

**Forest Service Handbook  
National Headquarters - Washington Office  
Washington, DC**

**Forest Service Handbook 6409.31 – Federal Management Regulation  
Chapter 102-73 - Real Estate Acquisition**

**Amendment:** 6409.31-2007-1

**Effective date:** October 03, 2007

**Duration:** This amendment is effective until superseded or removed.

**Approved by:** Jesse King, Chief Financial Officer

**Date approved:** September 21, 2007

**Responsible Staff:**

**Last Change:** 6409.31-97-1

**Superseded Document(s):**

**Digest:** Following is an explanation of the changes throughout the directive by section.

**102-73.55:** Sets forth with minor modification, the direction previously issued in interim directive (ID) 6409.31-2006-1. Sets forth direction that the Davis-Bacon Act (1) applies to Federal contracts in excess of \$2,000 for the construction, alteration, and/or repair of a public building and (2) may apply to some Forest Service lease activities where the lease contract involves new construction, alteration, and/or repair of a leased facility.

This direction follows the coding and format structure of the Federal Management Regulation (formerly referred to as the Federal Property Management Regulations).

**Subpart B-Acquisition by Lease**

**102-73.55 On what basis must Federal agencies acquire leases?**

The Davis-Bacon Act (40 USC 276a, 29 CFR parts 1, 3, and 5) applies to Federal contracts in excess of \$2,000 for the construction, alteration, and/or repair, including painting and decorating, of a public building. This Act may apply to some Forest Service lease activities where the lease contract involves new construction, alteration and/or repair of a leased facility. Factors to consider in determining if this Act applies are:

- The length of the lease.
- The extent of the Government involvement in the construction project; in other words, if the building is being built to Government requirements and whether the Government has the right to inspect the progress of the work.
- The extent to which the construction would be used for private rather than public purposes.
- The extent to which the costs of construction would be fully paid for by the lease payments.

If any of these factors are applicable to a proposed lease, then the provisions of the Davis-Bacon Act must be included in the lease solicitation and contract in accordance with this Act and the Department of Labor All Agency Memorandum 176, dated June 22, 1994 ([http://oamweb.osec.doc.gov/OAMFA/docs/pm\\_94-43.htm](http://oamweb.osec.doc.gov/OAMFA/docs/pm_94-43.htm)). For a copy of these clauses, see the Federal Acquisition Regulation 52.222-6 (<http://www.arnet.gov/far/loadmainere.html>). It is the responsibility of the real property leasing officer to determine if these factors apply. Furthermore, the lease file must be documented to show that the applicability of the Act was considered.