



OCT - 1 2003

MEMORANDUM FOR ASSISTANT REGIONAL ADMINISTRATORS

FROM: WILLIAM H. MATTHEWS *William H. Matthews*
ASSISTANT COMMISSIONER – PT

SUBJECT: Pricing Policy Clarification #10
Federal and Leased Standard OA Clause 2E

The attached pricing policy clarification further defines Rent commencement in Federal and Leased Standard OA Clause 2E.

The clarification was initiated based on a customer request to clarify when Rent commences. The clarification was drafted in coordination with the Regional Pricing Points of Contact (POC's) and the Pricing/Billing Panel. A copy of this clarification is being provided to the Regional Pricing POC's for dissemination within each Region.

If you have questions regarding this clarification, please contact the National Pricing Points of Contact, Kevin Rothmier at 816-926-1100, Mary Gibert at 202-501-0096 or Steve Peters at 215-446-4670.

Attachments

cc: Assistant Commissioners, Regional PT Directors, Regional Pricing POCs



Pricing Network

Effective Date: October 1, 2003

Purpose: Policy Clarification #10 on Federal and Leased Standard OA Clause 2E
Desk Guide Appendix A, page A-2

Existing Desk Guide Language:

Federal Standard Clause 2E and Leased Standard Clause 2E included in Pricing Policy Clarification #3 on "Separation of the Standard Clauses into Leased and Owned Sets."

Clarification:

The Standard OA Clause 2E as it relates to Rent commencement has been clarified. Replace Federal Standard Clause 2E and Leased Standard Clause 2E included in Pricing Policy Clarification #3 on "Separation of the Standard Clauses into Leased and Owned Sets" with the Attachment.

Attachment

Federal OA Standard Clause 2E

The Tenant agency's obligation to pay rent for the space governed by this OA commences when both of the following occur: the space is substantially complete and operationally functional. Occupancy and rent start will be coordinated with the Tenant.

1. The space is ready for occupancy of personal property, typically the substantial completion date. Substantial completion is signaled by PBS's acceptance of the space as substantially complete in accordance with the general construction contract documents. "Substantially complete" and "substantial completion" mean that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in the general construction contract, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

PBS will offer to an authorized representative of the Tenant the opportunity to participate in a walk-through of the space prior to final acceptance of the space as substantially complete by PBS. The authorized representative of the Tenant will make himself or herself available so as to not delay the walk-through of the space. The authorized representatives of PBS and the Tenant will itemize any defects and omissions (D&Os, or "punch list") of the construction project that will need to be corrected prior to final contract payment. Provided that the D&Os are minor matters not materially diminishing use of the space, the authorized representative of PBS, acting on behalf of the Government and its Tenant, will determine substantial completion.

2. The space is operationally functional. Operationally functional means that the building systems included in the general construction contract must function and GSA-provided building-specific safety and security features must be operational. Related space that is necessary for a Tenant to function due to workflow adjacencies must be complete before rent commences.

For large projects that entail phased occupancy of the Tenant's space, rent will commence on the individual blocks of space when they are substantially complete and operationally functional. The blocks will be added to the Client Billing Record (CBR) incrementally. In the case of phased occupancy with separate CBRs (for example, with different Agency/Bureau codes), the rent start date for each CBR will occur when the space associated with it is substantially complete and operationally functional.

If there is a *substantial* punch list for the space that would interfere with the Tenant's full access, occupancy, possession, use and enjoyment of the space, and the Tenant chooses to move in anyway, GSA will negotiate a rent discount with the Tenant while the punch list work is being completed. If after hours work is required, GSA will ensure that adequate security is provided while the contractor is in the Tenant's space.

Once the above “substantially complete” and “operationally functional” requirements have been met, rent will commence. GSA does not provide tenant agencies a grace period prior to rent commencement to accomplish the physical move into the space or to allow for the installation of personal property such as phones, furniture, computers, etc. However, rent should not start until those personal property items that have been included in the General Services Administration’s general construction contract, such as telephone and data systems or audio/video systems, are operational unless the Tenant chooses to move into the space pursuant to the preceding paragraph.

Leased OA Standard Clause 2E

The Tenant agency's obligation to pay rent for the space governed by this OA commences when both of the following occur: the space is substantially complete and operationally functional. Occupancy and rent start will be coordinated with the Tenant.

1. The space is ready for occupancy of personal property, typically the substantial completion date. Substantial completion is signaled in the case of leased space by the granting of an occupancy permit by the proper authority and/or by PBS's acceptance of the space as substantially complete in accordance with the lease. "Substantially complete" and "substantial completion" mean that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in the lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

PBS will offer to an authorized representative of the Tenant the opportunity to participate in a walk-through of the space prior to final acceptance of the space as substantially complete by PBS. The authorized representative of the Tenant will make himself or herself available so as to not delay the walk-through of the space. The authorized representatives of PBS and the Tenant will itemize any defects and omissions (D&Os, or "punch list") of the construction project that will need to be corrected prior to final contract payment. Provided that the D&Os are minor matters not materially diminishing use of the space, the authorized representative of PBS, acting on behalf of the Government and its Tenant, will determine substantial completion.

2. The space is operationally functional. Operationally functional means that the building systems included in this lease must function and Lessor-provided building-specific safety and security features must be operational. Related space that is necessary for a Tenant to function due to workflow adjacencies must be complete before rent commences.

For large projects that entail phased occupancy of the Tenant's space, rent will commence on the individual blocks of space when they are substantially complete and operationally functional. The blocks will be added to the Client Billing Record (CBR) incrementally. In the case of phased occupancy with separate CBRs (for example, with different Agency/Bureau codes), the rent start date for each CBR will occur when the space associated with it is substantially complete and operationally functional.

If there is a *substantial* punch list for the space that would interfere with the Tenant's full access, occupancy, possession, use and enjoyment of the space, and the Tenant chooses to move in anyway, GSA will negotiate a rent discount with the Lessor while the punch list work is being completed. If after hours work is required, GSA will ensure that adequate security is provided while the contractor is in the Tenant's space.

Once the above “substantially complete” and “operationally functional” requirements have been met, rent will commence. GSA does not provide tenant agencies a grace period prior to rent commencement to accomplish the physical move into the space or to allow for the installation of personal property such as phones, furniture, computers, etc. However, rent should not start until those personal property items that have been included in the lease contract, such as telephone and data systems or audio/video systems, are operational unless the Tenant chooses to move into the space pursuant to the preceding paragraph.