

GSA Leasing: Practice Tips and Pitfalls for Leasing Space to the Nation's Largest Tenant

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PRACTICES Government Contracts, Real Estate

KEY TAKEAWAYS

- **GSA Leasing:** The U.S. General Services Administration (GSA) manages one of the largest real estate portfolios in the country, leasing millions of square feet on behalf of federal agencies.
- **Federal Real Estate Trends:** Recent government initiatives to cut agency footprints and relocate offices nationwide are reshaping opportunities for commercial landlords.
- **Termination and Default Risks:** GSA leases have unique termination and default rules where landlords must understand cure notices, performance obligations and federal lease terms.
- **Dispute Resolution:** GSA lease disputes are governed by the Contract Disputes Act (CDA), requiring strict adherence to claim certification and appeal deadlines.
- **Compliance and Regulations:** Federal leasing involves additional legal requirements, including Davis-Bacon wage laws, bid protest procedures and other standards.

An often-overlooked segment of the commercial real estate market involves the single largest tenant in America: the United States government. The General Services Administration (GSA), which serves as the federal government's leasing agent, manages over 8,000 owned or leased buildings totaling more than 360 million square feet. Collectively, federal agencies operate more than 127,000 properties across 1.1 billion square feet, with annual operating costs exceeding \$15 billion. This includes government facilities such as courthouses, offices, military installations, laboratories and post offices. To that end, the federal government spends over \$5.7 billion annually on rent.

Given the breadth of the government's real estate holdings and the associated opportunities, it is important to understand the distinct legal framework that governs the government's ownership and management of real estate, including leasehold rights, disputes, terminations and other federal regulatory requirements. In particular, this article examines the legal rules for GSA lease termination and for lease-related claims and appeals under the Contract Disputes Act.

This area has attracted heightened scrutiny under the Trump Administration, which has been reassessing real estate obligations and pushing agencies to exit nonessential leases with several leases receiving attention from the Department of Government Efficiency (DOGE). A Jan. 17, 2025 internal memorandum from GSA's Office of Leasing titled "Freeze on Lease Expansions and Non-Mission-Critical Renewals" suspended lease expansions and discouraged renewals except where essential to agency missions. Additionally, OMB Memorandum M-25-04, issued on Feb. 2, 2025, directed executive agencies to cut their physical footprints by 10 percent in fiscal year (FY) 2025. Agencies such as the Department of Homeland Security (DHS),

Department of Health and Human Services (HHS) and U.S. Citizenship and Immigration Services (USCIS) have already begun implementing cancellations and consolidations. These shifts are driving an increase in lease terminations and legal challenges. Through Oct. 4, 2025, DOGE

reported the termination of 264 leases, totaling approximately \$113 million.

At the same time, the Trump Administration is offering new opportunities for landlords, as federal agencies explore relocating offices from the Washington, D.C. area to other parts of the country with lower costs of living.

I. THE ROLE AND SCOPE OF GSA

As highlighted, GSA manages one of the largest real estate portfolios in the world on behalf of the U.S. government. The agency was established under the Federal Property and Administrative Services Act of 1949 to acquire, manage and dispose of federal property. A major component of GSA is the Public Buildings Service (PBS), which oversees real property programs supporting over one million federal employees.

In its role as leasing agent, GSA acts as the contracting party on behalf of tenant agencies. While those agencies occupy the premises, it is GSA—not the tenant agency itself—that signs the lease. GSA's statutory leasing authority under 40 U.S.C. § 585 allows it to execute leases of up to 20 years.

II. LEGAL FRAMEWORK GOVERNING GSA LEASES

GSA leases are not directly subject to the Federal Acquisition Regulation (FAR), which applies to contracts for goods and services. Instead, GSA leases are governed by the Federal Management Regulation (FMR), 41 C.F.R. § 102-73, Subpart B. Some FAR clauses still apply, however, through the General Services Acquisition Regulation (GSAR)—specifically, GSAR Part 570, which addresses leasehold acquisitions. GSAR Part 570 applies to all GSA leasing actions involving real property, except for lease construction, which is covered by the FAR, and temporary space needs, which are often handled through simplified leasing procedures designed to reduce administrative burden.

GSAR Part 570 outlines procedures for conducting market surveys, soliciting and evaluating offers, and awarding leases, with an emphasis on cost-effectiveness, full and open competition, and regulatory compliance. The regulation provides specific guidance on when to use standard lease forms. GSAR Part 570 also provides simplified procedures for smaller leases and, more broadly, reinforces the requirement that only authorized contracting officers may execute leases and that environmental, accessibility, and security standards must be met.

III. GSA LEASE ADMINISTRATION

Delegation of Lease Authority

GSA may delegate its leasing authority to other agencies or provide leasing services to agencies that possess their own statutory authority on a reimbursable basis. While this flexibility broadens GSA's reach, it can lead to confusion over which entity holds decision-making power in a lease relationship.

Role of Brokers

GSA often enlists commercial brokers to support lease acquisition and management functions. However, critical responsibilities such as issuing contracting officer's final decisions (COFDs) and resolving contract claims must remain with GSA officials.

Actions of Tenant Agencies

The conduct of tenant agencies does not bind GSA or the government in lease enforcement or termination matters. In *27-35 Jackson Ave LLC v. United States*, the Court of Federal Claims observed that a strained relationship between the tenant and the landlord did not affect GSA's termination decision. 162 Fed. Cl. 550 (2022). Likewise, in *MLJ Brookside, LLC v. GSA*, CBCA No. 3041, 15-1 BCA ¶ 35,935 (further discussed below), the tenant agency's awareness of the lessor's re-leasing activity did not preclude GSA from enforcing its rights under the lease.

IV. LEASE TERMINATION RIGHTS

Termination for Convenience

Termination for convenience clauses granting the government broad unilateral termination rights are a mandatory feature in federal contracts for goods and services. However, the government is not legally required to include a termination for convenience clause in its leases. Whether GSA can terminate a lease for convenience depends on the terms of the lease. Federal leases typically include provisions that permit GSA to terminate the lease after the firm term (guaranteed period) by providing a specified number of days' notice, and that allow the government to reduce the rent if it vacates the premises early. These common terms provide GSA flexibility to respond to evolving agency requirements while limiting its long-term financial obligations.

Termination for Default

GSA can terminate a lease if the lessor is in default and may also seek damages, including relocation costs. Clause GSAR 552.270–22, Default by Lessor During the Term, provides that a lessor's "[f]ailure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required" is a default, unless it is cured within 30 days of notice from GSA. Repeated and unexcused failures to comply with the terms of a lease may be a default, even if failures are timely cured. Thus, lessors must be careful to avoid recurring problems. Landlords should ensure they are meeting all lease requirements, which may be more closely scrutinized in the present environment.

Lease Termination Case Law

Courts and boards tend to enforce express terms of federal leases as written, even when those terms are unusually favorable to the tenant. For example, in *27-35 Jackson Ave LLC v. United States*, 162 Fed. Cl. 550 (2022), the Court of Federal Claims ruled that an "untenantability" provision in a GSA lease gave the agency broad discretion to terminate the lease when the government determined the premises were untenable. The Court observed that "lease provisions that expressly delegate the power to determine untenability to one party are rare," but upheld GSA's untenability determination and resulting termination because the government demonstrated that GSA had undertaken a thorough process that met the "required legal standard." *Id.* at 557, 559. The Court found that: "the contracting officer at GSA made the untenability determination; that officer was briefed by both GSA officers and USCIS officers who had personally observed the damage and conveyed their assessments; and before exercising the right to terminate the lease, the officer had the chance to consider the adequacy of a remediation and restoration plan." *Id.* at 559.

Landlords must be cautious about how they respond to a cure notice. If a landlord responds and tells the government that it is unable or unwilling to correct the identified issues within the cure period, the government may be able to terminate without waiting out the cure period based on the common law concept of anticipatory repudiation. For example, in *5860 Chicago Ridge, LLC v.*

United States, 104 Fed. Cl. 740 (2012), there were ongoing roof leaks at an IRS building. The lease contracting officer sent a cure notice allowing the landlord only two weeks to fix the leaks, instead of the 30-day cure period provided for under the lease. However, the landlord responded that it would not be able to fix the leaks until the end of the summer, which was months away. The court upheld GSA's termination despite the truncated cure period because the lessor had "made amply clear that the requisite cure would not be forthcoming during a full thirty-day cure period or any other remotely comparable period," and therefore the "plaintiff should not be heard now to complain that the CO failed to wait the full thirty days before terminating the Lease for default." *Id.* at 759.

If a landlord takes other actions that are inconsistent with its performance of its obligations under the lease, that may also constitute repudiation, allowing the government to terminate without affording a cure period. In *MLJ Brookside, LLC v. GSA*, CBCA No. 3041, 15-1 BCA ¶ 35,935, the Civilian Board of Contract Appeals (CBCA) upheld GSA's default termination of a lease where the lessor re-leased the property to third parties before an agreement to terminate had been finalized. The FBI, the tenant agency, gave notice to landlord MLJ through its agent ProCorp that the agency intended to vacate the premises. ProCorp quickly began searching for replacement tenants. ProCorp subsequently asked the GSA contracting officer about the government's intentions with the lease, given the FBI's planned departure, to which the contracting officer responded that GSA would either "negotiate a lump sum to terminate early and release the space" or, if a deal could not be reached, keep the space in its inventory at the reduced vacant space rate until it could backfill or terminate. GSA's property manager replaced the locks and turned over the keys to ProCorp without retaining a set of keys for GSA, stating in a condition survey report that "[t]he lessor has accepted the space back as is with no problems or repairs needed. We have returned the keys to the lessor at this time and date." After the FBI moved out, ProCorp leased the premises to two new tenants. GSA continued to pay rent, however; it then sought to "show the premises to two potential federal tenants and was informed that the vacant space had been leased to another party." MLJ offered to terminate the leases of the replacement tenants if GSA wanted the space back, but the contracting officer terminated the government's lease with MLJ instead. The Board upheld the termination notwithstanding that MLJ was not given a written notice of default or 30-day opportunity to cure, because the Board held MLJ's leasing of the premises to third parties constituted an abandonment of performance, as it precluded MLJ from meeting its contractual obligation to provide the space to GSA. The Board awarded GSA damages in the form of a refund of rent the agency paid after the breach, while the space was leased to third-party tenants. As the Board stressed in that decision—and has reiterated since: "If the Government establishes a prima facie case that termination of the contract was proper, it is then the burden of the contractor to establish that its failure to perform is excused." *Asheville Jet Charter & Management, Inc. v. Department of the Interior*, CBCA 4079, 16-1 BCA ¶ 36,373 (citing *id.*).

By contrast, if the landlord complies with the terms of the lease, courts and boards will require the government to strictly adhere to lease requirements to provide written notice. Thus, for example, in *HPI/GSA-4C, L.P. v. GSA*, CBCA No. 6093, 20-1 BCA ¶ 37,567, the board awarded the landlord unpaid rent after finding that GSA failed to provide the required termination notice. The lease required 180 days' notice before termination. California filed a condemnation action in relation to the property. The IRS, the tenant agency, vacated the property and GSA ceased making payments. Approximately six months later, pursuant to a settlement agreement between California and the landlord, California took possession of the property. The landlord filed a claim for rent for the six-month period. GSA argued that various emails and letters, as well as a stipulation filed with the state of California, constituted notice of termination and that vacating the property served as notice in any case. The CBCA observed that "[t]he terms used in the [contract] provision track with commonly used GSA lease language," and that "GSA's Lease Management Guide instructs GSA employees to 'send a termination letter to the lessor in accordance with lease terms.'" None of

GSA's emails or letters said that the lease would be terminated on a given date. The Board therefore held that the lessor was entitled to unpaid rent "because GSA never terminated the lease, and therefore remained obligated to pay rent under the lease until . . . California took over the property."

Finally, the government may terminate for default based on the landlord's failure to adequately perform other obligations under a GSA lease, but the government bears the burden of proving the landlord's performance was inadequate or otherwise deficient when terminating on such grounds. In *Wise Developments, LLC v. GSA*, CBCA Nos. 6659, 7422, 25-1 BCA ¶¶ 38,745, the CBCA reversed a default termination of a GSA lease where the termination was premised on the landlord's failure to correct sporadic odors allegedly bothering tenant agency staff. The board found that the lessor had undertaken extensive efforts to identify and remedy the cause of the odors, including retaining third-party contractors to address it. The board concluded that the landlord's maintenance obligations were met and that GSA otherwise failed to establish that the landlord had violated any term of the lease. The odor itself did not constitute a default and did not otherwise violate any term of the lease, including any air quality standards. Nor did the odor cause a constructive eviction, particularly given that the contracting officer testified that the building was "well-maintained" and the agency's inspectors deemed the building safe for occupancy. On the other hand, the landlord sought reimbursement of the costs of identifying and remediating the odor, but the CBCA denied the claim. The board held that "[e]ven if the agency failed to prove that Wise was ultimately responsible for the odor, the terms of the contract required certain duties from Wise as the lessor. We find that Wise's efforts to address the odor were in keeping with those duties and should not be paid."

V. DISPUTE RESOLUTION UNDER GSA LEASES

Contract Disputes Act

The Contract Disputes Act (CDA), 41 U.S.C. ch. 71, governs disputes between landlords and the government under GSA leases. The statute imposes formal requirements for disputes that differ from disputes under commercial leases, requiring submission of a "claim" to the lease contracting officer for a final decision, which may then be appealed to a contract appeals board or the Court of Federal Claims. Strict compliance with statutory requirements, including the six-year statute of limitations and proper certification, is essential. For example, in *Miami-Dade Aviation Dep't v. GSA*, CBCA 6689, 20-1 BCA ¶¶ 37,727, the board dismissed a landlord's claim against the government for underpayment of rent because the claim required certification and was uncertified. Additionally, it was submitted more than six years after the claim accrued and thus was time-barred.

Landlords and property managers that are not accustomed to dealing with the federal government may be hesitant to pursue GSA leases in view of the government-unique dispute framework. While it is important to bear in mind these unique aspects of federal leases, lease disputes with federal agencies are not frequent occurrences. Moreover, landlords should have no trouble navigating the CDA process with the support of experienced government contracts counsel.

Claims and Requests for Equitable Adjustment

To assert a claim against the government under the CDA, a landlord must submit a written demand or assertion to the GSA contracting officer, seeking a specific amount of money (a "sum certain"), assuming monetary damages are sought. FAR 52.233-1(c). The claim should request a final decision and, if the amount claimed exceeds \$100,000, it must include a certification. FAR 52.233-1(d)(2). The certification must state:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.
FAR 33.207(c).

In lieu of a claim, landlords may submit an informal “request for equitable adjustment” (REA) to the contracting officer to attempt to resolve a disagreement without litigation. A claim must be submitted before the statute of limitations runs. However, an REA does not toll the limitations period. Further, interest does not begin to accrue until a claim is submitted. FAR 52.233-1(h). Finally, in some instances, an REA may be deemed a claim if it meets the statutory elements required by the CDA.

Note that notwithstanding any claim or REA, the landlord must diligently perform under the lease pending resolution or may risk termination for default. See FAR 52.233-1(i).

Contracting Officer’s Final Decision

When a CDA claim is filed, the contracting officer has 60 days to render a final decision or notify the landlord of the date by which the decision will be made. FAR 52.233-1(e). The final decision on a claim is the contracting officer’s formal determination to grant or deny a claim, either in whole or in part. A final decision is supposed to identify the contract at issue, describe the claim or dispute and state the decision with supporting rationale. The decision is also supposed to clearly state that it is a final decision and inform the lessor of its appeal rights.

These requirements are not always strictly enforced. For example, a final decision may be valid even if it does not inform the claimant of its appeal rights, unless the absence of appeal rights is shown to prejudice the claimant. In *Wise Developments, LLC v. GSA*, CBCA No. 6659 21-1 BCA ¶ 37,774 (an earlier iteration of a decision discussed above), the board found that a termination letter did not constitute a valid COFD because it lacked proper appeal language informing the landlord that an appeal was required to be filed within 90 days at the CBCA or within a year at the Court of Federal Claims (COFC). The landlord, Wise, brought a claim for damages based on wrongful termination five years after receiving the termination letter, but the board denied a motion to dismiss and allowed the appeal to proceed. Wise persuaded the board that it was prejudiced by demonstrating that it was a small company that did not typically engage in government contracts and was not well versed in the procedures for government contracts disputes. Although Wise engaged counsel after receiving the termination notice, the counsel originally hired did not specialize in government contracts and did not understand the timeframe for appealing a termination decision, mistakenly believing that a monetary claim just needed to be submitted within six years. The CBCA emphasized that while “a contracting officer’s decision can be final for purposes of appeal without using all of the language required by regulation”—i.e., the requisite appeal language—because the lessor demonstrated it was prejudiced by the lack of appeal rights notice, the 2014 termination notice was not a proper COFD and thus an appeal was not required to be filed within 90 days.

Government Claims

CDA claims go both ways: the government can assert claims against the landlord, including for default termination, which may include excess costs of reprourement (i.e., added costs associated with replacement leases) or the recovery of relocation costs. Unlike claims brought by contractors, however, government claims do not require certification. A government claim generally functions as

a final decision as well. This is important because the final decision starts the clock for the lessor to file an appeal.

Appeal Timeline and Forums

A lessor has 90 days to appeal a final decision to the Boards of Contract Appeals (BCAs) or one year to appeal to the Court of Federal Claims (COFC). Again, as is a recurring theme in this piece, these timelines will be strictly construed. For example, in *Acabay Inc. v. GSA*, CBCANo. 8185, 25-1 BCA ¶ 38,716, the board dismissed an appeal that was filed more than 90 days after receipt of the contracting officer's decision and the appellant could not prove timely mailing.

Lessors may choose between two appeal forums. They can appeal to the CBCA, an administrative body with agency counsel and streamlined procedures, within 90 days of the COFD. Alternatively, they can appeal to the COFC, a judicial forum where the Department of Justice represents the government, within one year. The CBCA is intended to offer more informal, expedited proceedings, while the COFC provides a traditional federal litigation proceeding with full discovery.

VI. ADDITIONAL ISSUES IN GSA LEASE CONTRACTS

Several other issues unique to the federal government can also affect GSA leasing.

- **Davis-Bacon:** The Davis-Bacon Act is a federal labor law that requires contractors and subcontractors to pay laborers and mechanics performing federally funded construction, alteration or repair work no less than the locally prevailing wages and fringe benefits for similar work, as determined by the U.S. Department of Labor. In the context of GSA leasing, Davis-Bacon requirements apply when the lessor or its contractors perform construction or significant alterations under the lease. These obligations are typically incorporated through GSAR clauses in leases that require tenant build-out, customization or improvements. Noncompliance with Davis-Bacon prevailing wage requirements, including associated administrative requirements such as certified payroll submission, can have serious repercussions that may include withholding of contract payments, payment of back wages, termination or even debarment (exclusion from participation in government contracting and grants).
- **Bid Protests:** Unsuccessful offerors may file lease bid protests under the applicable procurement protest rules. Bid protests are legal actions brought by non-prevailing competitors to challenge the solicitation or award of a lease through a variety of substantive and procedural arguments aimed at proving that GSA's decision in awarding the lease was unreasonable or irrational. These challenges are either filed directly with GSA, with the Government Accountability Office (GAO) or before the COFC.
- **Other Performance Claims:** Lessors (and GSA) may bring claims under the CDA for disputes independent of, or in addition to, terminations. For example, in *PJB Jackson-American, LLC v. Gen. Servs. Admin.*, CBCA No. 3628, 16-1 BCA ¶ 36,248, a landlord sought and was awarded damages for constructive changes (specifically, extra design work) and delay costs, in addition to damages for wrongful cancellation.

CONCLUSION

GSA lease terminations and other lease disputes sit at the crossroads of federal real estate and government contracts law. The government's termination rights often turn on the specific language of each lease. At the same time, procedural missteps — such as failing to certify a claim or timely appeal a final decision — can undermine otherwise valid claims. Given the financial stakes, legal

complexity and the Administration's current focus on GSA leasing, landlords involved in federal leases or exploring new business opportunities with federal agencies will benefit from a clear understanding of the governing legal standards, relevant case law and administrative procedures. Careful attention to these issues can help reduce risk and support more effective navigation of terminations and related disputes.