

DOING BUSINESS WITH GSA

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The US Government as Customer

- 30 statues, 2000+ pages of regulations, ~10 Executive Orders
- Tension between market economy and regulated industry
- GSA vs. tenant agency
- Competitive Bidding and Source Selection
- Pre-Award Contacts with GSA
- Confidentiality of Information Submitted
- Bidding and Award
- Protests

The US Government as Customer (cont.)

- Unique government rights and lease clauses
- Financing Issues
- Condemnation
- Breach of contract may equal violation of law
- Organizational conflicts of interest
- Federal budget constraints

Unique Lease Clauses

- Lessee (GSA) Drives Standard Lease Forms
- Acceptance of Space/Progressive Occupancy/Blended Rent Start
- Appropriations Limitations/Anti-Deficiency Act (31 USC § 1341; *Williams v. District of Columbia*, June 22, 2006)
- *Termination by GSA for Late Delivery of Premises/Lessor Delay/GSA Delay
- *Real Estate Tax escalations/base year
- *Net Utilities
- Rent payable monthly *in arrears*
- Improvements Allowance (lump sum vs. amortization)

* Modified in Credit Lease Clauses (Form 3517X)

Unique Lease Clauses (cont'd)

- Self-Help and Rent Offsets (Mutuality of Obligation)/*GSA Right to Terminate Lease for Lessor Default
- *Subletting and Assignment (Lessor consent required (reasonableness)); GSA relieved of Lease obligations upon assignment)/Substitution of Tenant Agency (no Lessor consent required)
- *Casualty
- *No GSA Obligation to Restore Premises at End of Term
- Applicability of Davis-Bacon and Miller Acts
- (No) GSA Holdover Damages

•Modified in Credit Lease Clauses (Form 3517X)

Unique Lease Clauses (cont'd)

- No Indemnification (Anti-Deficiency Act Issue)
- GSA lease approach to Termination for Convenience (T4C)
- GSA Mandated Change Orders
 - Unilateral right to make almost any changes that are “within the scope of the contract”
 - Contractor must perform without agreement on price
 - Equitable adjustment to contract price/schedule; includes profit
 - Progress payments

Financing Issues

- Credit Lease Clauses (3517 vs. 3517x)/No “standard” 3517x
- Full Faith and Credit of U.S./Binding obligation
- Appropriations Issues/ Lease Term/Statutory Leasing Authority
- Termination for Convenience
- GSA/Agency Legal Opinion & other documents
- Anti-Assignment Acts—Assignment of Claims and Notice of Assignment (41 USC § 15 and 31 USC § 3727)

Other Issues

- Transparency/Internal GSA policies
- Allocation of Risk/Reasonableness
- Consistency
- Fairness
- Recognizing the Situation on the Ground
- Benefits to Government of Financability

Questions?

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