



---

# Leasing Updates

DOE FIMS/RE Annual Training

Real Estate Breakout

June 7, 2023



# Leasing Topics

---

- A-11, Appendix B applicability
- Contractor Leasing
- EO 14057 – Green Leasing Guidelines



# OMB Circular A-11, Appendix B

## *Budgetary Treatment of Lease-Purchases and Leases of Capital Assets*

---

OMB review required:

- All leases with total cost >\$50M (assume options will be exercised)
- “Non-routine” financing proposals:
  - Enhanced-use leases and outlease-leaseback transactions
  - Public-private partnerships or limited liability corporations
  - Explicit Government guarantee of third-party debt, or implicit guarantee that reduces risk
  - Special purpose assets without a private sector market
  - GSA prospectus-level leases
  - Projects on Government land
  - Contractor acquisition, construction, or renovation of assets valued >\$50M
  - Share in savings proposals that result in the acquisition of real property



## A-11, Appendix B Applicability, continued

---

- Proposals that raise issues about the governmental/non-governmental status of the asset or the entity that holds the title to the asset;
  - Any financing proposal for which a statute requires OMB approval of the scoring (or of the proposal) or compliance with Circular No. A–11;
  - Arrangements that convey special tax status to the project by virtue of the Government's participation; and
  - Leasing arrangements that involve options that can be conveyed to a third party in exchange for future considerations.
- A-11, App. B states that agencies should submit these proposals to OMB during the conceptual, developmental stage.
  - DOE policy requires M&O contractor leases to comply with A-11



## A-11, Appendix B Applicability, continued

---

- RECO's role:
  - ID leases that may require OMB review
  - Coordinate with CO on M&O leases
  - Consult Budget Officer or CF to coordinate OMB review
  - Ensure budget scoring of proposed lease is performed
  - Confirm funding prior to executing lease



# Appendix B – Budget Scoring

---

## ***Operating or Capital Lease?***

- App. B criteria:
  - Ownership does not transfer to Govt
  - No bargain-price purchase option
  - Lease term <75% of the economic life of asset
  - NPV of total payments over life of lease <90% of FMV of asset at beginning of lease
  - Asset is general purpose, not special purpose for Govt use, or built to unique specifications of the Govt
  - Private sector market for the asset
- ***Operating Lease meets all 6, otherwise scores as Capital Lease***



# Appendix B – Budget Scoring

---

- GSA lease/OA, including delegated authority from GSA:
  - only annual lease payment needs to be obligated
- DOE direct lease, including M&O lease, that scores as an operating lease:
  - obligate entire amount of the firm term rent or the amount of the payment due in the event of termination, where applicable, plus rent to the date on which termination may be exercised
- DOE direct lease, including M&O lease, that scores as a capital lease:
  - obligate NPV of the total estimated legal obligations over the life of the lease



# Contractor Leasing Working Group

---

## WG Goals:

- Address issues and concerns with contractor leasing policies and procedures
- Review current practices from across the Department, compare/contrast different approaches
- Develop guidance materials outlining best practices, and leasing forms appropriate for use by all DOE offices

## Update:

- Collected and analyzed documents related to contractor lease review procedures
- Developed checklist of requirements
- Posted to Powerpedia Real Estate Forms page:  
[https://powerpedia.energy.gov/wiki/Real\\_Estate\\_Forms](https://powerpedia.energy.gov/wiki/Real_Estate_Forms)
- Next task – revise leasing chapter of RE Desk Guide





# Contractor Leasing Checklist

1. Preliminary Requirements. May be in the form of a Preliminary Real Estate Plan (PREP) or equivalent documentation:
  - a. Lease requires CRS review/approval because needed to perform work for DOE/NNSA and eligible for reimbursement under the contract (confirmed by Contracting Officer).  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - b. Mission need verified.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - c. Alternatives analysis conducted, identifies leasing as the most viable option.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - d. Determination that proposed lease will not require OMB review per Circular A-11, Appendix B (total rent over \$50M, out-lease/lease-back, e.g.).  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - e. Estimated cost and documentation of funds availability (specific documentation may vary by DOE office and M&O contract).  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - f. Requirements described: Asset type and square footage/acreage of space needed and any special requirements (e.g. security, loading docks, parking).  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - g. Size requirement aligns with DOE/NNSA office space standard (180 usable sf/person – see 2016 Office Space Standard for details).  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - h. Length of term identified, does not exceed anticipated mission need.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - i. Delineated area described. Reason for the selected delineated area explained (especially if outside central business district). Delineated area aligns with federal location policies: Rural Development Act; EO 12072, Federal Space Management; EO 13006, Historic Properties; EO 13834, Efficient Federal Operations; EO 11988, Floodplain Management; EO 11990, Protection of Wetlands; EO 13946, Targeting Opportunity Zones.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - j. Lease procurement plan/procedures approved in advance by CRS (full and open competition, e.g.). If applicable, contractor provides sole-source justification to CRS prior to beginning negotiations. Justification meets requirements in Federal Acquisition Regulation (FAR) Part 6.1 through 6.3.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_

2. Lease procurement procedures and requirements:
  - a. Confirmation that no Government-controlled (GSA or DOE/NNSA) space is available for use.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - b. Documentation that competition was sought and describing the method used (i.e., adequate advertisement to potentially interested parties).  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
    - i. Request for Expressions of Interest (EOI) advertised - required if estimated rent above SLAT (\$250K/yr.)  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
    - ii. If the estimated rent is below SLAT, 3 potential sources are identified. If fewer than three sources identified, the lease file has been sufficiently documented.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
    - iii. Documentation that a request for lease proposals (RLP) was issued, and to whom.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - c. Documentation that LEED, Carbon-Free Energy, Energy Star, and other applicable sustainability goals were addressed in the advertisement and solicitation process.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - d. Market survey (tour of offered spaces) conducted.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
  - e. Negotiation report/justification memo provided that addresses the following:
    - i. Description/analysis of proposals received.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
    - ii. Lessor of choice identified and basis for selection (i.e., lowest price per square foot or the offer that is most beneficial to the Government). Cost analysis (table) provided of terms and options, identifying costs per usable square foot and total costs.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
    - iii. Fair rental value determined by independent market survey (e.g. comparables provided by a broker or LoopNet), formal appraisal, or competition. Negotiated rent does not exceed fair rental value by more than 15%.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
    - iv. Selected space complies with DOE/NNSA office space standard (180 usable sf/person – see 2016 Office Space Standard for details).  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_
    - v. Budget scoring analysis conducted per OMB Circular A-11, Appendix B.  
**Y/N:** \_\_\_\_\_ **NOTES:** \_\_\_\_\_



# Contractor Leasing Checklist

## a. Lease form and provisions:

- i. GSA lease forms (modified for contractor use) used. or other forms reviewed by CRS and DOE/NNSA legal counsel.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- ii. Rent clearly identified. If there is an escalation clause, the process for determining and implementing increases is clear.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- iii. If applicable, build-out scope described, tenant improvement allowance and amortization schedule specified.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- iv. Tenant's responsibility for operating costs, property taxes, or other costs clearly defined, if applicable.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- v. Option terms, if any, have defined rent or clear process for determining rent, and procedures for exercising options.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- vi. No termination clause requiring notice longer than 365 days.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- vii. Include provisions allowing an assignment of the Lease to a successor contractor or DOE (but not requiring an assignment or making DOE liable for lease costs in the event of a contract cancellation).

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- viii. No clause requiring the contractor to indemnify Lessor.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- ix. No clause requiring the contractor to pay Lessor's attorney's fees.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

## b. Other documentation:

- i. Prohibited telecommunications equipment representation by Lessor.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- ii. Foreign ownership and beneficial owners disclosure by Lessor.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- iii. If the owner is an LLC or corporation, a Certificate of Good Standing is provided.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- iv. Certificate of Insurance provided.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- v. Certification that Lessor is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

## 3. Acceptance of Space

- a. Build-out completed per specifications.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- b. Certificate of Occupancy issued (if applicable).

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- c. Space available for occupancy by lease commencement date.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- d. No rent payments until space available for occupancy.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

## 4. Option Exercise (separate checklist for option terms in existing leases)

- a. Contractor notifies CRS of interest in exercising option in advance of notification deadline in lease (amount of advance notice flexible, but recommend at least 90 days)

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- b. Continued mission need for space.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- c. Contractor provides verification that option rent within current market range.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- d. New requirements (since initial lease execution, as applicable) incorporated via amendment or other agreement:

- i. Prohibited telecommunications equipment representation by Lessor.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- ii. Foreign ownership and beneficial owners disclosure by Lessor.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_

- iii. LEED, Carbon-Free Energy, Energy Star, and other applicable sustainability provisions.

Y/N: \_\_\_\_\_ NOTES: \_\_\_\_\_



# Green Leasing – DOE Policy

## DOE Order 436.1A *Departmental Sustainability*

- 4.e.(1)(f) ensure the sustainable and equitable siting of new and leased facilities to promote local infrastructure, public transportation, and equitable economic development
  - Mirrors Government-wide location policy (41 CFR 102-83 – Location of Space)
- 4.e.(1)(h) ensure lease space is in a building that at a minimum has earned an Energy Star label

## DOE O 430.1C *Real Property Asset Management*

- 4.b.(1)(d) ensure new solicitations for DOE-leased buildings above 10,000 rentable square feet meet building efficiency, performance, and management requirements
  - CEQ *Guiding Principles for Sustainable Federal Buildings and Associated Instructions*, February 2016, and subsequent revisions.
- 4.b.(1)(e) ensure facilities regardless of ownership comply with applicable federal metering requirements
  - 42 U.S.C § 8253, *Energy Management Requirements*, paragraph (e), *Metering of Energy Use*



# Green Leasing – EO 14057

---

## Executive Order 14057 *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*

- OMB Memo 22-06 Implementing Instructions:
  - All new (including new-replacing, succeeding, and superseding) leases
  - Entered into after September 30, 2023
  - 25,000rsf+ in buildings where Government leases 75%+ of total building square footage
  - Must be “Green Leases” (GSA to issue standards and guidelines)
  - Agencies with independent leasing authority must incorporate the guidelines into agency-specific leasing policies and procedures



# Green Leasing – EO 14057

---

- GSA has shared drafts of Green Leasing Guidelines:
  - Updated Lease Template and Request for Lease Proposal forms highlighting 65 green leasing provisions (43 pre-existing)
- Components of Green Lease, per EO implementing instructions:
  - Reduce **energy, water, material resources use, and emissions**
  - Improve **indoor environmental quality**
  - Reduce negative **impacts on the environment**
  - Increase the use of **sustainable products and services**
  - Increase **reuse and recycling** opportunities
  - Reduce **impacts of transportation** through building location
  - Consider the effects of the building on **human health and the environment**
  - **Track** impacts of **emissions, energy, water, and waste**



# Green Leasing – EO 14057

---

- Guidelines apply starting 10/1/2023
- GSA will manage in GSA-leased space
- Consider having GSA manage any leasing action 25,000rsf+
- Alternatives:
  - Use GSA revised RLP and Lease forms
  - Adopt green leasing provisions from GSA forms



# Leasing Discussion – Questions?

---

David Steinau

[david.steinau@hq.doe.gov](mailto:david.steinau@hq.doe.gov)

202-287-1503

Andrea Dolch

[andrea.dolch@hq.doe.gov](mailto:andrea.dolch@hq.doe.gov)

(240)449-5104