

ADC '10

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WINTER FORUM

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Federal Scoring Workshop
Energy Transactions and
OMB Circular A-11

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Energy Transactions & OMB Circular A-11

Scoring: Today's Topics

- What is “Scoring?”
- What is “Scored”?
- OMB Scoring Rules

What is “Scored”?

- If an agency intends to occupy space in or obtain services from an Enhanced Leasing development and pay for such services or space, the agency must undertake a scoring analysis using the criteria in Appendix B of **OMB Circular A-11** to determine whether the purchase of space or services is an “**operating lease**” or a “**capital lease**”
- Underlying ground lease is not scored unless it is an integral part of the purchase of space/services

What Is “Scoring”?

- Amount of appropriations that will be required for an agency to lease space or a facility (OMB)
- [**Translation**] How large a financial commitment is the agency making?
- If the use of space/services scores as a “capital lease” or a lease-purchase, the agency will need to have full budget authority prior to entering into the transaction.

Leasing Scoring Rules

- OMB Circular A-11, Appendix A & B
- Distinguish leases that effectively purchase the asset from leases that “use” the asset for a short period
- Criteria are based on private sector accounting standards for capital leases (Financial Accounting Standards Board standards and rules .

Transactions that are not scored

- Energy Savings Performance Contracts
 - *42 U.S.C. § 8287*
 - OMB Memorandum for the Heads of Executive Departments and Establishments on Federal Use of Energy Savings Performance Contracts, (Washington, D.C.: July 25, 1998)

Transactions that are scored as Operating Leases

- Service Contracts
 - Multi-year service (i.e., ground maintenance) and multi-year purchase contracts for expendable commodities (e.g., aspirin) are considered operating leases – however, agencies should consult with OMB if a service contract requires a private contractor to construct or acquire a capital asset solely or primarily to provide service to Gov't . [OMB Circular A-11, Section 3 Definitions and concepts.]

Reporting to OMB

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- Agencies must submit to OMB the following leasing and other non-routine financing proposals for OMB review of the scoring impact:
 - **Leases of capital asset with total payments >\$50 M**
 - Out-leases with leasebacks
 - Public-Private Partnerships/LLCs
 - Government guarantees
 - Special Purpose assets
 - EULs with leasebacks above threshold
 - **Projects on Government land**

Reporting to OMB

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- **[Continued]** Agencies must submit to OMB the following leasing and other non-routine financing proposals for OMB review
 - **Service contracts that require contractor to acquire or construct assets >\$50 M**
 - **Share in savings resulting in acquisition of real property**
 - Proposals raising issue with status of asset or owner
 - Any financing proposal requiring OMB approval
 - Arrangements with special tax status due to Government participation
 - Leases with options that are conveyable to 3rd party

UPFRONT LEASE SCORING

Operating Lease.

- Obligate BA equal to 1 year lease payments plus termination liability

Capital Leases.

- Obligate BA equal to PV of lease payments discounted using comparable Treasury rate

Definition of “Operating Lease”*

- PV lease payments don't exceed 90% of asset Fair Market Value, **and**
- Lease term is not greater than 75% of the economic life of the asset, **and**
- No bargain-price purchase option, **and**
- Ownership of asset remains with lessor and is not transferred to the Government, **and**
- Asset is a general purpose asset, not built for special purpose of the Government, **and**
- Private sector market for the asset

* **OMB Circular A-11 Appendix B**

PV lease payments don't exceed 90% of asset Fair Market Value Test

Fair Market Value *	\$20,000,000
Power Purchase Agreement (PPA) Term	20 Years
Treasury Discount Rate (OMB Cir. A-94/App C)	5.0%
Annual Minimum PPA Payments	\$1,301,029
Present Value of PPA Payments	\$16,213,693
As % of FMV	81%

- “Minimum annual Government payment” (PPA) **does not** include operating expenses and property taxes
- PV of PPA payments is less than 90% of the fair market value of the asset
- As an **Operating Lease**, Agency obligates \$1,301,029 in each of the 20 years covered by the PPA, plus termination liability.

* If new construction, must use estimate for private sector construction cost

PV lease payments don't exceed 90% of asset Fair Market Value Test

Fair Market Value *	\$20,000,000	
Power Purchase Agreement (PPA) Term		30 Years
Treasury Discount Rate (OMB Cir. A-94/App C)		5.0%
Annual PPA Payments	\$1,301,029	
Present Value of PPA Payments	\$20,000,000	
As % of FMV	100%	

- “Minimum annual Government payment” (PPA) **does not** include operating expenses and property taxes
- Present value of PPA payments exceeds 90% of the fair market value of the asset
- Therefore the PPA is a **Capital Lease**, and the transaction will need up-front budget authority

* If new construction, must use estimate for private sector construction cost

Economic Life Test

- Lease term is not greater than 75% of the economic life of the asset
 - If lease agreement contains an option to renew it will be presumed that the option will be exercised
 - If the lease agreement contains an option to purchase at less than fair market value, it will be presumed that the option will be exercised

**Public/Private Partnership includes SPE wherein
Federal entity is a beneficiary.**

Must Have “Substantial Private Participation”

- Non-Federal partner has majority ownership of the partnership and revenues.
- Non-Federal partner must contribute at least 20% of the total value of the assets owned by the partnership.
 - Total value includes Gov't. contributions (except land)
 - Non-Gov't. contributions can be cash, real assets and loans.
 - Government loans to Non-Federal partner do not count.
- No Government guarantees of the project (i.e., higher rent if reduces space or rental guarantee).

Lease-Back Agreements

- Projects on Government land are *presumed* to be for a special purpose of the Government.
- Government land leased to a “*totally non-Federal entity*” and leased-back will not be considered a Public/Private Partnership and **may** be an operating lease if the lease-back meets Operating Lease criteria.

Public/Private Partnerships

- Leases from “Public/Private Partnerships” *are* capital leases.
- Public/Private Partnerships are specifically defined -- if a partnership does not meet the defined test, the Agency assumes **all** of the partnerships obligations.

Lease Scoring Strategies

Risk	Who Bears the Risk?		Comment
	Govt	Private	
Lease of Gov't property			Government conveys ground lease to Lessee.
Project Development			Government sole commitment is to convey ground lease to Lessee. Lessee assumes all financing, construction and operation of any development on the leased property. NO explicit or implicit Government commitment or guarantees
Performance			Private developer solely responsible for project operations. Risk of performance, derived from market and economic factors is borne by the private sector. Government performance requirements under the terms of the ground lease limited to obtaining fair market rental and protecting interests of Federal Government as underlying land owner.
Market Demand			Lessee bears all Project market and economic risk .
Gov't lease-back or purchase of services			Lessor/Contractor must be totally non-Federal entity & meets all other operating lease criteria
Residual Value			Lessee has right to sell/assign its leasehold interest, subject to reasonable Government review, but bears the full risk of changes in future market price for the asset

Thank you

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