

## Leasing Alert! Energy Star label exception clarification

This Alert clarifies the meaning of the following Energy Star label exception: "The agency will remain in a building they currently occupy."

Recently, we were asked if an expiring GSA lease, with no Federal occupants, was exempt from earning the Energy Star label for a follow-on superseding lease due to the statutory exception "The agency will remain in a building they currently occupy." This Alert clarifies the meaning of this exception.

On September 28, 2010, GSA issued Realty Services Letter RSL-2010-02 to implement the Energy Star Requirements of the Energy Independence and Security Act (EISA) of 2007. Section 435 of the Energy Independence and Security Act (EISA) of 2007 mandates that no Federal agencies enter into a leasing contract after December 19, 2010, in a building that has not earned the Energy Star label, unless the space requirement complies with specific exceptions provided in statute. As provided in the Energy Independence and Security Act (EISA), offerors are not required to comply with the Energy Star Label requirements if the offered buildings meets one of the following statutory exceptions:

- No space is available in a building with an Energy Star label in the delineated area that meets the functional requirements of an agency, including location needs;
- The agency will remain in a building they currently occupy;
- The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
- The lease is for 10,000 rentable square feet or less.

Since all GSA leases are entered into by and between the United States acting through GSA for the accommodation of federal agencies, and GSA has the authority to assign and reassign space for executive agencies, it is GSA's position that it is irrelevant which agency or agencies (or none, if vacant) actually occupies the space under lease for the exception to apply. Leases are with the U.S. Government, not with individual federal agencies. Therefore, if GSA is already leasing space that is being considered in a procurement (new replacing, succeeding or superseding), GSA may use the above-mentioned exception (i.e., The agency will remain in a building they currently occupy), so that the Energy Star label is not required. However, in such instances, the successful offeror must agree to renovate the space for all energy efficiency and conservation improvements that would be cost effective over the life of the lease.

We will be amending the Leasing Desk Guide in the near future to incorporate this clarification.

Thank you.

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