

Leasing to Federal Agencies: *Is the Red Tape Worth the Greenbacks?*

As a commercial property owner, you strive to maintain 100 percent occupancy with good, law-abiding tenants that always pay rent on time and in full. While no tenant can ever be a sure bet, you might think that a federal agency is about as close to perfect as you can get. Given the government's source of income—our tax dollars—it should be the safest deal available.

Having the government as a tenant definitely has its advantages—but it may be more challenging than you think. Leasing space to a federal agency is very different from the usual commercial real estate world. For example, if you want any tenant in your building or center that has ties to the government, you'll more than likely have to deal with the General Services Administration (GSA).

The GSA, sometimes referred to as the "federal government's landlord," leases space all across the country and then assigns the space to various federal agencies. "When you deal with the GSA, you deal on their terms," says Santa Monica, California real estate attorney Susan Fowler McNally. "The GSA will use its forms and leave little to no room to negotiate," she says.

With the help of Fowler McNally and John Kocmur, president and founder of San Diego-based Janez Properties, we'll explain how to secure a federal agency as a tenant. And we'll give you a list of special issues to consider if that agency is involved in law enforcement.

The Process

The GSA follows a standard process when

securing space for federal agencies. First, after meeting with its agency-client, the GSA will advertise a requirement for space in the form of a Solicitation for Offers (SFO). In most cases, the GSA will advertise on the federal business opportunities Webpage, www.fedbizopps.gov, or in the local newspaper. The SFO spells out in detail what type of space is desired, the conditions of the lease, and the specific requirements that must be met for the space to be considered.

If you believe that your space is suitable, you would submit an initial bid offering your space. After all initial bids are received, the GSA will meet with you to ensure that you understand the requirements and can adequately prepare your final proposal. When all final proposals are in, the GSA will evaluate the offers and select the one that represents the best deal for the government.

Submitting final proposal

After meeting with the GSA officials, you'll want to work with your attorney to make sure you fully understand the terms and conditions before submitting your final proposal, says Kocmur. When you actually submit the final proposal to GSA, do the following:

- Make sure that the proposal fully complies with the SFO's request for space. If you don't give the GSA exactly what it wants, it will probably reject your offer out of hand, warns Kocmur.
- Make sure that you provide all documentation as requested. When it comes to the government, incomplete information

will most likely get your proposal tossed in the trash, says Kocmur.

- Be on time! A late proposal means that you've just wasted valuable time and money. If you don't get your proposal in by the deadline, don't even bother submitting it; the GSA won't consider it, Kocmur adds.

Federal Law Enforcement: Special Issues to Consider

Leasing space to a federal agency can be a lucrative venture. "With the federal government, you can be sure that the rent will get paid and that they won't move out in the middle of the night," says Fowler McNally. Also, because of the nature of governmental agencies, if they need to expand, they will probably stay with you, as relocation is a much more difficult task under the circumstances, she adds.

However, federal law enforcement agencies pose issues different from any other tenant, government or otherwise, warns Fowler McNally. "Because the forms are supplied for you by the GSA and the terms are set, your main focus should be on the impact

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Specialty Leasing *continued*

that the build-out will have on your bottom line and negotiating a fair price on the rent,” suggests Fowler McNally.

You should also consider how having federal law enforcement as a tenant will affect your other tenants, as well as the types of people that law enforcement will attract to your building or center, says Kocmur.

Build-Out of Leased Space

“Most of the issues surrounding leasing to law enforcement deal with the build-out of the space,” says Fowler McNally. A federal law enforcement agency is more than likely going to want specific, costly items installed that won’t be of any use to other tenants, she adds.

For example, Fowler McNally says that when the FBI leased space from one of her clients in a commercial building, the agency requested that bulletproof glass, soundproof walls, and handcuff rails be installed in the facility.

When the lease ends and the law enforcement agency moves out, the space will be useless to you unless all of those items are removed and the space is brought back to its original condition. Depending on the terms of the GSA contract, you could be responsible for restoration costs, or even worse—you might have to demolish the building, warns Kocmur.

Negotiating Fair Rent

It’s important that you factor in any and all costs that you think that you might incur when negotiating the rent with the GSA, says Kocmur. For example, in some government leases, the terms require the owner to be responsible for all clean-up

in the tenant’s premises, as well as the common areas.

Imagine that you have a law enforcement tenant that has an “accident” with a detainee and blood is involved. The cost of cleaning blood off ceiling tiles is not included in most janitorial services contracts, and consequently may not be a cost you can readily pass through to other tenants as a common area maintenance cost, warns Fowler McNally.

Similarly, spills in the “evidence room” may involve unknown substances. As a responsible owner, you can’t send the regular janitorial crew down to clean up the spill unless you know what was spilled. And if you don’t know what was spilled, you’ll probably need to bring in a hazardous materials team (HAZMAT). If you haven’t figured those types of costs into the rent you charge, you could end up paying the cost out of your own budget, says Kocmur.

Law enforcement tenants could also need special, round-the-clock access to the building, and you could get stuck with paying for the installation of an expensive security system for just one tenant, says Kocmur.

Impact on Other Tenants

Before you agree to have federal law enforcement as a tenant, consider how its presence will affect other tenants, says Kocmur. For example, people coming in and out of your building with guns may not provide a comfortable environment for other tenants. “We are very hesitant to mix this type of tenant with our standard office tenants; in fact, we avoid doing so at all costs,” he adds.

Also, a federal law enforcement agency’s equipment to conduct business could affect the other tenants’ functionality. For example, Fowler McNally once had a client that received a request to install signal-jamming devices in the walls for its law enforcement tenant. Such devices could interfere with other tenants’ reception and you could be held liable for any damage or injury that results from the interference, says Kocmur. Also, if the situation places too much of a burden on another tenant’s daily operations, that tenant could potentially acquire a legal right to leave the space, he adds.

Kocmur also notes that most law enforcement agencies do not want to be listed on building signage or have their locations revealed. “If you can’t warn prospective tenants ahead of time that you have law enforcement as a current tenant,” Kocmur says, “consider how that might affect your ability to market your building.”

Insider Sources

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