasing activities (for instance, broker and architect contracts).

C. EXECUTIVE ORDERS (EOs)

1. Executive Order 11375 – Equal Employment Opportunity.

This EO amended EO 11246 and prohibited contractors from engaging in employment discrimination on the basis of race, color, religion, national origin or sex. VA is committed to maintaining a diverse and inclusive environment and complies with applicable federal laws, regulations and policies regarding nondiscrimination when occupying space in GSA and non-GSA buildings. Additionally, VA adheres to the August 18, 2016, bulletin issued by GSA through a Federal Register notice, FMR; Nondiscrimination Clarification in the Federal Workplace. That bulletin clarified that GSA's nondiscrimination requirement in the FMR includes gender identity as a prohibited basis of discrimination for any facility under the jurisdiction, custody, or control of GSA. Equal Opportunity language is included by reference in GSA Form 3517B. Therefore, leasing officials are in compliance as long as this form is attached to the lease contract.

2. Executive Order 11738 – Implementation of the Clean Air Act and Federal Water Pollution Act.

This EO requires that each Federal agency empowered to enter into contracts undertake such procurement in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act. Requirements should be coordinated with the local Engineering Service. Both GSA L100 and the VARLP include environmental and sustainability requirements. As long as this language is not deleted or substantively altered, the leasing official will be in compliance with this EO.

3. Executive Order 11988 – Flood Plain Management.

This EO directs the avoidance of leasing space in buildings located within 100-year flood plains unless there is no practical alternative. Efforts to locate any practical alternatives should be documented in the lease file. According to this EO, each agency shall provide leadership and shall take action to reduce the risk of flood loss, 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 in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Leasing officials should require that sites and existing buildings offered in lease procurements are not located in the 100-year flood plain unless there is no practicable alternative (for instance, if the entire delineated area lies within the 100-year flood plain). Information on VA's application of this EO is required as part of the GSA delegation request process.

4. Executive Order 11990 – Protection of Wetlands.

According to this EO, all Federal agencies shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. This EO requires that the Government avoid leasing space in buildings located within wetland areas unless there is no practical alternative outside of the wetlands. Efforts to locate any practical alternatives should be documented in the lease file. Leasing officials should coordinate with their working group's environmental engineers and/or Green Environmental Management Systems (GEMS) coordinators on this requirement.

5. Executive Order 12072 - Federal Space Management.

This EO requires that Federal agencies implement a space management plan, and associated controls and monitoring to promote effective management of resources. This EO requires that first consideration be given to locating Federal facilities in central business districts within urban areas. GSA procedure calls for giving due consideration to agency needs with respect to location (see Executive Order 13006 which furthers this policy). The location of VA leased medical facilities is mission-based. VA complies with this EO by ensuring that Veterans in urban areas are provided with needed services. VA gives the highest priority in locating its new facilities to areas where Veterans requiring health care services are currently underserved. These determinations are made through demographic studies and VA's access guidelines (which establish maximum travel time and distance goals for Veterans to obtain healthcare). The leasing official should include a memo to be saved to the lease contract file that contains this explanation, and the same explanation is required by GSA as part of the delegation request process. Sample explanatory language is provided by ORP on request.

6. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.

This Executive Order requires new buildings constructed for lease to the Government be designed and constructed in accordance with appropriate seismic design and construction standards. As long as the leasing official complies with GSA's seismic requirements for leased buildings in preparation of the solicitation and procurement of the lease

(<https://www.gsa.gov/portal/content/101286>), then no additional action is necessary.

7. Executive Order 12902 - Energy Efficiency and Water Conservation at Federal Facilities.

This Executive Order requires that appropriate consideration be given to building efficiencies in the leasing process. Both GSA L100 and VA's solicitation for build-to-suit leases include environmental and sustainability requirements. As long as this language is not deleted or substantively altered, the leasing official will be in compliance with this EO.

8. Executive Order 12941 – Seismic Safety of Existing Federally Owned or Leased Buildings.

This Executive Order adopts the standards of the Interagency Committee on Seismic Safety in Construction (ICSSC) as the minimum level acceptable for use by Federal departments and agencies and requires buildings leased to the Federal Government to meet those seismic safety standards. As long as the leasing official complies with GSA's seismic requirements for leased buildings in preparation of the solicitation and procurement of the lease (<https://www.gsa.gov/portal/content/101286>), then no additional action is necessary.

9. Executive Order 12977 – Interagency Security Committee, as amended by Executive Order 13286 – Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security.

This Executive Order established the Interagency Security Committee to establish policies for security in and protection of Federal facilities. Both VA and GSA rely on ISC standards for aspects of physical security in leased facilities. As long as physical security language in the GSA L100 and VARLP is not deleted or substantively altered, the leasing official is in compliance. In the future, ORP will be releasing additional guidance on physical security in the context of leased facilities.

10. Executive Order 13006 – Locating Federal Facilities in Historic Properties in Our Nation's Central Cities.

Subject to the Rural Development Act and EO 12072, this EO encourages Federal agencies to locate Federal facilities on historic properties in our Nation's central cities, which furthers the intent of EO 12072 for locating Federal facilities in Central Business Areas (CBAs). 41 CFR § 102-83 provides guidance concerning the location of Federal facilities in urban areas. The location of VA

leased medical facilities is mission-based. VA gives the highest priority in locating its new facilities in areas where Veterans requiring health care services are currently underserved. These determinations are made through demographic studies and VA's access guidelines (which establish maximum travel time and distance goals for Veterans to obtain healthcare). The leasing official should include a memo to be saved to the lease contract file that contains this explanation, and the same explanation is required by GSA as part of the delegation request process. Sample language is available from ORP on request.

11. Executive Order 13327 – Federal Real Property Asset Management.

This EO promotes the efficient and economical use of Federal Real Property resources and requires Federal agencies to establish performance measures regarding cost, value and efficiency of all acquisitions, within the scope of an overall Agency Asset Management Plan. This function is primarily handled by Central Office entities. No affirmative action is required on the part of the leasing official.

12. Executive Order 13423 – Strengthening Federal, Environmental, Energy and Transportation Management.

This EO promotes increased efficiency in energy use. It requires that new construction and major renovations of government buildings comply with the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings and seeks to ensure that half of statutory required renewable energy consumption by the agency comes from renewable sources. (More detail is provided on this Executive Order in Appendix B: Executive Order 13423). [NOTE: This Executive Order Revokes Executive Orders 13101, 13123, 13134, 13148, 13149.] Both GSA L100 and VARLP include environmental and sustainability requirements. As long as this language is not deleted or substantively altered, the leasing official will be in compliance with this EO.

13. Executive Order 13514 – Federal Leadership in Environmental, Energy, and Economic Performance.

This EO requires that Federal agencies planning for new Federal facilities or new leases include consideration of sites that are pedestrian friendly, near existing employment centers, near center cities and population centers, and accessible to public transit. In addition, it requires agencies to implement high performance sustainable Federal building design, construction, operation and management, maintenance, and deconstruction by: (i) beginning in 2020 and thereafter, ensuring that all new Federal buildings that enter the planning process are designed to achieve zero-net-energy by 2030; (ii) ensuring that all new construction, major renovation, or repair and alteration of Federal buildings complies with the "Guiding Principles for Federal Leadership in High

Performance and Sustainable Buildings;” (iii) ensuring that at least 15 percent of the agency's existing buildings (above 5,000 gross square feet) and building leases (above 5,000 gross square feet) meet the Guiding Principles by fiscal year 2015 and that the agency makes annual progress toward 100-percent conformance with the Guiding Principles for its building inventory; (iv) pursuing cost-effective, innovative strategies, such as highly reflective and vegetated roofs, to minimize consumption of energy, water, and materials; (v) managing existing building systems to reduce the consumption of energy, water, and materials, and identifying alternatives to renovation that reduce existing assets' deferred maintenance costs; (vi) when adding assets to the agency's real property inventory, identifying opportunities to consolidate and dispose of existing assets, optimize the performance of the agency's real-property portfolio, and reduce associated environmental impacts; and (vii) ensuring that rehabilitation of federally owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings. Both GSA L100 and VARLP include environmental and sustainability requirements. As long as this language is not deleted or substantively altered, the leasing official will be in compliance with this EO.

14. Executive Order 13576 – Delivering Efficient, Effective, and Accountable Government.

This Executive Order established additional oversight to facilitate earlier mandates to improve transparency of Federal spending and streamline and cut waste. VA leasing officials should strive to be as transparent as possible while complying with confidentiality requirements pertaining to procurement-sensitive information.

15. Executive Order 13658 – Establishing a Minimum Wage for Contractors.

This Executive Order requires that contractors not be paid less than minimum wage. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a) (ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a) (ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). VA's lease template for build-to-suit facilities contains this requirement, so no further action should be necessary as long as the language has not been

deleted or substantively edited. Leasing officials using the GSA L100 should add a reference to this EO and/or FAR Part 52.222-55 in order to ensure compliance. This requirement is separate from the requirements related to Davis-Bacon Wages.

16. Executive Order 13690 – Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.

This Executive Order amended Executive Order 11988, Floodplain Management and established a Federal Flood Risk Management Standard (FFRMS). The amendments require federal agencies to use natural systems, ecosystem processes, and nature-based approaches to identify alternatives and require federal agency regulations or procedures to be consistent with the FFRMS. The FFRMS provides 3 approaches that federal agencies can use to establish the flood elevation and hazard area for consideration in their decision making for federally-funded projects: climate-informed science approach, freeboard approach (adding 2-3 feet of elevation to the 100-year floodplain), and using the 500-year floodplain. Leasing officials should require that sites and existing buildings offered in lease procurements are not located in the 100-year flood plain unless there is no practicable alternative (for instance, if the entire delineated area lies within the 100-year flood plain).

D. OTHER REGULATION AND POLICY

1. Comprehensive Procurement Guideline for Products Containing Recovered Materials (40 CFR Chapter 1 Part 247).

Both GSA L100 and VARLP include requirements for products containing recovered materials. As long as this language is not deleted or substantively altered, the leasing official will be in compliance with this EO.

2. Office of Management and Budget (OMB) Circular A-11, Appendix B (Budgetary Treatment of Leases).

This OMB circular established a requirement for Federal agencies to evaluate individual leases to determine budgetary treatment. Leases are to be classified as either capital or operating. Evaluation of a lease requires performing a calculation of the net present value of the lease payments over the term of the lease and comparison to the fair market value of the leased asset. Leasing officials are required to complete a capital lease checklist as well as an OMB scoring workbook at minimum prior to lease award, but strongly recommended at other major procurement milestones (project start, initial offers, and revised proposals). These artifacts must be saved to the contract file in order to document compliance.

3. Office of Management and Budget (OMB) Memorandum M-12-12, "Promoting Efficient Spending to Support Agency Operations," OMB Management Procedures Memorandum No. 2013-02 "Implementation of OMB Memorandum M-12-12 Section 3: Freeze the Footprint," Office of Management and Budget (OMB) Management Procedures Memorandum 2015-01, "Implementation of OMB Memorandum M-12-12 Section 3: Reduce the Footprint."

OMB Memorandum M-12-12 Section 3: Freeze the Footprint created a baseline of total square footage of office and warehouse space owned and leased by Federal agencies in fiscal year 2012. Agencies may not initiate any lease actions that would result in a net increase of office and warehouse space over this FY 2012 baseline.

OMB Management Procedures Memorandum 2015-01 requires all Federal agencies take steps to actively reduce the amount of square footage of owned and leased real property, by disposing of surplus properties held by the Federal Government, making more efficient use of the government's real property assets, and reducing the total square footage of their domestic office and warehouse inventory relative to the FY 2012 baseline. VA has implemented this Memorandum for its administrative office and warehouse space, but at this time it does not apply to leased medical or research space. The leasing official should save a statement from the VISN CAM to the contract file as to whether this Memorandum applies to a particular leasing action, and if so, the offset/reduction activities being undertaken, in order to document compliance.

4. Federal Management Regulation (FMR) Bulletin C-2.

This Bulletin replaced FMR Bulletin 2008-B1, re-established the repeal of delegated leasing authority for the acquisition of General Purpose space, and established certain procedures for the longstanding delegations for Categorical and agency-specific Special Purpose space as provided in 41 CFR part 102-73. Since 2014, VA leasing officials have been required to obtain delegations of authority from GSA on a project-by-project basis. The delegation request must be submitted to GSA before VA advertises for expressions of interest, and a delegation must be received before VA can issue a solicitation.

5. General Services Administration, Public Building Service (PBS) Leasing Desk Guide.

This GSA publication is the procedural guide for the acquisition and management of leasehold interests in real property in accordance with the laws, regulation and policy governing the Federal leasing process. While VA does closely follow GSA procedures for some aspects of lease procurements, it does diverge in some

procedures, as discussed throughout this Manual. If a leasing official has any uncertainty as to whether a GSA procedure should be followed for a particular action, s/he should contact Office of Real Property.

6. General Services Administration, Public Building Service, LeasingAlerts

These GSA publications communicate lease policy changes to Federal agencies and leasing officials operating under or subject to the authorities of the Administrator of General Services. For the most part, these updates and circulars apply to VA leasing actions, particularly where VA is utilizing GSA's RLP and L100. If leasing officials have any questions as to applicability of a certain item, s/he should contact Office of Real Property.

APPENDIX 3

LEASE CONSTRUCTION PROCESS

Phases/Steps	Key Outputs
Requirements Development and Approval to Begin	
<ul style="list-style-type: none"> - Establish space and service requirements - Develop Program for Design/Space Program - Create Business Case - Obtain agency approvals - Confirm funding availability - Develop prospectus (if applicable) - Submit authorization request - Deliver requirements package to procuring office (NCO or ORP) 	<ul style="list-style-type: none"> - Formal requirements document - Program for Design/Space Program - Business Case - Prospectus - Budget Submission - Requirements Package - Agency Approvals or Congressional Authorization
Project Start	
<ul style="list-style-type: none"> - Assemble project team, including onboarding any contractors - Develop Source Selection Plan - Request GSA delegation - Conduct preliminary budgetary treatment analysis - Advertise for expressions of interest and capability statements - Conduct Market Research Tour and provide feedback to respondents - Evaluate for VOSB or SDVOSB set-aside - Develop conceptual design, blocking plan, or general layout 	<ul style="list-style-type: none"> - Task Orders - Source Selection Plan - Acquisition Plan - OMB scoring workbook and checklist - Advertisement in FBO.gov - Market Research Tour Report - Set-aside determination and/or Form 2268 - VARLP with design attached

<ul style="list-style-type: none"> - Develop VARLP 	
Procurement	
<ul style="list-style-type: none"> - Publish VARLP on FBO.gov - Conduct pre-bid conference - Receive and evaluate offers - Conduct budgetary treatment analysis of all offers - Establish competitive range - Prepare for award on initial offers or undertake negotiations and request revised proposals - Obtain historic and environmental clearances as necessary - Identify potential awardee - Conduct any pre-award debriefings requested 	<ul style="list-style-type: none"> - Final, published VARLP - Conference presentation - Proposal Abstracts - OMB scoring workbook(s) and checklist(s) - Technical Evaluation Board Report(s) - Competitive Range Determination - Price Evaluations - Finding of No Significant Impact or Categorical Exclusion document - National Historic Preservation Act documentation for file - Debriefing records
Preparing for Award	
<ul style="list-style-type: none"> - Conduct responsibility determination - Conduct required pre-award reviews, concurrences, and approvals - Prepare Award Decision Memorandum or Price Negotiation Memorandum - Obtain certification of funds from user group - Process Congressional Notification (for prospectus-level projects) - Assemble final lease contract for signature and send to offeror - Obligate funds and execute lease contract - Notify unsuccessful offerors - Publish award notification to FBO.gov 	<ul style="list-style-type: none"> - Responsibility determination - Award Decision Memorandum or Price Negotiation Memorandum - Award Checklist with Attachments - Funding Certification - Congressional Notification Letters - Signed lease contract with all pages initialed - Funds obligation information - Notification letters - FBO notice
Post-Award	
<ul style="list-style-type: none"> - Hold post-award kickoff meeting - Hold user group design meetings with lessor and design team - Lessor undertakes construction - Process change orders as Lease Amendments as necessary - Conduct acceptance walk-through 	<ul style="list-style-type: none"> - Meeting minutes - Final design and construction documents - Lease Amendments and funding obligations for each - Final reconciliation Lease Amendment

<p>and pricing reconciliation</p> <ul style="list-style-type: none">- Accept facility as complete- Process Administrative Contracting Officer designation (for ORP-procured leases)- Move furniture and equipment into facility- Activate facility and see first patients	<ul style="list-style-type: none">- Acceptance Lease Amendment- Certificate of Occupancy- Administrative Contracting Officer designation documents- Custody and transfer receipt
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