



July 11, 2006

MEMORANDUM FOR ALL CHIEF FINANCIAL OFFICERS AND SENIOR REAL
PROPERTY OFFICERS OF AGENCIES APPROVED FOR A
LEASE DELEGATION FROM GSA

FROM:

KATHLEEN M. TURCO
CHIEF FINANCIAL OFFICER (B)

DAVID L. WINSTEAD
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

SUBJECT:

Policy Clarification for Delegations of Lease Acquisition
Authority

This memorandum serves to clarify Federal Management Regulations (FMR) Bulletin 2005-B-1, Delegations of Lease Acquisition Authority – Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations, published in the Federal Register on May 25, 2005.

Agencies are reminded that they must comply with Executive Order 13327, Federal Real Property Asset Management, including the requirements to:

- Establish performance measures addressing the cost, value, and efficiency of all acquisitions
- Verify that the lease acquisition falls within the scope of the overall agency asset management plan

Agencies are also reminded that FMR Bulletin 2005-B-1 requires them to:

- Meet the training and experience requirements (agency contracting officers) of the contracting officer warrant program specified in the GSA's Acquisition Manual, and

- Support all delegated leasing activity responsibilities, including; a warranted contracting officer, legal review and oversight, construction inspection and management, cost estimation, lease management and administration, and program oversight.

Concerning the application of laws and regulations governing the budgetary treatment of Federal space acquisitions, specifically the Office of Management and Budget (OMB) Circular A-11, GSA offers the following policy clarification.

Agencies acting under delegated authority from GSA are solely responsible for securing the necessary funding to fully fund their contractual obligations, including up-front budget authority related to the award of a particular lease, as well as liabilities and payment obligations arising under a lease contract for the entirety of its term. Under a delegation of GSA leasing authority, leases which meet the criteria for an operating lease shall be construed to require budget authority sufficient to cover the annual lease payment only, consistent with the budgetary treatment of lease payments made from a self-insuring fund as described in OMB Circular A-11.

In the event of a default (specifically, the final adjudication by a court of competent jurisdiction that the delegatee agency has breached its contract obligations under the lease related to the payment of rent or other expenses and, as a result, the Federal government is indebted to the lessor for the payment of a sum certain), GSA will act as a guarantor of the Government's monetary obligations under the lease related to such a default, but only to the extent such obligations cannot be satisfied by the delegatee agency as determined in consultation with OMB. However, the delegatee agency will remain responsible for all costs, damages, losses and liabilities related to the lease, including reimbursement of such default costs to GSA.

Also, if an agency enters into a lease agreement that scores as a capital lease, regardless of whether or not that leasing authority was provided by a delegation from GSA, the agency must secure the necessary up-front budget authority as described in the OMB Circular A-11.