CHAPTER 6:

Change in Square Footage—Expansion and Reduction

Overview

Changing agency initiatives can result in client agencies requesting that the Public Building Service (PBS) of the U.S. General Services Administration (GSA) expand or reduce their space under a lease. When these changes occur during the course of a lease and when it is impractical to wait until the expiration or end of the firm term, PBS will work with the client agency to assist in the determination of whether a change in square footage on behalf of one or more agencies is the correct solution.

A project for the change in square footage can be in the form of an increase or a decrease of space. Increases must be initiated by the client agency through normal space acquisition processes, which usually includes use of Portfolio Management's (PT) Service Delivery Excellence ("SDE") experts. Decreases occurring in the middle of an Occupancy Agreement (OA) have their own notification requirements, which are detailed in the Reductions section of this chapter.

This chapter guides the user through the process of changing square footage during the course of a lease. It also covers the process that PBS must follow to mitigate its Funds from Operations (FFO) losses if an agency relinquishes leased space back to PBS prior to the expiration of the underlying lease at a time when there are no currently available lease termination rights.

PBS collaborates with customer agencies as they incorporate space optimization policies in their space actions. Executive agencies need to be aware that, by submitting their requirements document and signing an Occupancy Agreement, they have taken into consideration OMB's implementation guidance to minimize the size of their overall civilian real estate inventory, and that increases in an agency's square footage in one location must be offset by reductions elsewhere. Although PBS assists OMB in monitoring and reporting agency compliance, Leasing Specialists will defer to the agency requirements and assume that they have addressed the OMB requirements.

Part 1: Expansions

1. When Is an Expansion Considered?

New or replacing space actions may be accomplished through a lease expansion project whenever appropriate space is available for lease in a location where PBS already leases space. Expansion requests typically come from an agency that has a mission-related need for additional space at a leased location. There may be cases where an expansion of an existing lease is warranted regardless of whether the requesting agency is already housed at the location. In other words, an expansion project is the expansion of an existing PBS lease with the lessor, not necessarily an expansion of space under an existing Occupancy Agreement (OA). All proposed expansions, whether within or outside of scope, (as defined in the next Section 2 of this Part 1 and supplemented by Sections 4 and 5 of this Part 1), should be reviewed by the Lease Contracting Officer (LCO) to determine what course of action would be in the best interest of the American taxpayer, regardless of whether a full justification is required; (which is unnecessary if within scope).

Many considerations go into an expansion decision including the client agency's long-term housing strategy; the length of the remaining firm and total lease term; the amount and current value of the existing tenant improvements (TIs) and other investments made to the space; the attractiveness of existing contractual rental rates; and the cost of relocation, (including mitigation of any existing lease liability and the cost of TI and any RWA for alternative space). There are times, (such as when a lease is not in a firm term), when a superseding lease or a relocation may present the better alternative to expansion under the existing lease.

In most expansions, agencies must also plan corresponding (offsetting) reductions in space elsewhere so that overall space usage continues to comply with Office of Management & Budget (OMB) targets which are further detailed in Part 2, Section 1 of this Chapter 6 of the Leasing Desk Guide.

2. Determining the Scope of the Lease

Requests for expansion of space are handled differently depending on whether the expansion is within or outside the scope of the lease. But, regardless of whether within or outside of the scope of the lease, all expansions are space acquisitions and subject to the same steps as new requirements resulting in sole source procurements, including the need for acquisition plans, scoring, funds certifications, Occupancy Agreements (OAs), and Price Negotiation Memoranda (PNMs). Any differences in processes are addressed in this Chapter.

An expansion is a modification of the lease contract. Whether an expansion is within the scope of a lease is a procurement-related issue. Contracting officers must consider whether expansion was within the scope of the competition that resulted in the award of the current contract. Among the factors to consider are:

- The extent of the change,
- The performance period,
- The difference in cost between the awarded lease and the lease as it may be modified, and
- Whether the expansion is of a nature which potential offerors would reasonably have anticipated.

See Section 4 for a full listing of factors.

For example, the expansion of a warehouse lease to provide for like warehouse space, or a laboratory lease to provide for like laboratory space, could be considered within the scope of the lease, if it otherwise meets the requirements of Section 4 in Part 1 of this chapter. The similarity of the use of the space and mission are factors that can be taken into consideration. However, the expansion of a basic office lease to provide for a technical laboratory space, warehouse, or even high-end office space such as a judge's chambers may not be within the scope of the lease.

3. Assembling Project Management Team

The Leasing Specialist or project manager should assemble a project management team as shown below. Optional members will be based on the size and complexity of the project.

- Regional Office of Portfolio Management
- Regional Office of Leasing
- Regional Office of Facilities Management and Services Programs, including the Lease Administration Manager (LAM)
- Office of Client Solutions / SDE
- Regional Counsel's office
- Central Office's Zone Manager with the Center for Lease Project Delivery (optional)
- Space Planning (optional)
- Design and Construction (optional)
- LCO

4. Expansions Within the Scope of the Lease

The Lease Contracting Officer may determine, without further review by the Office of Regional Counsel, that an expansion request is within the general scope of the lease when the following criteria are met:

(i) One of these:

- The expansion request is made from the same agency component or sub-division of the same agency occupying the space under the existing lease;
  -or-
- Personnel to be housed in the expansion space have a mission-related need to be co-located with the employees in the existing space;

(ii) And all of the following:

- The expansion request is coterminous with the existing lease term;
- The expansion request is for a reasonable amount of space in comparison to the space currently under lease; and
- The expansion request is not received immediately after the award of the lease—generally a year after the award would be considered a reasonable amount of time. Please see the "Prospectus-Level Leases" Chapter of this Leasing Desk Guide ("LDG") for guidance on an expansion request that would push a below-prospectus lease beyond the prospectus threshold, or if an expansion request would cause a prospectus-level lease to exceed the parameters of the resolution.

Lease Contracting Officers must consult with the Office of Regional Counsel before determining that an expansion request is within the general scope of the lease if all of the above criteria are not met.

a. Agency Requirements.

The client agency's requirements may come to PBS documented, totally conceptual, or somewhere in between. The Lease Contracting Officer, working as a member of Portfolio Management's Service Delivery Excellence ("SDE") Team, must understand the agency's needs and must have received verification of the funding necessary for the changes as both are described in Chapter 1, Requirements Development, before issuing changes to the lessor. For expansions, the SDE team should especially consider the amount of time remaining until lease expiration. Significant tenant improvement costs amortized over a relatively short period of time drive up rental rates and overall occupancy costs. In such situations where significant tenant improvements are necessary, it may make sense to extend the term using a superseding lease. See Leasing Desk Guide Chapter 5.

b. Competition

If the expansion space is within the general scope of the lease, the Leasing Specialist may acquire the space through negotiations with the lessor without a Justification for Other Than Full and Open Competition ("Justification", or "JOTFOC") (see GSAM 570.403). However, the LCO must document the file with a written determination that the expansion is within the scope of the lease and must provide an Acquisition Plan and scoring details (scored on the total expanded space). For the purpose of applying the Simplified Lease Acquisition Threshold (SLAT), Prospectus Threshold, or other thresholds, the proposed total combined space is used for comparison to the threshold amounts.

c. Availability of Space

Expansion projects are initiated based on the premise that expansion space exists or can be constructed at the leased existing location and that it can satisfy the space need. The Leasing Specialist must explore potential space solutions as well as determine the proposed cost of the expansion space during an initial conversation with the lessor before initiating the project.

d. Market Research

The Leasing Specialist must assess the market value of the space, including the space being expanded as well as other leases in the building and in buildings of similar character in the immediate market vicinity.

Unlike expansions outside the scope of the lease, a formal cost benefit analysis is not required for within scope expansions. However, the LCO still has a responsibility to ensure that the proposed expansion action represents the best interest of the Government and that the price is fair and reasonable before proceeding.

e. Documentation

The Leasing Desk Guide Chapters Introduction: General Information, Lease Authorities, and Responsibilities; and Chapter 2: New or Replacing Lease, Part 1, describe the systems required for documenting lease actions (REXUS, G-REX, etc.). Expansion projects must first be created in REXUS as an expansion lease action. The resulting project number from REXUS must then be inputted into G-REX, which will then determine and apply the proper procurement steps depending upon whether the expansion is identified in G-REX as within or outside of scope and whether above or below the Simplified Lease Acquisition Threshold (SLAT).

PBS revises the existing OA to include the expansion space. Through the use of an incremental version of the Occupancy Agreement (OA) in the OA Tool, the rates of the existing and expansion space may be blended or, a separate OA for the expansion space may be created. Either way, the OA must continue to reflect the underlying lease contract.

f. Funding

An expansion to an existing lease is considered a new occupancy and PBS' policy and practice is to negotiate with the lessor to provide the full tenant improvement (TI) allowance based on the client agency's tier. (See Pricing Desk Guide (PDG) Section 2.2 (Occupancy Types) and 2.5.3 (New Space in Shell/First Generation Condition)). Tenant improvements above the agency's allowance are expected to be paid via a RWA. A lessor's inability or refusal to provide a TI allowance for an expansion is a deviation from policy and the Leasing Specialist should consult their Leasing Supervisor or Lease Acquisition Officer in addition to the Regional Pricing Point of Contact (POC). Whether the TIs are funded through the rent or by a Reimbursable Work Authorization (RWA), the LCO must obtain a signed OA before awarding the expansion in the Lease Amendment (LA). The OA must clearly indicate both the anticipated costs and method of funding. Refer to PDG for re-let space, second-generation space that already has TIs installed for a prior tenant that the new agency can use, for determination of the TI allowance and lump-sum payment options.

g. Negotiations

The Leasing Specialist must ensure that the Lease Amendment contains language that unless specifically excluded in the LA, requirements and terms and conditions (other than price) in the existing lease will also be in effect for the expansion space. These include technical requirements such as fire suppression systems, and services such as cleaning, electricity, and maintenance. The Leasing Specialist should advise the lessor to account for the cost of these requirements in its proposal and negotiate as appropriate.

In addition, negotiations should address adjustments to the real estate tax base and operating costs attributable to the expansion space. The Government's pro-rata share of real estate tax adjustments (percentage of occupancy) should also be revised.

h. Award and Construction

At the conclusion of negotiations, once the lessor's proposal has been determined to be fair and reasonable based upon market prices for comparable space, the Leasing Specialist obtain a signed OA with the final negotiated costs. Once BA 53 funding and, if required, RWA funds have been confirmed, the Leasing Specialist will send two copies of the LA to the lessor for signature. Upon award of the LA, the Lease Contracting Officer, will issue a Notice to Proceed to the lessor and schedule the design kickoff meeting with the agency's and lessor's teams as soon as practical to maintain the project's momentum.

The Leasing Specialist or the construction manager must actively manage the construction process either directly or indirectly through other resources to remain on schedule and within budget. Regularly scheduled construction inspections are critical, and the Leasing Specialist or construction manager must compare the work to the plans and specifications, the lease, and the LA to verify compliance with the Government's requirements.

i. Lease Copies and Post-Award Notifications

The Lease Contracting Officer must distribute the LA and prepare post-award notifications as prescribed in the Leasing Desk Guide Chapter 2, part 5. These include notification in FedBizOpps, possible Randolph Sheppard notification, possible COR designation, and a Price Negotiation Memorandum (PNM).

j. Commencement of Rent

Once PBS accepts the space as substantially complete and operationally functional, the rent must commence immediately unless otherwise stipulated in the LA. (Note that an expansion typically involves two LAs: one detailing the expansion, including a construction schedule for TIs; and a second LA for establishing the effective date upon acceptance of space by the Government). Commencement activities include gathering as-built drawings, activating the lease, finalizing the OA, closing out the project, and other procedures described in Chapter 2, New or Replacing Lease, part 8.

5. Expansions Outside the Scope of the Lease

a. Agency Requirements

After consultation with the Office of Regional Counsel, the LCO may determine that acquisition of the expansion space needed is outside the general scope of the lease according to the criteria in Part 1, Section 2 , “Determining the Scope of the Lease,” of this LDG chapter 6.

Notwithstanding that the expansion is not within the scope of the lease, if the agency has a mission-related need for the personnel to be co-located, or there are other justifiable reasons for the expansion, the Leasing Specialist must follow the steps in subparagraphs b and c below to determine which alternative is most cost-effective and obtain approval to consolidate at the existing location or at a new location.

b. Market Research and Cost-Benefit Analysis

The Leasing Specialist must conduct market research as described in Chapter 5, Succeeding Lease, Superseding Lease, to determine the availability of suitable alternative locations. If the proposed total space of an out of scope expansion (after expansion) exceeds 10,000 ABOA SF, the Leasing Specialist must also place an ad in FedBizOpps (FBO) seeking expressions of interest for the total space requirement. (There is a special template available for the FBO ad for an out of scope expansion). If alternative locations are available that can satisfy the total requirement, the Leasing Specialist must perform a cost-benefit analysis to determine if it is in the Government’s best interest to relocate. This analysis must follow the cost-benefit analysis procedures as outlined in Chapter 5, Succeeding Lease, Superseding Lease, and include the same factors, as appropriate. If the lease has cancelation rights only include in the cost-benefit analysis the cost of the unexpired portion of the **firm** lease term rather than the **full** lease term. This cost should be the remaining non-discounted amount for the balance of the firm term unless there is very good reason to believe that a smaller amount will be incurred; (e.g., another agency has committed to taking it; an offer has been received from a lessor to accept a discounted buyout; or an appraisal has been done that estimates the amount that should be recovered in subleasing or assignment).

If the cost-benefit analysis supports an expansion, then the Leasing Specialist may proceed after preparing the documentation and approval of the Justification as described in subparagraph c below.

If the cost-benefit analysis does not support an expansion at the existing location, then the Leasing Specialist and the Regional Account Manager (RAM), as necessary, must advise the agency and obtain its approval to proceed with a replacement lease for the entire requirement. Therefore, even when expansion space is available and expansion could simplify the procurement, the Leasing Specialist must not assume that an expansion is the only option or the best option.

c. Justifications and Documentation

If the Leasing Specialist pursues the expansion alternative and the amended lease is below the Simplified Lease Acquisition Threshold (SLAT), (based upon the value of the original lease plus the proposed expansion), then the lease file must include documentation that explains the lack of competition (GSAM 570.203-2b).

However, if the Leasing Specialist pursues an expansion, and the lease, including the expansion area, is above the SLAT, then a Justification is required (GSAM 570.403). See LDG Chapter 5, Section 12 for guidance on writing the required Justification.

The negotiation, award, design, construction, and commencement steps for out-of-scope expansions are the same as Step 4 in-scope expansions discussed earlier.

SLAT Considerations

Should the potential expansion result in a SLAT lease potentially exceeding SLAT, the LCO may consider doing a new sole source co-terminus lease contract for the additional space rather than amending the existing lease contract to include all of the above SLAT provisions in a lease amendment.

Once the physical and financial viability of an expansion has been established, the Leasing Specialist must create the project in the appropriate system or systems and, if the expansion will be outside the scope of the lease, prepare the formal written Justification (including a redacted version for posting).

d. Prospectus

Additional scrutiny and approvals are required if an expansion of a prospectus-level lease would result in the parameters of the Prospectus Resolution being exceeded, or an expansion of an under-prospectus lease would result in an under-prospectus lease becoming a prospectus-level lease (which would occur if the new combined net annual rent resulting from the expansion resulted in the Prospectus threshold being exceeded). In either of these situations, see the "Prospectus-Level Leases" Chapter of this Leasing Desk Guide for further guidance on obtaining the required approvals.

Part 2: Reductions

1. Goal: Reduce the Footprint

- In May 2012, OMB issued Memorandum M-12-12, entitled "Promoting Efficient Spending to Support Agency Operation," to direct agencies to move aggressively to dispose of excess properties held by the Federal Government, among other things, and to make more efficient use of the Government's real estate assets.

- In March 2013, OMB issued Management Procedures Memorandum No. 2013-02, entitled "Implementation of OMB Memorandum M-12-12 Section 3: Freeze the Footprint," to provide further directives and implementation guidance on space policy.

- On March 25, 2015 OMB issued Management Procedures Memorandum No. 2015-01 to redefine the space policy to include annual reductions in agency square footage use.

In general, these OMB memoranda require agencies to consider and pursue available co-location or consolidation opportunities to promote a net annual reduction in both total office and warehouse space within each Agency's real estate inventory. PBS contributes to these goals through its "No Net New" and "Reduce the Footprint" policies, which encourage client agencies to reduce and consolidate their space holdings.

Specifically, PBS collaborates with customer agencies to ensure that they attempt to incorporate the space optimization policies and have considered its requirements as they pertain to space actions. Executive agencies need to be aware that, by submitting their requirements document and by signing an Occupancy Agreement ("OA"), they are representing that they have taken into consideration OMB's implementation guidance to reduce the size of their overall civilian real estate inventory. Although PBS assists OMB in monitoring and reporting agency compliance, Leasing Specialists will defer to the agency requirements and presume that they have addressed OMB's size requirements.

As part of the strategy to implement the "Freeze and Reduce the Footprint" PBS is issuing leasing guidance and tools to address space reductions (i.e., space relinquishments, and early releases) that occur in leased space prior to lease expiration. Some of that guidance includes determining when to best re-size and relinquish existing space as it is often in taxpayer and PBS' best interest to tie it to the underlying lease expiration or a backfill opportunity. Regardless, a PBS goal is to track agencies' plans and *possible plans* to relinquish space prior to OA expirations. This provides for quicker awareness of possible backfill and sublease opportunities that can result in the minimization of vacant leased space. The goal is to both assist client agencies and protect PBS and the American taxpayer from avoidable rental costs for vacant leased space. Early awareness and re-marketing of space that is going to be released by PBS' client agencies is an important part of the effort to mitigate vacancy in leased space. Similarly, efforts should be made to also assist in the remarketing of vacant space when OAs are *not* cancelable because of the obvious value to the taxpayer in minimizing rental expense for vacant space.

2. The Space Relinquishment Process

When an agency formally acts to relinquish space before PBS' underlying lease expires, the following pages provide an outline of the steps to be taken.

Step one: The agency is required to submit a written notice of release to PBS: information about the release is to be reported to a centralized Space Release Mailbox (space.release@gsa.gov). If the client agency has not submitted its release notice directly to this email address then the recipient should send a notice to the mailbox. The OA, lease and the space must then be investigated to determine if the OA can be canceled, if the lease can be terminated early, and if the space is or can be made marketable for backfilling, subleasing, or assignment.

Before accepting the space relinquishment request from a client agency, PBS must confirm whether the agency has cancelation rights under its OA and has met the required provisions stipulated in Pricing Desk Guide ("PDG") Section 5.3. To assist with this, the Leasing Specialist should research the most current OA to determine whether it is cancelable or non-cancelable, and if cancelable, the 4-month notice period and minimum occupancy term. The agency's rights with PBS are governed by the OA and national pricing policy. See Pricing Desk Guide 5th Edition for all required provisions on cancelations and return of space.

When a decision is made to accept the space relinquishment request, the range of choices which may be available to the LCO are: a) to backfill the space with another federal agency, b) sublease the space to the private sector, c) terminate the lease early if it has termination rights, d) terminate the lease via buyout with the lessor if PBS does not have viable lease termination rights, e) to enter into a superseding lease for a reduced amount of space, but with a longer firm term, or f) strategically hold onto to the space to meet a contingent possible need. The Leasing Specialist or Lease Contracting Officer may have discussions with a lessor concerning the lessor's receptiveness to a buyout and buyout price but must not start any buyout negotiations until after the appropriate analysis has been completed and senior management has approved a buyout as the appropriate course of action, as shown under Attachment 1.

This section of the chapter describes in detail the protocols, procedures, analytical tools and templates to use to determine which choice may be the most advantageous to PBS.

a. Evaluating Space Marketability

In accordance with the Pricing Desk Guide, PBS has no obligation to accept the client agency's release of space that is not in marketable blocks as determined by PBS. But, PBS may not refuse an agency release of marketable space just because there may not be a suitable tenant and the space might remain vacant. Therefore, once PBS determines that the agency has cancelation rights in its OA, the Leasing Specialist is to determine the space's marketability in accordance with the 4th Ed. Pricing Desk Guide, Chapter 5.3.2. Any questions regarding marketability of space determinations should be brought to the attention of the Leasing Supervisor or Lease Acquisition Officer in addition to the Regional Pricing POC. The following are examples of situations where the marketability of leased space may be questionable:

- Small spaces, single rooms, or closets;
- Inaccessible space (i.e. not accessible from the building's common corridors that have exterior accessibility);

- Oddly configured space that makes a tenant's layout difficult or impossible;

- Long, narrow spaces;

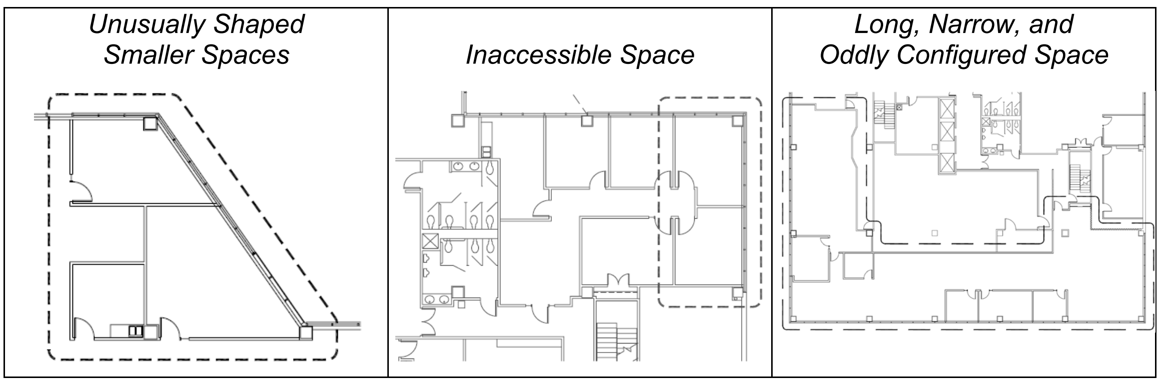
- Corridors;

- Security considerations that would effectively prevent most other backfill and/or sublease opportunities; (e.g., on a partial release of space the re-leasing agency imposes security restrictions that effective prevent the backfilling of the space by most other agencies); and

- Any other space that would be problematic to backfill, sublease or assign <u>as a result of the characteristics of the space itself</u>; not the finishes, building location, or lack of backfill or sublease demand.

The figure below illustrates some of these problematic spaces.

Nonmarketable Spaces



If an agency is the sole occupant of a building or occupies a large block of space on multiple floors, making partially returned space viable may mean requiring the agency to consolidate operations on fewer floors so that the partially returned space is not comprised of numerous small non-contiguous spaces, which unduly limit PBS' opportunities for backfill or sublease, or the Lessor's willingness to take back the space. The agency must bear the costs of alterations and moving necessary to perform this work.

If an agency is releasing all space under their OA, it will be considered marketable by default.

b. Marketability Determination

PBS may suggest ways to reconfigure unmarketable space to make it marketable and advise the agency of the estimated cost of alterations it must bear in order to relinquish the space. Once these discussions are concluded with the agency, the responsible PBS associate must notify the agency of the marketability decision in writing. A signed OA is not required. If the space cannot be made marketable in a configuration acceptable to both PBS and the client agency, the responsible PBS associate should provide

> **Marketable Space**
>
> Larger, squarer, more accessible spaces with windows are more easily marketable for backfill, assignment, or sublease. The Leasing Specialist should keep this in mind when discussing marketable space with the agency.

the determination that the space is not marketable to the agency in writing, and the project may be closed out in the appropriate systems. If the OA is cancelable, PBS may not refuse an agency release of marketable space just because there may not be a suitable tenant and the space might remain vacant.

c. The OA Release of Space Process

With 4 months written notice, the tenant agency has the right to release space in a cancelable OA, subject to the conditions in PDG Chapter 5.3.1. In October 2011, PBS issued pricing policy guidance requiring in cancelable OAs that the agency also be at least 16 months into their occupancy term. Thus, an agency providing its written notice of space release in a cancelable OA that's only 6 months into the occupancy term must pay rent through the 16 month of occupancy. In the event of OA release of space, Tenant agencies are responsible for reimbursing PBS the unamortized balance of Tenant Improvements (TIs) as Rent through the OA Tool. If agreeable to the lessor, if there is an outstanding TI balance after a partial release of space, the unamortized balance may be re-amortized (based on remaining OA term) over the remaining space in the OA; (OAs are mere pass through vehicles per PDG Section 1.2 on page 1-2. For additional information on payment options for TI's, see PDG Section 2.5.10). Additionally, the client agency remains liable to pay rent until it has completely removed all personnel and furnishings from the affected space and all work has been completed to construct any new demising walls and modification of building systems if needed. In some circumstances, accomplishing this may take much longer than 4 months. The Leasing Specialist should advise the client agency of these facts when a longer period is anticipated.

When the agency's occupancy is governed by a non-cancelable OA, PBS still has discretion over whether to allow the client agency to release the space. Several factors may affect PBS's decision in this situation, including whether:

- The lease may be terminated without consequence or expense to PBS;
- The terminating agency has agreed to cover the estimated cost obligations;
- Another agency desires to backfill the space and the agency vacating the space agrees to pay any rent differential between the backfill tenant and rent the vacating agency was paying, not including TIs.

d. The Mechanics of Relinquishing Space

An agency's relinquishment of space in an Occupancy Agreement is done via a written relinquishment notice, which is considered to be validly delivered upon receipt by anyone within PBS. Nevertheless, the notice should be sent by the agency directly, or forwarded by the PBS person receiving it to the following central processing mailbox: space.release@gsa.gov.

Once a request has been received, the mailbox administrator will send it to the regionally identified point of contact for space releases.

When an agency notifies PBS that it intends to release space back to PBS, PBS must first confirm that the requestor has the authority to request the release, the OA is cancelable and the space is marketable. This verification should be done through the region's point of contact for the space.release@gsa.gov email address.

In the event that the agency emails the Leasing Specialist or any other member of PBS directly rather than the centralized mailbox, the person who received the email requesting an early space release from the customer must immediately forward it to space.release@gsa.gov. When forwarding the email request to the centralized mailbox, the agency contact making the request should be included on the email. The email should also include a message directing the customer to send all future space releases to the mailbox directly.

The tenant agency must supply the following minimum information:

- Lease number and location
- Occupancy Agreement (OA) number
- Agency/Bureau names
- A brief description of the location of the space such as room number, floor, or markings on a floor plan so that PBS can calculate the amount of space being relinquished and its marketability.
- The planned relinquishment date

If the Leasing Specialist has been made aware of a likely reduction but the customer is not ready to formally request the release through space.release@gsa.gov, the Leasing Specialist must report the above information to the regional point of contact person for the national Vacant Space team, which is coordinated by Portfolio Management in Central Office. This allows PBS to begin possible re-marketing efforts well in advance of the date the agency will cease paying rent to PBS.

As with expansion projects, the client agency's reduced requirements must be given full consideration, including impact on parking and security, and subsequently documented prior to taking any further action. Most importantly, the space to be relinquished must be marketable to another Government agency or a private sector tenant; and if it's not, then the tenant agency is to be advised its release request is rejected. The LCO must also understand the agency's needs and must have also received verification of any funding necessary for any changes, including alterations to demise and/or make the space marketable, before issuing changes to the lessor. (Refer to Chapter 1, Requirements Development). Whenever significant changes are needed to reduce the space, PBS may provide space planning services to the agency or contract with the lessor, as long as the agency funding is adequate and designated for this purpose. (Refer to Appendix H for further information regarding parking).

After PBS' acceptance of a release of space, the Leasing Specialist is responsible for coordinating with RBM in Portfolio Management to modify the client agency's Rent billing through OA Tool (including any unamortized TIs) as of the effective date of the release.

Whenever an agency notifies PBS that it intends to release space for which the Government does not possess termination rights under the lease, PBS will be responsible for marketing the space for backfill, sublet, or assignment to future tenants, or possibly buying out of the lease obligation should there be no better alternatives.

For further details on agency rights to release space including applicable repayment obligations, see the Pricing Desk Guide (PDG) Section 5.3, Return of Space.

Note: In the event the space is backfilled in less than 4 months or before the 16-month initial occupancy the releasing tenant receives the benefit of a reduced release period and their OA should be reduced to coincide with the backfill effective date.

3. Researching the Lease for Termination Rights

a. Termination Considerations

Before PBS can terminate space with the lessor, the Lease Contracting Officer must understand the Government's rights and obligations under the lease. Several questions, including the following six questions, must be answered:

- Does PBS possess termination rights under the lease?
- If so, what are the notification requirements for exercising termination rights?
- Is the agency terminating all of the space or a marketable portion of its space?
- If a portion, does PBS possess partial termination rights or full termination rights?
- Is the rent for the space significantly below market?
- Is there another agency that could backfill the space?

The answers to these questions and results of the Space Relinquishment Decision Tool will help the Lease Contracting Officer determine whether to issue notification of termination, initiate discussions with the lessor, or strategically hold the space. Remember, everything is negotiable, but it is important to know the answers to the above questions prior to entering into any discussions with the existing lessor.

Note: Lease termination provisions do not affect the tenant agency's ability to terminate the cancelable OA. The OA is not part of the lease contract (which is an agreement between PBS and the Lessor). The OA is a separate agreement between the tenant agency and PBS.

In situations where GSA has very favorable lease terms relative to market, the tool may indicate there is greater value to the lessor if we vacate the space and the lessor re-lets the space to a replacement tenant. In such situations if subleasing or assignment is not preferable, we may negotiate to terminate at no cost to PBS or even to have the lessor pay the Government to terminate the lease. Even when PBS has termination rights, before exercising that right, the Leasing Specialist should compare the lease rate and other lease terms and conditions to the local rental market. If PBS has a favorable lease, such as a below-market rate with several years or more remaining and the space is in good condition with a functional layout, then the Leasing specialist should consider backfill or sublease and assignment opportunities. Compare the all-in costs to house an agency in backfill space versus the cost to house them in new or succeeding occupancy elsewhere. If the overall cost to house an agency in the space that will be released is lower than their other housing alternatives (e.g., a new or succeeding lease), the Leasing Specialist should seriously consider backfilling the space and not terminating the lease. This would also be an indicator that the space may be able to be subleased or assigned to maximize FFO.

Any net benefit of a lease termination is immediately passed through to the agency OA even in the event the termination occurs before the agency's 4 month notice period or within the first 16 months of occupancy.

b. Complete Terminations

Within Termination Rights

The simplest form of termination occurs when the client agency terminates its entire space during the Government's termination rights period. In this circumstance, the Lease Contracting Officer may notify the lessor in writing as prescribed in the terms of the lease and proceed to close out the space just as if the lease had expired. (Refer to Chapter 2, New or Replacing Lease, part 8 for closeout procedures). But, before exercising, be sure that if the lease rate is below market that there is no better possibility, such as backfill or strategic hold.

Without Termination Rights

If the lease does not grant the Government the right to terminate, or if termination rights take effect so far in the future that allowing the lease to run its course would pose an unacceptable financial burden to the Government, the Lease Contracting Officer should consult with a regional asset manager and other SMEs to consider whether legitimate backfill, sublet or assignment opportunities exist. When looking for replacement tenants consider the security level of the remaining tenants and the prospective tenants in making the decision.

At the same time, the Lease Contracting Officer, or his or her designee, must complete the Space Relinquishment Decision Tool. Based on the results of the tool, if backfilling the space with a federal tenant would appear to be the most financially advantageous course of action, but there are no prospective tenants, then the Lease Contracting Officer must prepare a summary of their analysis and recommendation, including a copy of the dashboard results from the tool, and share it with their supervisor and Leasing Director. The same analysis should be done for sublease/assignment. See Part 2, Section 4(c) of this chapter for more detailed information on elements to address in the summary of the analysis and recommendation.

If the recommendation is to pursue a buyout, the Lease Contracting Officer may contact the lessor to indicate the Government's desire to terminate the lease. However, prior to initiating any buyout negotiations with the lessor, the region must contact the Zone Manager with the Center for Lease Project Delivery in the National Office of Leasing for concurrence. In many situations, the lessor will request PBS to make some form of lump-sum payment known as a buyout, for this right. The Zone Manager will coordinate with the Budget and Finance offices to confirm that funds are available for the lump-sum payment.

The final agreement will be established through a lease amendment and a memo to the file that will document the analysis completed to support the buyout. Subsequently, the lease will be closed out after the space is vacated in accordance with the terms of the buyout agreement.

c. Partial Terminations

Within Termination Rights

When the client agency terminates only a portion of its space (or its entire space when the agency is housed in a multitenant lease), where the lease provides partial termination rights, the LCO must notify the lessor in writing as provided in the lease, supply a floor plan that clearly delineates the space being terminated,

Provisions for Remaining Space

The LCO should remind the lessor that the space remaining under the lease will be subject to the surviving lease provisions and verify that the physical space and building systems are altered accordingly.

and request a cost proposal from the lessor if any work will be required to subdivide the space. The costs must be documented in the lease through an LA. Obtain floor plans that clearly show the remaining premises.

If there is an outstanding TI balance after an agency has released a portion of its space under an OA, and it is agreeable to the lessor, the unamortized balance may be re-amortized (based on remaining OA term) over the remaining space in the OA; (OAs are mere pass through vehicles per PDG Section 1.2 on page 1-2).

Without Termination Rights

If the lease does not include partial termination rights, follow the same process as discussed under paragraph 5.b above for Complete Terminations - Without Termination Rights."

4. Vacant Space Mitigation

This section of the chapter describes in detail the protocols, procedures, analytical tools and templates to use to determine which mitigation strategies are available to PBS and which outcome may be the most advantageous to PBS.

a. Process Overview

When a decision is made that PBS will accept the space back, the range of choices which may be available to PBS are to 1) backfill the space with another federal agency, 2) sublease (or assign) the space to the private sector, 3) terminate the lease early if it has early termination rights, 4) terminate the lease via buyout with the lessor if PBS does not have lease termination rights, or 5) strategically hold the space for possible future use (such as swing space or disaster space). Note that, before proceeding with a buyout, the Lease Contracting Officer (LCO) or his/her designee shall formally request that GSA be released of its lease obligations for underutilized vacant space and document this communication in the lease file and/or any future lease buyout memo.

PBS's National Office of Leasing monitors the scope and impact of space relinquishment activity, provides oversight and guidance to PBS regions, and is the point of contact for Central Office involvement in the mitigation of vacant leased space. Through Zone Manager in the Center for Lease Project Delivery, the Office of Leasing consults with the regions on proposed actions, and tracks the results of backfills, assignments/subleases and buyouts for program management and reporting purposes.

A comprehensive Mitigation Plan must be drawn up for each vacant space, regardless of its size. Multiple avenues for mitigating FFO losses must be explored simultaneously until one is successful. For example, backfill and disposal (via subleasing or assignment) should generally be pursued simultaneously unless backfilling is a timely, virtual certainty. Even the benefits of a highly attractive rental rate evaporate quickly if backfilling takes significantly longer than subleasing or assignment.

The mitigation of lease liability on vacant leased space is such a central function of PBS that the expertise is to be made available to other agencies even when PBS is not directly affected financially. This includes agencies on non-cancelable OAs and delegated leases for facilities no longer used by the client or delegated agency.

b. The Mitigation Process

PBS is responsible for being aware of any vacant space in leases in our inventory. Additionally, PBS is responsible for working to actively mitigate the financial impact to the government of that vacant space. The Leasing Specialist can assist in this effort by following the steps outlined below:

- Act expeditiously upon receipt of an agency notice of the release of space.

- Create an ad-hoc team, including associates from other business lines, based on the complexity of the project and the expertise needed. The project team should include:
    - Lease Contracting Officer

- Zone Manager from the National Office of Leasing, Center for Lease Project Delivery
- Regional Office of Portfolio Management
- Office of Client Solutions / SDE
- Regional subject matter expert (SME) for Space Relinquishment Tool (optional)
- Regional Office of Facilities Management and Services Programs (optional)
- Regional Counsel's office (optional)
- Space Planning (optional)
- Design and Construction (optional)

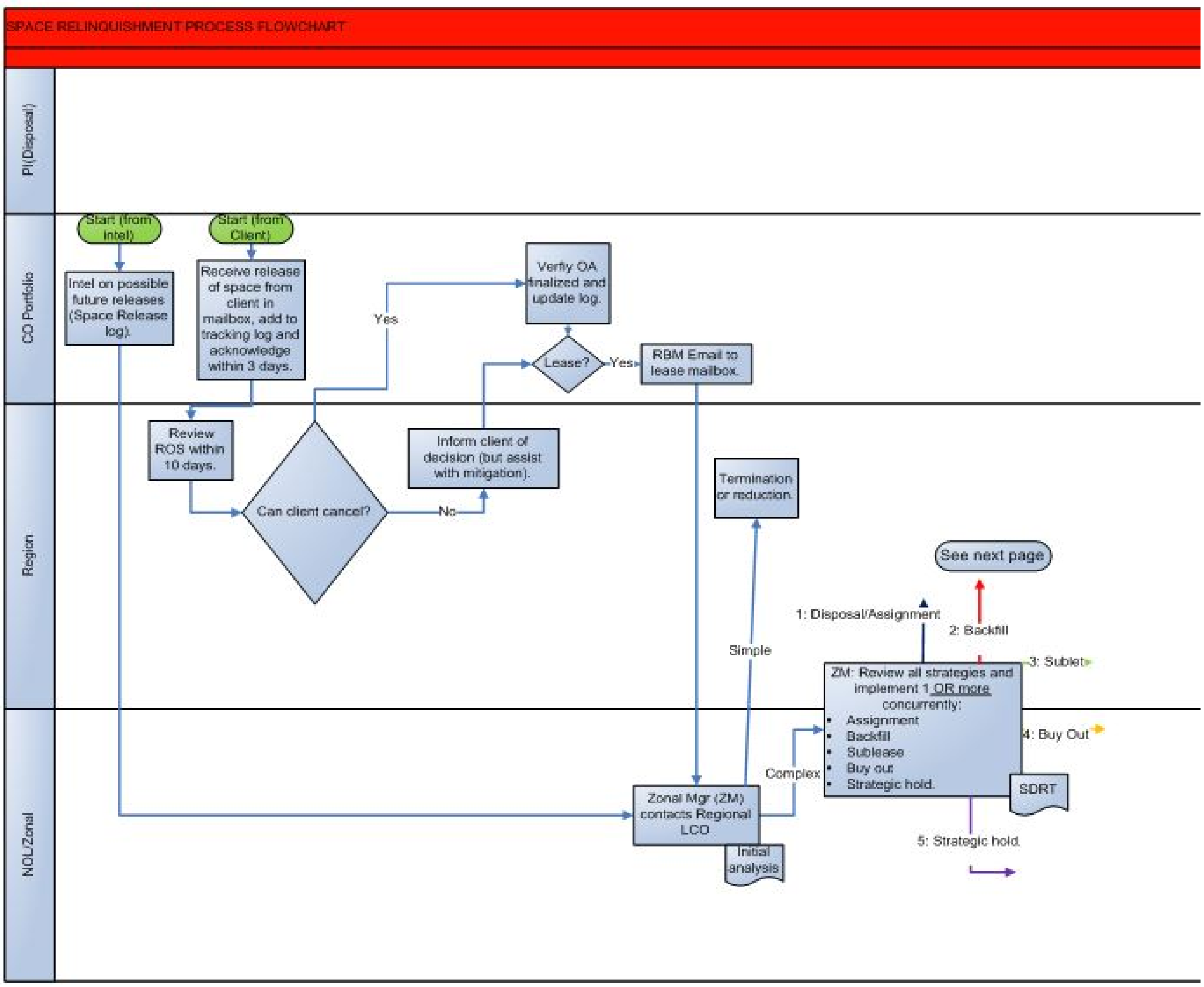
- Using the ad-hoc team, conduct a preliminary discussion of mitigation prospects and avenues. Prepare a written summary of the situation using the "Vacant Space Mitigation Plan" template found on the Forms tab of The Office of Leasing Google Site. Include the ad-hoc team's ideas and your recommendation for strategies, remembering that multiple strategies must be pursued simultaneously. Set a timeline to re-group to discuss finalization of the preliminary planned approach, and continue working with the assigned Zone Manager.

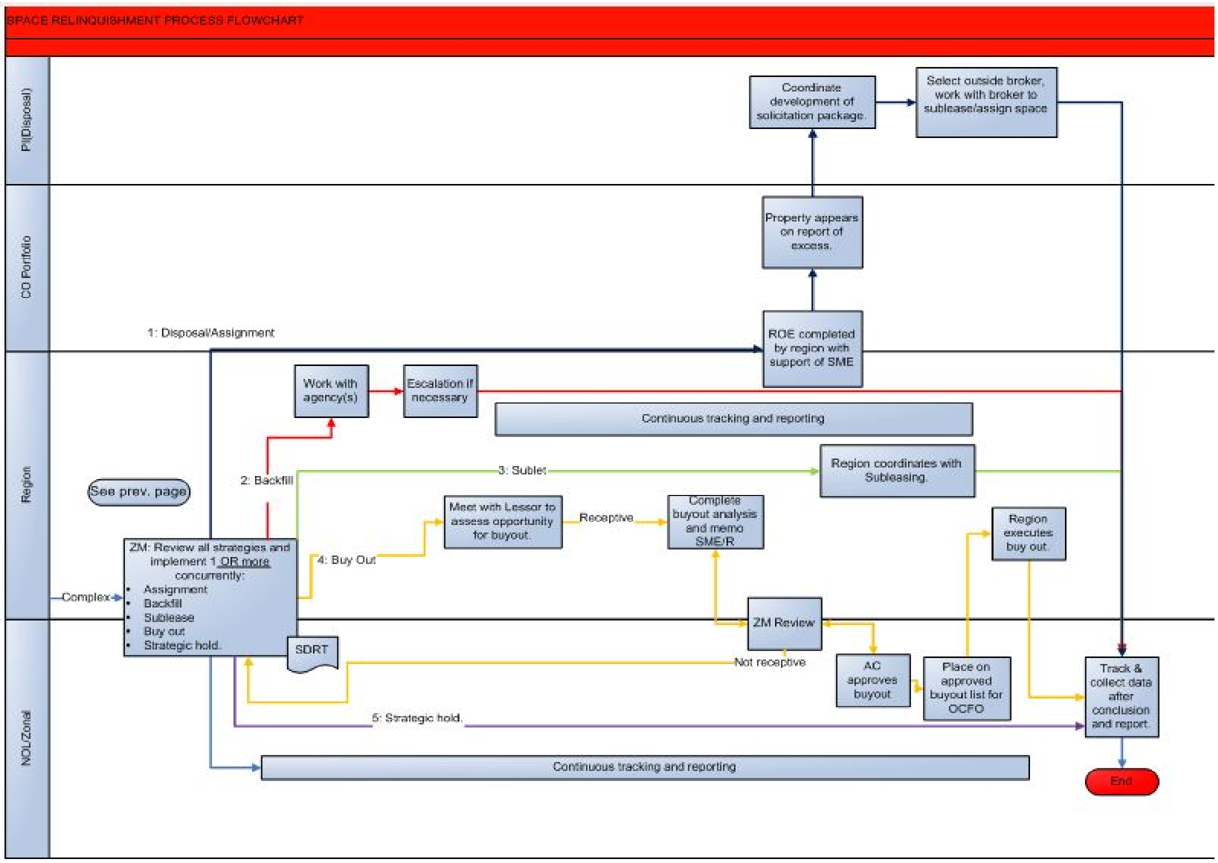
- Test "the waters" (no more than a few weeks) to refine the prospects/outlook for various mitigation strategies, making sure to fully investigate and explore all backfill opportunities. Unless only a very elementary analysis is necessary, use the Space Relinquishment Decision Tool to estimate financial outcomes of backfilling, subleasing/assignment and buyout.

- Share that information with your supervisor(s), including the Leasing and Portfolio Directors, and the assigned Zone Manager and reach agreement on the courses of action to take, (realizing that there should be multiple courses of action being taken simultaneously).

- If the recommendation includes pursuing private sector tenants via subleasing or assignment, work with the Zone Manager to set a meeting with the appropriate PBS Portfolio and Disposal contacts to start the process.

c. The Space Reduction Process Flow Chart




SPACE RELINQUISHMENT PROCESS FLOWCHART
PI(Disposal)
CD Portfolio
Region
NOL/Zonal
Coordinate development of solicitation package.
Select outside broker, work with broker to sublease/assign space
Property appears on report of excess.
ROE completed by region with support of SME
1: Disposal/Assignment
Work with agency(s)
Escalation if necessary
Continuous tracking and reporting
2: Backfill
3: Sublet
Region coordinates with Subleasing.
See prev. page
Meet with Lessor to assess opportunity for buyout.
Receptive
Complete buyout analysis and memo SME/R
Region executes buy out.
4: Buy Out
Complex
ZM: Review all strategies and implement 1 OR more concurrently:
Assignment
Backfill
Sublease
Buy out
Strategic hold.
ZM Review
SDRT
Not receptive
AC approves buyout
Place on approved buyout list for OCFO
Track & collect data after conclusion and report
5: Strategic hold.
Continuous tracking and reporting
End

d. Looking for Backfill Tenants and Sublease/Assignment Opportunities

The Lease Contracting Officer must investigate the possibilities of other client agencies backfilling the space and examine the lease, including the General Clauses, with regard to the Government's right to sublet the space or assign the lease to private-sector tenants. Then, the Lease Contracting Officer must use the Space Relinquishment Decision Tool to help determine whether backfill or sublet/assignment will reduce the Government's financial exposure to paying rent for the vacant space. The Lease Contracting Officer must coordinate backfill and sublease/assignment efforts with the asset manager, the region's Office of Leasing Zone Manager, the Office of Real Property Utilization and Disposal (RPUD), Regional Counsel, and the Office of Client Solutions/Service Delivery Excellence.

As mentioned earlier, in coordination with Regional Portfolio Management ("PT"), Leasing Specialists and PT must contact either RPUD or Portfolio Management Analysis (PTAC) in the Office of Portfolio Management (Central Office) for assistance in subleasing/assigning the leased space to non-Federal tenants. The RPUD program manager maintains a list of regional program points of contact, which is available on the Office of Real Property Utilization and Disposal's website (www.disposal.gsa.gov). Before the commencement of any effort to market the space for sublease or assignment, the leasing specialist must confirm that the lease contract, (generally Clause #1 in the General Clauses: Form 3715B), will allow for the Government to sublet or assign and under what conditions. If the subletting and assignment General Clause necessitates that discussions must be had with the lessor (e.g., to obtain lessor's consent), this could also be an opportunity to discuss other potential issues such as extending the term for a possible subtenant and a TI allowance for a subtenant.

If a determination is made to pursue sublease/assignment, the Leasing Specialist must work with regional PT to complete a Standard Form 118, Report of Excess, which will provide the RPUD Program Office with information they need to pursue subleasing/assigning the space and comply with real property disposal policy.

The RPUD Program Office maintains Blanket Purchase Agreement (BPA) contracts with private sector real estate brokerage firms for Real Property Sales and Support Services (RPSSS) that can assist in securing private-sector sub-tenants and assignees. The RPUD Program Office website contains a list of these RPSSS contracts.

It should be noted that a sublease action can often "morph" into a buyout. A previously unwilling lessor may suddenly be agreeable to terminate PBS' lease for little or no cost once a sublet tenant is identified by PBS, especially if additional term is required from the lessor to complete the sublease or assignment.

As distinguished from backfills, space to be sublet or assigned should be offered "as is". However, when impractical, (e.g., "as is" space is not competitive with comparable space in the local market), and is judged by the LCO, in consultation Portfolio Management, to be in the Government's interest, Government funds - subject to availability - *may* be used for minor refurbishing, (such as carpet cleaning or removal, and repainting), or alterations to sublet or assign the space. However, on subleases or assignments not being done on as "as is", PBS *strongly* prefers to provide free rent (on the sublease) or a discounted price (on the assignment) rather than provide TI or a TI allowance. PBS' lessor may be a source of TI funding in sublease or assignment situations.

For backfills by Government agencies, per PDG Section 2.5.3 the full TI allowance to provide functional space *may* be provided subject to lessor or PBS availability of funds. This cost may be included in the annual rent over the term of the OA. Otherwise, alterations for the sole benefit of a Government backfill tenant must be paid for by the tenant through a Reimbursable Work

Authorization (RWA). The replacement Government agency tenant should have PBS construct the alterations (if the Lessor concurs) and pay for them using an RWA. In limited circumstances, after consultation with Regional Counsel, an exception may be possible for the Government agency tenant to retain its own construction management company; however, all construction drawings and completed alterations must be approved by PBS for compliance with the lease provisions. For instructions on the preparation of an RWA and the RWA payment information to provide the tenant, see the RWA National Policy Document on the Reimbursable Services page on PBS Insite

It is preferable to have lessors perform the work because the lessor offers the lowest risk option for performing alterations due to their knowledge of their buildings and systems. Using an outside vendor could result in liability to the Government as a result of any damage or poor workmanship on the part of that vendor. The Office of Regional Counsel should be consulted to address the potential liability when procuring alterations from a source other than the Lessor.

If the space is being subleased (rather than assigned), the lease and the sublease will have to be administered. In this situation, the necessary paperwork must be completed to collect the re-occurring sublet income. The underlying existing lease will continue to be paid monthly, and the Field Office will have to continue to administer the lease as well as any sublease.

5. The Space Relinquishment Decision Tool

The Leasing Specialist must use the Space Relinquishment Decision Tool (“SRDT”) to estimate financial outcomes of various courses of action, unless the proposed buyout/termination is either at no cost to the Government, (it does not require the use of any appropriated funds), or there is no identifiable possibility of backfilling or subletting/assignment (generally because of insufficient remaining leasing term for subletting/assignment) of the space. The Leasing Specialist must also prepare a summary of the situation including the results of the analysis tool and their recommendation, and share their summary with regional management. Circumstances such as high dollar value or political sensitivity may require elevation for review at higher levels within the regional office and Central Office. The regional Leasing Director and Assistant Commissioner for the National Office of Leasing must review and approve buyouts before finalizing buyout negotiations with the lessor.

a. Overview

The Space Relinquishment Decision Tool is a spreadsheet with accompanying instructions and should be used when an agency has provided written notice of their intent to release space or made it known the written notice is imminent. The purpose of the tool is to give decision-makers an analytical basis for financial decisions whether it is in the best interest of the Government to sublease/assign or backfill the vacant space, to buyout the lease, or to continue the monthly payments (less adjustment for vacant premises) until lease expiration, (a “Strategic Hold”). There may also be significant non-financial factors that can impact this decision as well.

The tool analyzes one lease at a time. It relies on factual information from the lease and OA input by the user, and user-generated estimates about market rents, vacancy downtime, retrofit costs and discount rates. For the departing agency, it calculates their upfront costs and net savings (cost avoidance) to relinquish the space. For PBS, it calculates the rent exposure, a range of projected financial outcomes for backfill or sublease/assignment, and calculates buyout targets. This enables a comparison of the estimated net income or net loss from a backfill or sublease versus a buyout. The space relinquishment decision tool is designed to show which course of action is estimated to have the lowest overall cost or highest overall net income to the government.

The Space Relinquishment Decision Tool Template and Instructions can be downloaded from the Office of Leasing Google Site. The Google Site also lists the regional subject matter experts (SMEs) trained to use the tool and assist users. The intended audience for the tool includes but is not limited to Lease Contracting Officers (LCOs), Leasing Specialists, Asset Managers, Appraisers and Customer Account Managers, with support as needed from space planning, construction cost estimating and other professionals.

It is the responsibility of the user, not the SRDT subject matter expert, to gather the lease and OA information and market data (rental rates, vacancy trends, tenant improvement (TI) costs, etc.) for input into the tool. The user must utilize current market data information from Bullseye reports, if available, for the market area. If no Bullseye reports are available for the market, the user must obtain any available market data from sources such as CoStar, LoopNet, REIS, and local brokers and landlords. The SME’s role is to walk the user through the tool and help them understand the dashboard results.

b. Calculating Costs and Projecting Outcomes

Based on users' inputs, the Space Relinquishment Decision tool will calculate the following:

(Note that the costs for space planning/programming to make the space marketable and move costs are estimated by the Tool's user; the user may require assistance from other business lines to create these cost estimates).

- The financial impact for the departing agency including:
  - Rent (including parking cost, if applicable) from the date of written notice until relinquishment
  - Upfront cost to relinquish space, including unamortized TI, and any unearned concessions from free rent or commission credits
  - The agency's total obligation if they remain in the space
  - The savings or cost avoidance resulting from the relinquishment

- The financial impact on PBS including:
  - The amount of funds PBS will receive from the agency
  - The amount of future rent PBS is obligated to pay (potential rent exposure)
  - The estimated net income or expense from a sublease/assignment or backfill
  - Buyout target range for negotiations
  - A comparison of projected financial outcomes for backfill/sublease/assignment versus buyout

The range of buyout targets is to help the Lease Contracting Officer set negotiation objectives. The concept of a fair and reasonable buyout amount is one that makes up the estimated difference between the value of the government's remaining rent and the value the lessor can achieve without the government's tenancy. The baseline assumption is the lessor will re-rent the space to a replacement tenant at market rates after incurring downtime, retrofit and marketing costs. In situations where PBS has very favorable lease terms relative to market, the tool may indicate there is greater value to the lessor if the Government vacates the space, allowing the lessor to re-rent the space for a higher rent. In this case the leasing specialist may negotiate to terminate at no cost to PBS, or even negotiate to have the lessor pay PBS to terminate the lease. An example would be where PBS has a below market rental rate, well-configured space in good condition, and adequate length of lease term remaining. This would also generally be an excellent opportunity to assign or sublease at a rental rate in excessive of the Government's rate to get the best possible outcome for the Government.

c. Summarizing the Analysis and Recommendation

The LCO must prepare a summary of their analysis and recommendation, including a copy of the dashboard results from the tool, and share it with their supervisor. If the recommendation is to buy out the lease, it must be forwarded to region's Zone Manager in the Center for Lease Project Delivery for concurrence before initiating buyout negotiations with the lessor. Once a buyout amount is agreed upon between PBS and the lessor, the supporting analysis must be signed by the Leasing Director and the Assistant Commissioner for the Office of Leasing. The Buyout Memo form can be found on the Forms tab of the Office of Leasing Google Site.

The following documents that support a Lease Amendment to buyout must be filed in Tab 7 of the Lease File Contract:

- Buyout Memo

- Justification for the buyout target, if applicable
- Determination from Portfolio and /or other sources that no further need exists for space
- Notification to lessor of Government's desire to terminate, if applicable, including action under the Adjustment for Vacated Premises clause or negotiations to reduce services
- Lessor's offer(s) and counteroffers
- Condition Survey report, if appropriate
- Legal consultation, if appropriate

NOTE: Leasing Specialists must place documents related to unsuccessful lease buyout efforts in the “Other” section of the Tab 10 of the Lease File Contract.

d. Buyouts

Before proceeding with a buyout, the Lease Contracting Officer (LCO) or his/her designee shall formally request that GSA be released of its lease obligations for underutilized vacant space and document this communication in the lease file and/or any future lease buyout memo.

- For buyouts, the region must first obtain concurrence from the Zone Manager in the Office of Leasing, Center for Lease Project Delivery on any financial figures to be used during negotiations. Use the aforementioned “Space Relinquishment Decision Tool (SRDT)” template provided on the Office of Leasing Google Site. After running the tool, refine the preliminary results with the assigned Zone Manager from the National Office of Leasing, Center for Lease Project Delivery, who concurs on the buyout pricing to offer the lessor.

- Upon reaching an acceptable buyout price with the lessor prepare a formal buyout approval request (including funding) and include a narrative of the buyout strategy using the “Buyout Memo” template found on the Forms tab of the Office of Leasing Google Site.

  Once the Zone Manager from the National Office of Leasing’s Center for Lease Project Delivery team has concurred, the narrative buyout strategy must be signed by the region’s Leasing Director, the Assistant Commissioner for the Office of Leasing, and the PBS Budget Division Director before funds are allocated by the OCFO (Office of the Chief Financial Officer). An example of a completed Buyout Memo is attached to this LDG chapter as Attachment #1.

- Proceed with the agreed-upon courses of action with continuous tracking and reporting to the Zone Manager. Upon finalization in writing with the lessor, report the action and results to the assigned Zone Manager so that the dollar savings of the successful mitigation strategy can be tracked. (See Section 4 of this chapter for information and method to report).

e. Subleasing and Assignment (Disposal)

The Real Property Utilization and Disposal (RPUD) group and Portfolio Management’s Outleasing (PTAC) group can both dispose of leaseholds, but they use differing avenues for subleasing or assigning to the private sector, (or other entities such as state or local governments). The term “outleasing” literally refers to temporary non-Federal Government use of Federally owned (not leased) real estate. However, both PBS business lines have authority to sublease and assign vacant leased space that has been excessed. Apart from RPUD’s disposal fee, the principal difference between using RPUD and PTAC to sublease or assign space is the speed and availability of funds for broker commissions, TI, and other costs of subleasing or assigning.

RPUD is able to tap their “190 Account”, a revolving fund that allows immediate contracting with a broker vendor for listing the space and incurring a potential commission liability whereas PTAC must locate and identify funds for a prospective commission or other costs prior to listing the space with a broker vendor. Note that a “broker vendor” as described here is not referring to the zonal broker contracts listed under PBS’ GLS contract.

The result of this distinction between RPUD (Disposal) and PTAC is that Disposal will typically be the better source for subleasing or assigning the space to the private sector, principally because of the lack of delay in identifying funds for broker commissions. Both sublease/assignment methods require Reports of Excess (Standard Form 118 - short form) be completed in order to declare the lease as excess property to the Government. Since RPUD’s broker vendors are already contracted for under a Real Property Sales and Support Services (RPSSS) Blanket Purchase Agreement that was awarded in November 2013, only a statement of work must be prepared for each lease in order to get a determination of vendor interest via bidding of the commission rate.

The Real Property Utilization and Disposal group, in the RPSSS statement of work, should provide for the possible withdrawal of the vacant space from the RPSSS without penalty for the purpose of backfilling by another Government agency. This allows for simultaneously using the RPSSS to sublease or assign while also attempting to backfill. By pursuing both avenues simultaneously, the leasing specialist can position the Government to execute the best outcome for the Government.

f. Documentation

PBS leasing specialists must include the documentation described in Part 2, Section 5(c) of this LDG chapter in both G-REX and in Tab 7 of the Lease File Contract.

g. Design and Lease Commencement

See LDG Chapter 2, New or Replacing Lease, or Chapter 8, Alterations in Leased Space, for details on design and configuration of occupied space, and details on lease commencement and closeout activities.

If GSA excess furniture services are desired, the RAM can assist with arrangements.

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6. Reporting the Outcome and Results

After the buyout, backfill or sublease/assignment action is completed, the LCO will report the results to the National Office of Leasing Zone Manager. If the Space Relinquishment Decision Tool was used, the Results Report Tab can be used. This information is used to report program results to our internal and external stakeholders. If in doubt where to report, the LCO shall initiate contact with the Director, Program Support Services, National Office of Leasing, or email AskPR@gsa.gov and include “Space Relinquishment” in the subject line.

For a buyout, the PBS National Office of Leasing needs to know what the Government’s potential financial exposure was, how much was spent to get relief and the net relief realized. Therefore, the LCO must report the following information to the National Office of Leasing; all of which can be found on the Results Report Tab:

- The date of written notice from the agency
- The actual relinquishment date by the agency (date space was turned back to PBS in marketable condition and the agency’s obligation to pay rent stopped)
- The amount of any funds received from the departing agency upon relinquishment, including unamortized TI, unearned concessions, and funds to make the space marketable
- The amount of rent PBS was due to pay the lessor from the relinquishment date until the lease expiration or early termination right date
- The amount of any funds PBS paid to third parties for alterations, restoration, studies, etc.
- The amount of rent PBS paid to the lessor after the agency stopped paying rent to PBS until the effective date of the lease termination
- The buyout amount paid to the lessor
- The rent relief resulting from the buyout (the amount of rent PBS would have paid from the effective lease termination date through the original lease expiration date or early termination right date if there were no buyout)

Similarly, for a backfill or sublease/assignment, PBS National Office of Leasing needs to know what the Government’s potential financial exposure was, how much was spent to get relief and the net relief realized. Therefore, the LCO must report the following information to the National Office of Leasing which can be found on the Results Report Tab in the Space Relinquishment Decision Tool:

- The date of written notice from the agency
- The actual relinquishment date by the agency (date space was turned back to PBS in marketable condition and the agency’s obligation to pay rent stopped)
- The amount of any funds received from the departing agency other than rent, for items such as unamortized TI, unearned concessions, or to make the space marketable
- The amount of rent PBS was due to pay the lessor from the relinquishment date until the lease expiration or early termination right date
- The amount of any funds PBS paid to third parties for alterations, restorations, studies, leasing commissions, etc.
- The amount of any funds paid to the lessor to prepare the space for the backfill or sublease/assignment tenancy
- The amount of any upfront lump sum payments to PBS from the subtenant or assignee, such as for reimbursement for tenant improvements
- The scheduled rent from the backfill or sublease tenant

- The net rent relief (how much rent we are obligated to pay from the relinquishment date through the expiration date, plus how much we spent to get relief, minus the rent and other receipts we received and expect to receive)

There may occasionally be additional information needed by the National Office of Leasing depending on the circumstances, in which case the office will contact the LCO.

For questions or comments concerning space relinquishments, you may contact your Zone Manager at the National Office of Leasing by email at AskPR@gsa.gov and include "Space Relinquishment" in the subject line.

ATTACHMENT 1

(EXAMPLE OF BUYOUT MEMO APPROVAL REQUEST)

GSA Pacific Rim Region

MEMORANDUM FOR THE FILE
BUYOUT APPROVAL

U.S. Geological Survey (USGS)
City, State (Warehouse)

Regional GSA Contacts
Leasing Specialist: ____
Lease Contracting Officer: ____________________________________
Area Manager: ____
Branch Chief: ____
Director of Leasing: ____

LEASE VITAL STATISTICS

Lease Number: GS-00X-00000 (LXX00000)
Effective Date/Expiration Date: __/__/____; __/__/____
Firm Term Expiration Date: __/__/_____
USGS RSF/ABOA: ________/________
Rental Rate RSF/ABOA: $00.00 / $00.00 (after $_.__/ABOA SF adj. for vacant premises)
[Agency: ______] OA: XX000000 – Cancelable (cancelation notice received—agency will vacate by __/__/____)
Months from agency vacating (termination of OA) until Firm Term Expiration: __
Monthly Rent for Vacant Space: $____________ (after adjustment for vacant space)
Total Rent Exposure until Firm Term Expiration: $_________________
Lessor: ____
Date of Contact with Lessor Requesting Early Termination:__________________
Lessor's Contact Information: ____

____

BACKGROUND

This lease is for [general purpose space, warehouse, etc.] in [city], [state] for the [agency]. [Agency] occupies _______ RSF / _______ ABOA SF. On __/__/____, [agency] submitted their notice of intent to vacate this space and the space will be released on __/__/____. The agency will be moving the equipment housed in this facility to _____________________________________in [city], [state].

TIMELINE OF EVENTS

March 2015 – [Agency] submits notice of intent to vacate their space (effective __/__/____).
April 2015 – Contacted Lessor. Lessor unwilling to terminate early but will consider a buyout offer—consults with financial staff and is willing to reduce the 15 month rent by 2 months.
April 2015 – May 2015 – Data for buyout gathered.
June 2015 – Real Property Utilization and Disposal (RPUD) consulted for possible sublease alternative
June 2015 – Further negotiations with Lessor lead to buyout proposal to reduce the 15 month rent by 5 months to 10 months.
June 2015 – RPUD reviews new proposal and recommends moving ahead with buyout in lieu of sublease opportunity

ANALYSIS OF AVAILABLE ALTERNATIVES

BACKFILL

Backfill of Leased Tenants:
Per PBS READ, there are no pending or pipeline requirements for space in ______________________.

Backfill of Federal Tenants:
Per _________________________, there are no agencies which require space in ________________.

SUBLEASE

Overall Warehouse Market Conditions and Competitive Environment:

In general, the local warehouse market is relatively weak. In the ________ Cluster (per CoStar) in which this property is located there are approximately 65 warehouse properties totaling 3,870,913 square feet. There is 777,831 square feet reported available for an overall vacancy rate of 20%. The [agency] is the sole tenant in their free-standing building; the agency occupies 100% of the building. Market research shows there are 49 spaces available in the submarket of similar size to this space that would be competition to subleasing the space. The average, triple net asking rate for these spaces is approximately $15 per square foot. We estimate between 12 and 15 months to sublet the space. Contact with local brokers also confirms that many warehouse properties are listed and some warehouse properties are available that are not advertised. Many

properties are advertised with signage only, rather than posting ads on CoStar or LoopNet. REIS does not publish data on this market, and no other reliable, unbiased data source is available.

Space Relinquishment Tool Sublease Scenario Analysis:

The space relinquishment tool estimates show that if GSA were to pursue a sublease, the results would range from a Government loss of $67,078.00 to a loss of $85,828.00, with the most likely outcome at an approximate $81,203.00 loss. This is based upon an estimated 12 to 15 months for a GSA sublease to be completed, with 14 months being the most likely scenario. The time factor estimate used for the lessor to lease the space is 10 to 15 months, with 12 months being the most likely.

Real Property Utilization and Disposal Review:

_____[name]______, Real Property Utilization and Disposal (RPUD), reviewed the documents and recommended continued negotiations with the lessor, in lieu of taking on the administrative costs and risk associated with subleasing such a small warehouse space over such a short term. Upon further negotiations and an increase from a two (2) month rent reduction to a three (3), and then five (5) month rent reduction, RPUD fully supported the buyout option.

BUYOUT

GSA first approached the lessor requesting an early no-cost termination on [date]. An agreement could not be reached with the lessor on doing a no-cost termination; therefore GSA entered into buyout negotiations on [date]. [Revise if lessor agreed to a no-cost termination.]

As shown on the space relinquishment tool, GSA's estimated buyout cost for this lease ranges from $54,232.00 to $83,582.00 with the most likely outcome being approximately $68,081.00. Preliminary buyout discussions with the lessor revealed that she was only willing to discount two (2) months of rent off of the fifteen (15) month firm term liability. Further discussions with the lessor, initially were not productive, but in later discussions she agreed to a three (3) month discount, and as her final offer, a five (5) month discount. The total fifteen (15) month rent liability for the firm term (before adjustment for vacant premises) is $85,838.13. The lessor has agreed to a total buyout cost of $57,218.80, saving $28,609.40 (33%) on the lease contractual obligation.

Tenant Agency	USGS	Honolulu, HI	Most Likely	Optimistic	Pessimistic
Rent obligation from Date of Notice by Agency to Relinquishment Date (RD)			$ 22,888	$ 22,888	$ 22,888
Rent obligation from Relinquishment Date to end of firm term, **if agency doesn't relinquish**			$ 91,836	$ 91,836	$ 91,836
Upfront Cost to Tenant Agency to Relinquish Space (details below on this sheet)			$ 2,500	$ 500	$ 4,000
Rent obligation after Partial Relinquishment			$ -	$ -	$ -
Total cost to Tenant Agency (rent until relinquishment + upfront relinquishment costs)			$ 25,388	$ 23,388	$ 26,888
Cost Avoidance to Tenant Agency after Upfront Costs			**$ 89,336**	**$ 91,336**	**$ 87,836**

GSA		Most Likely		Optimistic		Pessimistic	
		Full Relinquish't & Backfill or Outlease	Full Relinquish't & Buyout	Full Relinquish't & Backfill or Outlease	Full Relinquish't & Buyout	Full Relinquish't & Backfill or Outlease	Full Relinquish't & Buyout
Rent obligation from Relinquishment Date to end of Firm Term		$ 85,828	$ 85,828	$ 85,828	$ 85,828	$ 85,828	$ 85,828
Recapture of Funds from Tenant Agency		$ -	$ -	$ -	$ -	$ -	$ -
Rent from Tenant Agency through end of firm term, if partial relinquishment		n/a	n/a	n/a	n/a	n/a	n/a
Rent "deficit" before any backfill, outlease or buyout		$ 85,828	$ 85,828	$ 85,828	$ 85,828	$ 85,828	$ 85,828
Upfront Cost to GSA for backfill / outlease	'Pessimistic' backfill/outlease is a loser	$ 1,000	n/a	$ -	n/a	$ -	n/a
Income from backfill / outlease		$ 5,625	n/a	$ 18,750	n/a	$ -	n/a
Profit (loss) from backfill / outlease		$ 4,625	n/a	$ 18,750	n/a	$ -	n/a
Net Income (Cost) to GSA to keep space and backfill or outlease		($81,203)	n/a	($67,078)	n/a	($85,828)	n/a
Discount rate		n/a	5%	n/a	6%	n/a	4%
"PVG" (present value of government lease)		n/a	$ 81,862	n/a	$ 81,318	n/a	$ 82,410
- "M" Mitigating Factors		n/a	$ 14,953	n/a	$ 28,258	n/a	$ -
= **"B" Buyout target** (see Data Input sheet and Instructions re BUYOUT)		n/a	$ 68,081	n/a	$ 54,232	n/a	$ 83,582
Net Income (Cost) to GSA to Buyout (= "B" buyout target minus recaptured funds from tenant)			($68,081)	n/a	($54,232)	n/a	($83,582)

"PVG" is the Present Value of the Government's remaining rent obligation. It is the discounted rent for shell, BSAC and operating costs (less adjustment for vacant premises) plus remaining balance of any unamortized TI.

"M" is for Mitigating Factors. It includes the discounted estimated rent to Lessor from re-leasing the space to another tenant, considering vacancy and pro-rated marketing and buildout costs. Other mitigating factors may also apply and should be considered. See instructions document for additional information and guidance.

"B" Buyout Target = PVG minus Mitigating factors. Consider this amount in setting your negotiation objectives.

RECOMMENDED SOLUTION

The Government has examined all available opportunities for mitigating the cost of this vacancy through backfill and outleasing. The analysis by the Lease Contracting Officer, demonstrates that the Government cannot reasonably expect to recover any significant costs through these alternatives.

The most likely scenario for a government sublease indicates an estimated total loss of $81,203.00. This is a $23,984.20 greater loss than the current buyout offered by the Lessor ($57,218.80). The scenario analysis eliminates a government sublease as a viable alternative. In practice, the cost for additional administrative processing by GSA to manage the sublease and also risk and liability issues must also be considered, and a value should be established for this and factored into the analysis.

The most likely scenario for a government buyout indicates an estimated total loss of $68,081.00. This is $10,862.20 greater loss than the current buyout offer from the Lessor ($57,218.80). The current buyout offer is approximately 16% less (smaller loss) than the most likely buyout scenario from the analysis. In this case, the offered buyout is clearly a fair and reasonable cost.

It is in the Government's best interest to pursue a buyout with the owner. The Lease Contracting Officer is requesting approval to finalize buyout negotiations with an anticipated cost to the Government of $57,218.80.

REQUEST FOR APPROVAL TO PROCEED WITH BUYOUT NEGOTIATIONS

Prepared By:

John Doe
Lease Contracting Officer

Date

Concur:

Jane Smith

Date

Funds Available:

PBS Budget Director

Date

Approve:

Assistant Commissioner
Office of Leasing -PR

Date