

## CHAPTER 11:

# Prospectus-Level Leases

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## 1. Introduction

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The U.S. General Services Administration's ("GSA's") larger leases (those above the designated cost threshold based upon net annual rent as further detailed in this chapter) are classified as prospectus-level leases. GSA must prepare and submit a "prospectus" to GSA's congressional oversight committees: the Committee on Environment and Public Works of the U.S. Senate and the Committee on Transportation and Infrastructure of the U.S. House of Representatives. The prospectus sets forth various details concerning the proposed lease request, including among other things, square footage, length of term and rent. Thus, pre-acquisition time frames are longer for prospectus-level leases; significant approvals are required at various stages; leases are subject to restrictions related to negotiated terms; and there is involvement of a broader team including regional and national officials from the GSA Public Buildings Service (PBS) Office of Portfolio Management and Customer Engagement ("PT"), and the PBS Office of Leasing ("OL").

This chapter of the Leasing Desk Guide ("LDG"), issued jointly by PT & OL, provides guidance relating to the laws, regulations, and policies impacting GSA's Capital Investment and Leasing Program (CILP) for prospectus level leases and supplements [Prospectus Level Lease Guidance](#) issued August 2020 by the Capital Assessment and Allocation Division (PTB) within PT. This chapter includes information on GSA's statutory authorities, the method for calculating whether a lease exceeds the prospectus threshold, definitions of key terms, and several fundamentals of lease prospectuses and related matters. Information on prospectus-level alterations in leased space is also provided.

All members of a project team involved in delivering a prospectus-level lease must have knowledge of these fundamentals and requirements.

PTB is available to consult on project-specific issues and questions, as is the OL Center for Lease Project Management ("PRAC").

## 2. Statutory Authority

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GSA is authorized to acquire leased space from the private sector if vacant Government owned or existing leased space is not available to house Federal agencies, as set forth in 41 CFR § 102-73.45 and section 1-105 of Executive Order 12072, Section 1-105.

Projects over the prospectus threshold must be consistent with the terms of the adopted resolutions, the 20-year statutory maximum lease authority, and the lease scoring requirements as defined in the Office of Management and Budget ("OMB") Circular A-11, Appendix B. See PT's *Lease Scoring Guidance* and the *Leasing Desk Guide Appendix F, Determination of Operating or Capital Lease Classification for Budget Scoring* for scoring information. Occasionally, the Senate and House resolutions have slight inconsistencies. In such cases, it is GSA's policy to conform to the most restrictive provision in the adopted resolutions. If there are conflicting resolutions, the project team must obtain instructions from PTB before continuing with the lease procurement.

GSA's 20-year maximum lease authority is not applicable to additional term in options that have yet to be exercised. Thus, subject to issues with scoring as a capital lease, it is permissible to procure a lease (both under-prospectus and prospectus-level) for a firm term of 20 years with options that extend the term beyond 20 years. These options may only be exercised at a later



date when the remaining lease term plus the option term being exercised will not exceed 20 years. If the net annual rent for the option period exceeds the prospectus threshold, as a matter of PBS policy, resolutions must be received before executing the options, unless the options were already previously approved by the Committees, were evaluated in the pricing analysis and award determination, and considered in the scoring analysis.

### 3. Prospectus Requirement

A lease action requires a prospectus when the total space requirements included in the lease agreement will result in a net annual rent<sup>1</sup> (total annual rent minus operating expenses paid directly to the lessor) that equals or exceeds the current prospectus threshold. The prospectus threshold applied to a particular lease procurement is the prospectus threshold in effect during the **fiscal year of the lease award**, not the fiscal year when the lease term begins or the fiscal year when the prospectus request is submitted to OMB and the Committees. The threshold amount sets the minimum net annual rent for which a prospectus is required.

At the Administrator of GSA's discretion, and with notification to the Committee on Environment and Public Works of the U.S. Senate and the Committee on Transportation and Infrastructure of the U.S. House of Representatives, the dollar amount of the threshold may be periodically adjusted. It is GSA's practice to also review such adjustments with OMB. Because of these periodic adjustments, it is always wise to confirm the current threshold amount as it could change at any time, although past practice, as demonstrated in the table below, shows infrequent adjustments.

The following table shows prospectus thresholds for fiscal years 2019 through 2022. Current information can be found online at the following [web site](#).

Prospectus threshold for:	Fiscal Year of Lease Award <sup>2</sup>			
	FY 2022	FY 2021	FY 2020	FY 2019
Construction, repair and alteration, lease projects	\$3,375,000	\$3,095,000	\$3,095,000	\$3,095,000
Alterations in leased space	\$1,687,000	\$1,547,000	\$1,547,000	\$1,547,000

**Any proposed lease action that results in an estimated net annual rent that falls within 10 percent of the annual prospectus threshold warrants special attention. Before GSA executes any lease action that falls within 10 percent of the threshold, regional project teams must obtain approval from PT.**

Caution: Seeking prospectus approval to "rescue" a procurement that exceeds the threshold takes more time and explanation than obtaining approval in advance. All prospectuses must be

<sup>1</sup> Net annual rent – to determine net annual rent, subtract only operating expenses paid directly to the lessor from the total annual rent due under the Lease Agreement. See subparagraph 3.a, Determining Whether a Prospectus Is Required.

<sup>2</sup> These thresholds are applicable by fiscal year ("FY"), not by the program year of submission.



reviewed by GSA Central Office, cleared by OMB, and approved by the Committees. The Committees' review schedule is not completely predictable, and business meetings are rarely held to address emergency submittals. Failure to plan on GSA's part is not an emergency requiring Committee action. Regions must submit projects to PT based on the agreed upon five-year planning process. Some submittals may be 24 months in advance of the need while others may be 36-48 months in advance. The typical timeline for a New or Replacing prospectus project is at least 4 to 5 years if accounting for design and construction of a new facility. This is particularly prevalent in medical, laboratory, and law enforcement facilities with Interagency Security Committee ("ISC") security levels 3 and higher.

Additionally, section 880 of the John S. McCain National Defense Authorization Act ("NDAA") for Fiscal Year (FY) 2019 (Pub. L. 115-232, 132 Stat. 1636, 1909-10) limits the use of Lowest Price Technically Acceptable ("LPTA") selection criteria in circumstances that would deny the Government the benefits of cost and technical tradeoffs. Thus, as with under-prospectus lease procurements, any prospectus-level lease procurement not utilizing the Automated Advanced Acquisition Program ("AAAP") procurement method must utilize source selection ("best value") unless a written justification has been provided for LPTA. Additionally, all prospectus-level Lease Construction projects, must be procured using source selection rather than LPTA.

### a. Determining Whether a Prospectus Is Required

A lease prospectus is required when the total space requirements of an agency (or several agencies) or buildout needs for functional office space will result in a lease with a net annual rent equaling or exceeding the prospectus threshold that applies to the fiscal year of lease award.

Net annual rent is calculated by subtracting operating expenses paid directly to the lessor from the total annual rent due under the lease agreement. Annual rent under the terms of the lease consists of two components: base rent and operating expenses.

- Base rent is also referred to as "net rent" – the amount of consideration for use of the land and buildings (or portions of the buildings). The following items are included in base rent:
  - Shell rent
  - Real Estate Taxes in the amount of the tax base
  - Amortized Tenant Improvements (TI) and Building Specific Amortized Capital (BSAC)
  - The amortized cost of GSA's lump sum payment (using GSA funds) should GSA elect to reduce the rent by buying down the TI or BSAC
  - Parking
- Operating expenses can also be described as "costs for services" such as heating and cooling, utilities, and janitorial services.

Initial tenant space alterations funded by a client agency through a reimbursable work authorization (RWA) and PBS fees are not included in the prospectus calculation.<sup>3</sup>

<sup>3</sup> The requirement to submit a prospectus for a project generally only relates to PBS requests for appropriations to the Federal Buildings Fund and not to customers. See 40 U.S.C. § 3307 and Appendix D, § D.11. Client agency funding that GSA intends to accept and use is legally available for the intended

### Net vs. Operating Rent to Calculate Prospectus Threshold

#### Net Rent

- Shell Rent, including ownership costs such as real estate taxes and insurance
- Amortization of Tenant Improvement Allowance (TIA)
- Amortization of BSAC
- Parking Rent
- Antenna and other space rents
- Amortized cost of GSA's Lump Sum payments (funded by GSA)

#### Operating Rent

- Operating costs such as utilities, cleaning, janitorial, heating, and common area maintenance.

Additionally, should the contemplated lease call for a stepped rent or a change in the base rent, GSA must calculate a "levelized" net annual rent to determine whether a prospectus is needed. This may require anticipating stepped rent in the initial planning analysis in determining whether a prospectus is needed. To levelize the rent, regional PT, in consultation with the Leasing Specialist, must:

1. Calculate the present value of the stream of annual net rental payments (annual rent minus operating expenses) using the OMB-provided discount rate consistent with the lease term,<sup>4</sup> and
2. Amortize the resulting present value over the term of the lease using the same discount rate used to calculate the present value stream. This will yield an annual payment that is the same

purpose of the RWA work, appropriations available to agencies to fund necessary expenses, including maintenance or operating expenses, also are expressly made available by Congress to pay GSA for expenses of renovating and altering buildings and facilities under GSA's control, even if the funds are in an amount equal to or greater than GSA's statutory prospectus threshold. This authorization is set forth annually in the appropriations act. For example, section 705 of title VII of division E – Financial Services and General Government Appropriations Act 2022, of the Consolidated Appropriations Act, 2022, Public Law No. 117-103 (March 15, 2022), provides:

Appropriations available to any department or agency during the current fiscal year for necessary expenses, including maintenance or operating expenses, shall also be available for payment to the General Services Administration for charges for space and services and those expenses of renovation and alteration of buildings and facilities which constitute public improvements performed in accordance with the Public Buildings Act of 1959 (73 Stat. 479), the Public Buildings Amendments of 1972 (86 Stat. 216), or other applicable law.

Based on the above-quoted provision (and assuming the same or a substantially similar provision continues to appear in future annual appropriations acts), client agency appropriations for necessary expenses, including operation and maintenance funding, would be available to fund repair and alteration expenses incurred by GSA in connection with reimbursable work in buildings and facilities under GSA's control. Accordingly, it is not necessary for a client agency to certify that its RWA funds for these purposes are exempt from the requirements of 40 U.S.C. § 3307. (GSA Public Buildings Service [National Policy Manual](#), [Reimbursable Work Authorizations](#) effective August 1, 2020)

<sup>4</sup> OMB specifies annually, typically at the beginning of the calendar year, which discount rate to apply to levelized calculations. Discount rates can be found in OMB Circular A-94, Appendix C, the most recent version of which is on the [OMB Website](#).

for each year over the entire term of the lease—a levelized net rent. Note that levelized rent includes commission credits and free rent periods.

A simplified spreadsheet for levelizing rent is available online at PT's Website [page](#).

If the sum of the net rent components times the rentable square feet in the proposed lease equals, or exceeds, the annual prospectus threshold, a prospectus must be submitted. The prospectus request should reflect the cost of a fully serviced lease so if the government pays directly for any services or utilities, add these costs back in when calculating the Proposed Total Annual Cost and Maximum Rental Rate/Rentable Square Feet (RSF).

For interim prospectus-level lease actions see section 11 of this LDG chapter for further information. (Interim prospectus-level lease actions are typically authorized as part of the longer-term action and can be acted upon once the prospectus for the associated longer-term action has been submitted to the congressional committees).

## b. When to Evaluate and Reevaluate Whether a Prospectus is Required

The project team must evaluate and reevaluate the proposed lease action against the prospectus threshold at several points in the procurement process:

1. An initial determination is made as soon as client agency requirements or a draft Client Project Agreement (“CPA”) are received. This should be at least 18 months prior to submission of the CILP.
2. If the initial determination is that the procurement is below the prospectus threshold, that determination should be reevaluated whenever there are significant changes in real estate market conditions or client agency requirements that could alter the initial determination. Check for these conditions several times throughout the procurement process.
3. Before signing and awarding a lease, always verify that all terms remain within the approved prospectus limits, including the proposed net annual rent.
4. Before signing and awarding a lease amendment, always verify that all terms remain within the approved prospectus limits. Any Lease Amendment that would modify the cost per square foot, total annual cost, lease term, (including the exercise of an existing renewal option<sup>5</sup>), amount of leased space, or any other material change to the original lease agreement, requires a reevaluation of the lease and consultation with regional PT to confirm that:
  - The existing lease, initially below prospectus level, remains below the prospectus threshold.
  - Any modification, regardless of whether the original leasing action is above or below the

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<sup>5</sup> Unless the option was evaluated in the original lease award's price analysis and was also a part of the original Congressional prospectus approval. See section 8 of this LDG chapter for further information on renewal options.



prospectus threshold, does not introduce a scoring problem;<sup>6</sup> and

- The existing lease, if initially above prospectus level, is still consistent with the terms of the prospectus and the Committees' resolutions.

If a Lease Amendment pushes a below-prospectus lease above the prospectus threshold or if a Lease Amendment causes a prospectus-level lease to exceed the parameters of the Committees' resolutions, the regional project team must consult with PT before taking any further action. GSA may need to seek approval of an amended prospectus.

If a modification to the lease is initiated before the client agency begins occupancy, include any additional costs and change in square footage in the evaluation of the applicable prospectus threshold and confirm consistency with approved prospectus parameters. If a modification to the lease is initiated after occupancy, the Lease Contracting Officer ("LCO") and regional PT must consider the materiality and time frames involved before executing the Lease Amendment. The key to determining the next step is to define whether the changes to the lease were foreseeable before occupancy or were truly independent modifications to the lease raised by the client agency after occupancy. If the changes were foreseeable before occupancy, then a new prospectus would be necessary. If the changes were due to unforeseen circumstances, then a new prospectus may not be necessary. For example, if immediately after occupancy an agency were to receive a new mission authorization that requires additional personnel and expansion space is required, a new prospectus may not be necessary. The LCO must document the lease file and consult with PT before executing any modification to the lease and follow competition requirements in procuring the additional space. See LDG chapter 6, Change in Square Footage - Expansion and Reduction, for guidance.

### c. When to Submit a Prospectus

Once it has been determined that a prospectus is necessary, submitting the project with sufficient lead time is very important. Given that certain project scenarios warrant a longer lead time for preparing, submitting, and executing complex lease proposals and the agency objectives of minimizing the risk of holdovers and extensions, PT has developed a five-year planning process for prospectus level leases. Several times a year, the list of prospectus level leases over a five-year planning horizon are reviewed with each region. In those reviews, project strategy, lease expirations, the need for interim leasing approval and basic project parameters are discussed. This culminates in the region and Central Office collaboratively deciding when the project should be submitted.

Typically, new or replacing leases should be included in the cycle at least three years prior to lease expiration. Succeeding lease or extension or renewal proposals can typically be included in the cycle two years prior to expiration.

Lastly, prospectus-level lease projects are required to be managed using the Kahua project management tool. Use of this tool will assist in meeting the numerous additional milestones that prospectus-level lease projects entail.

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<sup>6</sup> See additional information on scoring under section 12, Scoring Risks.





## d. Submittal Requirements

Instructions for preparing and submitting a prospectus and the required supporting documents are provided in the annual CILP Planning Call for prospectus-level leases, released by PT. The regional project team for a proposed prospectus-level lease must first prepare a prospectus package using the supplied templates. The compilation of the package is primarily led by PT with input from OL. Also, at the prospectus package compilation stage, the project is not typically resourced with an LCO, but a Project Manager (“PM”) may have been assigned.

## e. Identify Congressional Districts and Delineated Areas in the Prospectus

In each lease prospectus, GSA must correctly identify the appropriate congressional districts affected by the proposed action. The identified district or districts must be contained in whole or in part within the delineated area specified in the prospectus narrative. If the delineated area is the central business district (CBD), for instance, then the header must include the congressional district or districts that the CBD covers.

The congressional district used for succeeding/superseding lease projects is typically the district where the project building is located, although it could extend beyond the current district .

As with under-prospectus lease procurements, the delineated area for a prospectus-level lease project may have to include the full CBD, and should also include area opportunity zones. Central Office review by the Center for Lease Project Management’s Zone Manager of a reduced delineated area should be requested early in the requirements development process to avoid any surprises or issues with the client agency.

The submitted prospectus package must include a map identifying the delineated area. The body of the prospectus must include a narrative description of the delineated area and the names of the streets marking the northern, eastern, southern, and western boundaries of the area. Use of summary information is permitted when boundary streets or highways are numerous, complex, and difficult to follow. If the delineated area is in an underdeveloped area where street names are not available, include a map that clearly identifies the delineated area and indicates nearby points of reference, such as landmarks or monuments.

When the procurement process begins, the delineated area in the Request for Lease Proposals (“RLP”) must be identical to the delineated area in the prospectus. Historically, GSA’s annual appropriations act requires that GSA’s oversight and appropriating committees be notified of any changes to the delineated area. For example, section 525 of title V of division E - Financial Services and General Government Appropriations Act, 2022, of the Consolidated Appropriations Act, 2022, Public Law No. 117-103 (March 15, 2022), states the following:

In any case in which the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate adopt a resolution granting lease authority pursuant to a prospectus transmitted to Congress by the Administrator of the General Services Administration under 40 U.S.C. 3307, the Administrator shall ensure that the delineated area of procurement is identical to the delineated area included in the prospectus for all lease agreements, except that, if the Administrator determines that the delineated area of the procurement should not be identical to the delineated area included in the prospectus, the Administrator shall provide an explanatory statement to each of such committees and the Committees on





Appropriations of the House of Representatives and the Senate before exercising any lease authority provided in the resolution.<sup>7</sup>

### f. Lifecycle Planning & Milestones

The annual CILP Planning Call for prospectus-level leases identifies the schedule for regional submission of lease prospectuses to Central Office. Note that there are two rounds of circulation to Central Office, one (unsigned) occurs prior to the packages going to OMB. The table below shows a generic time frame for lease prospectus milestones and submissions. Fiscal year dates and deadlines will appear in the annual call or be sent by the Capital Allocation Division with separate guidance to the regions. Direct any questions about the status of a lease prospectus that cannot be answered at the regional level to the Capital Allocation Division.

	Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4		
	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S
Lease Prospectuses Submitted to Central Office																								
PTAB Review																								
Transmittal to OMB																								
CO Circulation and Signature																								
Transmittal to Congress																								
Resolutions																								

Upon transmittal to Congress, GSA can advertise for the requirement

Upon receipt of matching resolutions, GSA can award the lease.

An approved prospectus takes the form of resolutions issued by the congressional committees, which include specific details on lease terms. Though the above table refers to matching approved resolutions, the Committee resolutions do not have to match to proceed with award. The requirement is that both resolutions be obtained. In the event they differ, the terms of the more stringent resolution prevails.

GSA must give OMB and its oversight Committees sufficient time to review and approve prospectus-level projects. For this reason, when working with client agencies, it is critical that regional employees not wait until the last minute to initiate and submit a prospectus. OMB and Congress will rarely act on prospectus emergencies.

On a separate track from the CILP participation and review, draft prospectuses and related advertising and RLPs must also undergo a review by OL prior to posting. This includes OL required reviews of all advertisements, including market research, expressions of interest, and amendments to advertisements. Advance review by the OL Center for Lease Project Management (prior to posting) is also required for RLPs, and a synopsis of the proposed lease award comparing the proposed award to the approved prospectus must be provided to the OL

<sup>7</sup> This language appears on an annual basis and, in any communication to Congress to modify the delineated area, you must reference the latest statutory citation.



Center for Lease Project Management for review prior to lease award. See additional details for these OL procurement reviews in the related procurement process sections later in this chapter.

While each lease procurement project is unique, the following will provide general timelines on the *minimum* requirements development lifecycle, including proper alignment and timing with the PBS Project Lifecycle (Identification, Initiation, Planning, Execution, Closeout, Building/Business Operations). Keep in mind that the typical timeline for a New/Replacing prospectus project is at least 4 - 5 years if accounting for design and construction of a new facility. This is particularly prevalent in medical, laboratory, and law enforcement facilities with ISC Security Levels 3 and higher.

Identification Phase. The Identification Phase begins with a continuing needs letter or a customer request. During this phase the project's owner is the planning manager; the planning manager is responsible for collecting the strategic requirements and all work to finalize a signed CPA:

- Internal PBS analysis (by planning manager): Begin the internal analysis and planning 66 months prior to current occupancy expiration. This must also be no later than eighteen (18) months prior to the CILP submission date.
- No later than 60 months prior to current occupancy expiration, the planning manager presents the developed CPA and cover letter as a proposal to the client. Also, this should occur no later than 18 to 12 months prior to the CILP submission date.

Initiation Phase. Finalize CPA (by planning manager) no later than the earlier of 30 months prior to occupancy expiration or March of the fiscal year preceding CILP Submission.

Planning Phase. (By planning manager) Agree to final functional and technical requirements with the customer no later than 24 months after the strategic requirements are finalized.

If there is a lack of engagement from the client, there is an escalation protocol outlined in the in the memorandum jointly issued by PT, OL, and the Office of Project Delivery ("PCB") dated January 10, 2017 entitled "Managing Customer Requirements through Standardization and Upfront Planning."

Execution Phase. The PM and LCO are core team members in execution, and their roles do not differ for prospectus projects. Full details of the PBS Project Lifecycle and the interplay between the planning manager and the leasing specialist can be found in the Lease Project Delivery [gPM Playbook](#) issued by the PBS Commissioner on December 14, 2020.



## 4. Prospectus-Level New Building and Lease Construction

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Any project where New Building Construction (whether or not Lease Construction), is a potential housing solution warrants special attention. These projects must be discussed with PT before submitting the proposed lease prospectus. (See definitions of New Building Construction and Lease Construction in LDG chapter 14). Leasing Specialists and LCOs must not seek or promise to deliver a Lease Construction solution that excludes existing buildings in a market. Likewise, Leasing Specialists and Contracting Officers cannot exclude New Building Construction from consideration if capable of meeting the RLP and technical requirements, including the Government's timing of possession and occupancy.

Requirements that **may** result in New Building Construction, whether or not Lease Construction, also need sufficient lead time to allow for the regional or Central Office New Building Construction reviews (see LDG chapter 14) for the space under the new lease to be available for occupancy by the time the existing lease expires, so such project submissions must be consistent with the time frame required for delivering the space and verifying the availability of client agency funding.

Lease Construction also raises the possibility of including a purchase option in the RLP. See section 8 of this LDG chapter entitled "Renewal and Purchase Options" for more information on the use of lease purchase options in prospectus-level leases.

Note that site selection and design of Lease Construction projects are also subject to location policies, the National Environmental Policy Act, LEED or Green Globes requirements, Design Excellence, seismic, Wildland-Urban Interface (both Lease Construction and Market-Driven Construction per E.O. 13728 dated May 18, 2016), progressive collapse (and other security countermeasures unique to New Building and Lease Construction), E.O. 14057 (additional sustainability considerations such as net-zero emissions), and section 106 of the National Historic Preservation Act of 1966, as amended, all as detailed in chapter 14 and elsewhere in the LDG.

In markets where Lease Construction or Market-Driven Construction are the only procurement solutions, Design Excellence (see LDG chapter 14 and the [Design Excellence in Leasing Program Guidance](#)) must be applied to the procurement. In addition, Best Value Trade-Off must be used as the procurement methodology. If the region is facing Market-Driven Construction as a procurement solution, the PM or LCO must also seek further guidance from OL. Additionally, as soon as the PM or LCO knows that the project is Lease Construction or Market-Driven Construction they must reach out to the Chief Architect for guidance in determining the applicability of Design Excellence for Leasing in relation to their project.

As mentioned, prospectus-level Lease Construction or Market-Driven Construction also requires a source selection procurement method be used rather than LPTA, further potentially adding to the procurement timeline.

## 5. Advertising

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Leasing Specialists may advertise for a prospectus-level requirement only after the prospectus has cleared OMB and has been submitted by GSA to the Committees. Additionally, advertisements for prospectus-level projects, including market research ads, expressions of



interest, and amendments to advertisements must be provided to OL for the PBS Commissioner's Office approval, prior to posting. Submission to OL should be initiated approximately one month before the desired ad posting date to allow an appropriate amount of time for review, revision, and approval. OL will either concur or provide feedback on the document within five business days. If no changes are required (or after requested changes are made), the proposed advertisement will be forwarded from OL to the Deputy Commissioner for concurrence, and to the GSA Office of Congressional & Intergovernmental Affairs ("OCIA") and PT for stakeholder awareness. The general purpose for the OL review of the advertisement is to verify consistency with the prospectus and to confirm that the advertisement is not unduly restrictive. Ads can be reviewed before oversight Committee resolutions are received, but advertising cannot commence until the prospectus package has cleared OMB and has been sent to the Hill.

Documents required for OL's Center for Lease Project Management ad review:

- 1) Ad
- 2) Prospectus document and housing plan
- 3) Resolutions, if received.

At the time of the updating of this chapter there was also a [Prospectus Ad Template](#) being developed to use for prospectus level advertisements. Consult with the OL Leasing Zone Manager for either a copy of the template or alternative.

Note that in addition to review of ads, prospectus-level RLPs must also be reviewed by the OL Zone Manager prior to issuance. See the following section 6 of this chapter for more specific details.

Market research not tied to a specific project can be used to establish the overall availability of space or sites. Such surveys might be instrumental in developing a prospectus and may be undertaken during requirements development. However, actual market surveys and requests for Expressions of Interest may not occur until after OMB has completed its review, and the prospectus package has been submitted to the Hill.

After GSA has submitted the prospectus to the Committees, the Leasing Specialist may pursue the procurement to the point of lease award. However, the lease cannot be awarded until GSA has received the adopted resolutions from the Committees, and a synopsis comparing the proposed award to the approved prospectus has been submitted and reviewed by OL's Center for Lease Project Management.

## 6. Adopted Resolutions and Commencement of Procurement

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As a matter of GSA policy, a prospectus-level lease project must receive adopted resolutions from the Committees. Once the resolutions are adopted by the Committees, GSA may enter into a lease agreement. Once all resolutions are received, the LCO may award the lease, if there is a signed OA, a certification of funds, and the necessary client agency funding is available for moves, furniture, information technology, RWAs, and other related project expenses, and the terms and conditions of the lease are consistent with the Committees' resolutions. Each resolution can include language directing GSA to undertake specific actions. It is important that the project team read, understand, and incorporate any such requirements in the procurement. In the event of differing resolutions, the terms of the strictest resolution prevail.



In addition to confirming consistency with the Committees' resolutions, pursuant to protocols issued December 12, 2016, by the Assistant Commissioner of the Office of Leasing, the following checkpoints with OL are also required for prospectus-level lease projects:

- CILP Package Review - OL reviews the submitted prospectus package in collaboration with PT Central Office.
- Advertisements – All prospectus-level advertisements, including market research, requests for Expressions of Interest, and amendments to advertisements, must receive concurrence from the Commissioner's office prior to publication. See section 5, above, for further information on advertising reviews.
- Justifications for Other than Full and Open Competition ("Justifications") – All Justifications requiring signature by the GSA Senior Procurement Executive or those involving a prospectus-level action, including use of interim leasing approval, must be reviewed by OL. All submissions for OL review must be submitted timely, (Lease Extension: 6 months prior to lease expiration; Renewal and Succeeding Leases: 18 months prior to lease expiration), to provide enough time to evaluate fully the requested action. Please refer to LDG chapter 5 for further details on this review and approval process.

Regions must consult with the OL Center for Program Oversight, Compliance, and Workforce Development as soon as the region makes the decision to pursue a sole source strategy. The submission process to OL can be found in LDG chapter 5, including all required documentation for submission. All cost estimates should be in Microsoft Excel or Google format (no PDFs accepted). The draft Justification, separate signature page, and Decision Paper must be forwarded in either word or Google docs (no PDFs).

The region's draft Justification, Decision Paper, and supporting documentation will be reviewed within 10 business days of the initial full package submission to the Justification mailbox. Any questions, comments, concerns, revisions, and clarification requests are returned to the region with a similar 10 business day response turnaround.

OL provides a full due diligence review and collaborates with the region to ready the Justification for the next level of *draft* review by the Office of the General Counsel. Once all elements of the OL review are complete and all requested clarifications addressed, the Justification PM notifies the region to finalize the Justification and circulate within the region for required signatures including the Regional Commissioner.

OL must ultimately provide concurrence prior to submission to the Commissioner's office and the Agency's Senior Procurement Executive. The OL Center for Program Oversight, Compliance, and Workforce Development will coordinate the Justification review with the Regional Lease Acquisition Officer and LCO.

- Request for Lease Proposals ("RLPs") – RLPs, (or the advertisement<sup>8</sup> if a prospectus-level lease project using AAAP), must receive advanced concurrence from the Office of Leasing. Approximately one month prior to issuance, route the draft RLP along with the associated draft lease through the OL Leasing Zone Manager. The Zone Manager will review and forward to the OL Program Manager for approval, who then will forward for

<sup>8</sup> Consult with the Zone Manager for guidance on what to use for the advertisement template for a prospectus-level lease project, especially if using AAAP.

OL Center for Lease Project Management and PBS Commissioner level awareness. Along with the draft RLP, (or the advertisement for a prospectus-level lease project using AAAP), and lease, the following must also be included in the RLP/lease package: 1) Special Requirements and 2) prospectus documents and resolution (if received). The general purpose of OL review of the RLP package is to verify compliance with the prospectus and to confirm the RLP does not unduly restrict competition.

- Lease Award Synopsis – A brief description of the parameters of the potential prospectus award compared to the approved prospectus is required to be submitted to the Assistant Commissioner of the Office of Leasing (through the OL Leasing Zone Manager) at least five business days prior to award as a notification only (no approval by OL required). Please include the following in the Award Synopsis: 1) Award Summary Notification; 2) prospectus documents and resolutions; 3) final scoring with prospectus compliance tab; and 4) [Prospectus Lease Award Summary Template](#).

## **7. Request for Lease Proposals and Lease Documentation Requirements**

In addition to the standard documentation that is required as part of all lease procurements, the following items should also appear in either the RLP/Lease or the lease file, or both, for prospectus-level lease projects:

- Addendum to GSA Form 3517B (General Clauses) - No Federally Elected Official to Benefit -- This clause must be added to all prospectus-level leases and is found in the Global Lease template section 7 (Additional Terms and Conditions).
- Daily Occupancy Data – Language must be added to all prospectus-level leases that provides (upon request and if available to be systematically captured) for the lessor to supply the Government with daily data on the number of people accessing the Government's occupied space. This language is found in section 7 (Additional Terms and Conditions) of the Global Lease template.
- Prospectus Lease – Include the optional RLP paragraph that coincides with the lease being over the prospectus threshold.
- RLP Review by Regional Counsel – All prospectus-level RLPs must be reviewed by the Regional Counsel prior to issuance.
- Lease Review by Regional Counsel – All prospectus-level leases must be reviewed by Regional Counsel prior to award.

## **8. Renewal and Purchase Options**

Renewal Options: Provided there is a projected continuing need for the space, a prospectus submission for a lease should request approval for the maximum amount of renewal option term that will not result in the lease scoring as a capital lease. Note that renewal options in prospectus-





level leases are not scored when they require a future prospectus to obtain approval to exercise. Also recognize that a prospectus typically does not include language specifying whether the procurement action will be a renewal option. A prospectus will, however, request a term under which procurement actions may be taken, i.e., replacement leases, succeeding leases or renewal options. So, even an unevaluated option must be scored should the prospectus include any term covered by the option, and an option term not included in the Committees' approval is not price evaluated in the award decision. Another prospectus must be submitted when approaching the exercise date of such an unevaluated option for committee approval to exercise the option.

**Purchase Options:** The LCO must use their best judgment to determine whether including a priced purchase option in the prospectus and RLP is appropriate. Factors to consider, especially for fixed-priced options, are like those that determine whether to use a longer firm term, plus whether the Government will be leasing the entire building (excepting perhaps some ground floor retail-type space that can be outleased should the Government purchase the building).

## 9. Consistency with the Committees' Resolutions

After receiving offers from prospective lessors for a prospectus-level requirement, but before awarding the lease, the LCO must review the offers to verify that they are consistent with the resolutions and confirm the following:

- The total RSF in an offer, including free space, does not exceed the maximum in the resolutions. Any proposed housing plan change requires consultation with PT and, potentially, subsequent notification to the Committees.
- There is no tradeoff of square footage for rental rate and vice versa even if the total annual cost remains within the total amount in the adopted resolutions. The RSF cited in a single prospectus may be used to lease space in more than one building. However, the maximum RSF, the maximum rental rate per RSF, and the total annual cost may not be exceeded.
- The following situations are not permitted unless a deviation is obtained; if special circumstances require deviation from this policy, regional PT must contact Central Office PT:
  - A prospectus project is approved for agency X, which determines before award that it no longer requires the space. It is not permissible to use the Committees' resolutions obtained for agency X to lease space for agency Y.
  - If it is determined that the amount of space provided for under the resolution is no longer required, it is not permissible to secure the excess space and assign that space to another client. For example, resolutions are adopted for 200,000 RSF in a particular location. However, if before lease award only 150,000 RSF is needed to satisfy the requirement (thus creating a surplus of 50,000 square feet), it is not permissible to use the 50,000 square foot surplus to acquire space for another agency need or for any requirement not clearly identified in the prospectus.
- The offer does not exceed the maximum rental rate per RSF in the adopted resolutions. If a lease procurement is delayed beyond the projected effective date of the lease that was



stated in the prospectus, regional PT, in coordination with the Leasing Specialist, is permitted to escalate the maximum proposed rental rate per RSF from the originally projected fiscal year effective date to a revised fiscal year effective date. This escalation must be calculated only if a delay forces the lease effective date to slip into a future fiscal year. The award date **cannot** be used as the starting date for such escalation unless the fiscal year of the award and the fiscal year of the effective date are the same. For example, if a lease is projected to be awarded in FY 2021 and effective in FY 2022, but, due to slippages in schedule, does not take effect until FY 2023, one year of escalation at the rate identified in the prospectus (FY 2022 to FY 2023) is permitted, not two (FY 2021 to FY 2023). Leasing Specialists must use the appropriate escalation rate, as stated in the footnote of the prospectus, to escalate the rent rate.

- The offer does not exceed the total annual cost stipulated in the adopted resolutions.
  - If the annual rent over the term of the lease is constant (not a stepped rent), compare the first year with the approved total annual cost in the prospectus. The first-year rent cannot exceed the total annual cost in the resolutions.
- If the proposed rent is a stepped rent, to determine whether an offer exceeds the total annual cost in the resolutions, the Leasing Specialist must levelize the rent and calculate the per square foot cost to confirm that it does not exceed the maximum per-square-foot rent in the resolutions. The levelized rent thus calculated takes into consideration all commission credits and free rent periods. Complete instructions for levelizing rent are found under subparagraph 3.a, Determining Whether a Prospectus Is Required. The levelized net rent plus the first-year operating expenses cannot exceed the total annual cost in the resolutions.
- The offer does not include a lease term that exceeds the term cited in the resolutions.
- Leasing of parking spaces must comply with the terms and conditions of the resolutions. If there are any variations from the resolutions, the Leasing Specialist must consult with PT.
- The Leasing Specialist must discuss any proposed change to a prospectus-level lease with the regional Office of Portfolio Management and Customer Engagement before any lease award takes place. As previously mentioned, changes to a prospectus-level lease may require notification to GSA's oversight Committees, or an amended prospectus.

## 10. Post-award Monitoring and Changes

Any post-award Lease Amendment that would modify the cost per square foot, total annual cost, lease term, amount of space under lease, operating lease status, or any other material change to, but not accounted for in, a prospectus-level lease requires an evaluation by the regional Office of Portfolio Management and Customer Engagement and consultation with Central Office PT before any action can be taken. **The Leasing Specialist must obtain the concurrence of the regional Office of Portfolio Management and Customer Engagement (who will confer with Central Office PT) and document that concurrence.**

## 11. Interim Leases

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An interim lease is a lease at a current location procured to bridge the gap between a current lease and some other long-term solution, be it relocation to Government-owned space or some future lease at the same or some other location. Interim leases include short-term renewal options and lease extensions. An interim action is required when the current lease expires before the effective date of the new or replacement lease. Continued occupancy of current space after lease expiration (absent an interim lease solution such as a lease extension or a short-term lease) constitutes a lease holdover, (see Leasing Alert LA 19-02 and LDG chapter 10, Lease Holdovers, Standstill Agreements and Condemnations for more information on holdovers). While a standstill agreement is preferable when in holdover, a standstill is not considered a lease, so standstill agreements are also technically considered holdovers (and also not interim actions). In addition to budget approval, it is GSA policy that all interim lease actions exceeding the prospectus threshold be submitted to the appropriate Congressional committees prior to entering into the interim lease arrangement. This is typically accomplished through mention of the need for interim action in the prospectus for a longer-term solution. Holdover tenancy subjects the Government to financial risk, including potential penalties for continued occupancy of space without the lessor's agreement. **Therefore, when addressing a prospectus-level expiring lease, it is important to start working on a prospectus submittal on the normal schedule for leases requiring a prospectus submittal even when only an interim lease action is contemplated.** GSA does not typically submit prospectuses under the auspices of interim leasing. Instead, as a matter of course, an interim housing approval provision is included almost all submitted lease prospectuses. That provision provides the necessary approval for interim extensions. If the extension itself is the subject of the prospectus, the interim provision is NOT what provides the approval to execute the extension. More specifically, lease prospectus submissions typically include the following provision:

GSA will execute such interim leasing actions as are necessary to ensure continued housing of the client agency prior to the effective date of the new lease. It is in the best interest of the Government to avert the financial risk of holdover tenancy.

While there is no prescribed rental rate for interim leases, the Leasing Specialist and LCO must try to secure an interim rate at an existing location consistent with either the current rental rate or otherwise consistent with market rents in the area. The lease contract for all prospectus-level holdovers resulting from delays in congressional approval should continue at the rental rate stated in the expired lease, subject to the approval of regional PT and the Office of Regional Counsel. Rent payments are still due during the period of holdover tenancy and are made without regard to the current interim leasing provision for prospectus-level leases not yet approved by the Committees. However, no operating cost escalations are to be paid during holdovers, unless a standstill agreement is reached. See Leasing Alert LA 19-02 and LDG chapter 10, Lease Holdovers, Standstill Agreements, and Condemnations, for more information.

The Committees' resolutions approving a prospectus typically include a blanket approval of interim leases without specifying the amount of space, rental rate, or lease term using the following language: "Approval of this prospectus also constitutes authority to execute an interim lease for all tenants, if necessary, prior to the execution of the new lease." The LCO and Leasing Specialist must verify the specific interim leasing provision, if any, contained within an approved prospectus.

Appropriations are made for the current fiscal year for which payments are due through the rental of space budget activity (BA-53 account) within GSA's Federal Buildings Fund. These funds are



legally available for the payment of rent, regardless of the nature of the lease agreement. The proposed interim leasing provision serves to put the Committees on notice of GSA's intent to enter into interim leases, where necessary, even if the Committees have not acted on the underlying prospectus. The proposed language clarifies that GSA intends to use its authority to enter into interim lease agreements to avert the financial risk of holdover tenancies.

Using interim leasing authority does not reduce the term of the lease approved in the adopted resolutions. For example, if agency X occupies space under a lease that is set to expire in 2030 and the Committees have adopted resolutions for a new 10-year lease with an anticipated effective date of FY 2030 but, due to unforeseen circumstances, the new leased space will not be ready for occupancy until 2032, GSA may enter into an interim lease for agency X until the new leased space is ready. The 2 years spent do not count against the 10 years of the new lease. If the space is ready for occupancy in 2032, the new lease may be for a term of 10 years, or until 2042.

## 12. Scoring Risks

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Prospectus-level leases must be evaluated against all of the criteria in OMB Circular A-11, Appendix B, to distinguish capital leases from operating leases. As with under-prospectus leases, all prospectus-level leases must include a 90 percent scoring analysis. Prospectus-level leases are evaluated a minimum of three times – during requirements development, upon submission of the prospectus to Central Office and pre-award. However, it is suggested to consider also doing an informal scoring analysis upon receipt of offers to determine where the offer needs to improve (or potentially shorten the lease term) to conform to the operating lease criteria requirements.

No lease, whether below or at prospectus level, may be awarded without a completed determination of operating lease treatment. Leasing Specialists and LCOs must refer to [the latest GSA scoring policy](#) for specific guidance on prospectus-level Lease Construction and the exercise of options and expansions to prospectus-level leases. Also, see LDG, Appendix F (Determination of Operating or Capital Lease Classification for Budget Scoring), for more information on lease scoring.

## 13. Prospectuses for Alterations in Leased Space

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40 U.S.C. § 3307(a)(3) requires a prospectus for all post-Government occupancy alterations in leased space when the Estimated Construction Cost (ECC), whether payment of the ECC is made lump sum by GSA funds or amortized in the rent, exceeds the threshold amount for alteration projects in GSA leased buildings (which, as of FY 2022, is \$1,687,000). The current threshold amount for alterations in leased buildings can be found [here](#).

Initial space alteration expenditures (Tenant Improvements) for a new lease are not governed by the alterations in leased space threshold. **However, GSA must not use such expenditures inappropriately to buy down the rent to avoid submitting a lease prospectus.** Therefore, according to PBS's pricing policy, absent an approved deviation, an agency may not pay a lump sum for shell and first-generation general tenant allowance elements. This is because the pricing policy requires GSA to deliver basic functional space without the agency lump-sum payments. If GSA cannot deliver basic functional space below the prospectus dollar limitation, a prospectus



will be required. If GSA receives a lump sum payment from a client agency for the buildout that would otherwise be provided by GSA, that payment must be reflected in the calculation to determine whether a prospectus must be submitted.