

Special Guidance for On-Airport Leases

In conjunction with GSA's Office of Small and Disadvantaged Business Utilization (OSDBU), the National Office of Leasing is releasing this special guidance to assist regional leasing programs in leasing on-airport space from airport authorities. The leasing program acquires space for agencies, such as the Transportation Security Agency (TSA), whose mission requires that GSA obtain space at airports, which is available from a single source, the airport authority. Further, airport authorities are generally quasi-governmental entities which are subject to the sub-contracting laws enacted by local legislatures. Often these local legislatures prescribe utilization of small businesses and minority businesses located within the city limits, for example. Under the governing rules for airport authorities, it may not be possible to accept the federal standards without corresponding action by their governing legislature or board. The subcontracts are already in place by the local authorities, making it impossible to "maximize practicable opportunities" for small businesses to perform. This also restricts the ability of the local government to comply with all 15 requirements for a subcontracting plan as required by FAR 52.219-9.

Further complicating this issue is the fact that on-airport leases for agencies such as TSA represent a very small percentage of the overall space leased at airports, making it impractical for the Lessor to implement the governing local subcontracting rules for the majority of their space while complying with federal standards with respect to the subcontracting opportunities available under the GSA lease.

As outlined in the leasing alert, small business sub-contracting is required under certain circumstances under FAR 52.219-9. When leasing space from airports who do not qualify as a small business under NAICS code 531120, and are unable to accept the federal sub-contracting guidelines due to a conflict with legislatively enacted local subcontracting regulations, LCOs should pursue an individual deviation pursuant to the instructions under GSAR 501.403 Individual Deviations. GSAR 501.403 provides guidance on approving individual deviations from the FAR and GSAR. In order to facilitate substantial compliance with GSA's small business subcontracting goals, regional leasing programs should use these guidelines to properly document instances for on-airport leases where Lessor still provides small business subcontracting opportunities pursuant to corresponding regulations enacted at the local level, but it is impractical to implement the subcontracting procedures contained in this leasing alert.

During the negotiations for leases at an airport the LCO should confirm whether the airport authority qualifies as a small business. When the airport authority is other than a small business, the LCO should discuss the small business subcontracting requirements as described in attachment 1 of this alert. If the airport authority indicates that they cannot accept these standards due to a conflict with local regulations which

govern small business subcontracting opportunities at that airport, the LCO should obtain a copy of the corresponding local regulations and prepare an individual deviation justification for approval by the Head of the Contracting Authority or, upon delegation of authority pursuant to GSAR 501.403(b), the Director of Leasing. Upon approval of the individual deviation, LCOs may omit the following General Clauses from the lease:

- 52.219-8 Utilization of Small Business Concerns
- 52.219-9 Small Business Subcontracting Plan
- 52.219-16 Liquidated Damages—Subcontracting Plan
- 52.219-73 Goals for Subcontracting Plan

Note that, in instances where the LCO determines that there are no subcontracting opportunities (for example, the airport only employs city employees provided by the local entity), the LCO should instead process a waiver in accordance with GSAM 519.705-2(d). The waiver must include justification documenting the rationale behind a determination of no subcontracting opportunities. The LCO must coordinate the notice through GSA's regional Small Business Technical Advisor (SBTA) and obtain concurrence from AAOSDBU.