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2 SPACE ACQUISITION GUIDANCE

2.1 Applicability

This document provides general guidance in the acquisition of office, storage and special purpose space.

2.2 Real Estate Acquisition Process

2.2.1 Request

The acquisition of real property interests is usually informally initiated by a request for market information and estimated costs. The Real Estate Contracting Officer (RECO) must receive a written request along with a funding certification in order to start the acquisition process. A certification of funding must be received prior to the obligation of any funds for any purpose (i.e., surveys, appraisals, space lease, etc.) or the award of a contract. This certification is normally provided by a Procurement Request (PR), which must commit valid funding to fully cover the first fiscal year costs.

2.2.2 Requirements and Planning Revised 1/2011

The RECO should assist the customer in the development of requirements to ensure that the space to be acquired will meet their needs and that it will conform to FAA regulations such as the Administrative Space Guidance, found in 2.4.1: Appendix A and the Administrative Space Regulations as found in the Space Order 4665.4 for administrative space found in 2.4.1.1. The customer should be advised of available alternatives that may fulfill their needs at a lower cost or in a more efficient manner. The RECO must consider the potential budgetary impacts of long- term (over 5 years including options) space leases when developing alternatives and generally should avoid any lease terms that could result in the lease being classified as a capital lease or lease purchase, unless the customer has prepared and obtained budgetary authority for such a lease. See OMB Circular A-11, Appendix B, and "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information.

When the FAA is currently leasing space, in or near the delineated area, consideration should be given to the advantages of collocation, both from economic and program point of view. If there is a demonstrated advantage to collocation, negotiations may be conducted with the lessor provided the proposed rental will be comparable with the market survey determination of the fair annual rental. The RECO should also consider other available federal space, if it meets the requirements of the customer.

The FAA's mission generally requires that offices be located within 5 miles of an airport and outside the central business area.

On requests for renewal of existing leases, the RECO should determine that if the property continues to meet the FAA’s needs, any changes required in the lease terms should be negotiated and included in the renewal.

2.2.3 Procurement Method

Competition is the preferred method of procurement and should be utilized whenever practical and reasonable. Competition is appropriate when the requirement is not site specific.

The single source method of procurement is appropriate when technical requirements, business practices, or programmatic needs have determined that a specific site is required to meet the FAA's mission. The lease file should document the reason(s) competition was not used in the acquisition.

2.2.4 Succeeding Leases/Lease Renewals **Revised 7/2012**

General Requirements: Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. If the tenant organization indicates a need to remain in the same location, the RECO can initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Competition is the preferred method of acquisition for administrative space; however, if a single source is in the best interest of the Government, the single source form must have signature concurrence from the line of business. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses. However, if the lease has met its 20 year authority, the RECO must negotiate a new lease using the current lease template.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport nevoid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. For all GSA controlled space, the RECO must commence the renewal process at least 24 months prior to the lease expiration date. Further, this time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

2.2.4.1 Holdover Tenancy Revised 7/2008

If a continuing need has been determined and it appears the lease will expire without a Supplemental Lease Agreement for a short term extension, or succeeding lease has not been awarded, then the RECO must follow the steps in the AMS policy as per 4.2.3.2.1.2 Emergency Reservation of Expiring Funds for Continued FAA Occupancy**.** In those instances where FAA continues to occupy leased facilities after the expiration of the lease term, the FAA is considered a **"holdover tenant."** If the expired lease does not have a "holdover" clause, the laws of the state in which the facility is located will determine FAA's rights of occupancy.

As mentioned under the policy, the RECO must notify his manager, regional counsel, and the LOB Budget office of issue.

If the RECO is unable to get the lessor to sign a temporary agreement, then the RECO must take steps to ensure that sufficient funds are either reserved, or set aside for settlement of the holdover period. A holdover period should not exceed 6 months. Prior to the end of the current fiscal year, the RECO will notify the affected LOB of the potential need to reserve the minimal funds necessary to pay for the FAA's occupancy during the continued occupancy period (so long as it occured in the same fiscal year), and provide an estimate. If the LOB wishes to reserve funds from the soon to be expiring budget year (for rent that is incurred during the same fiscal year), they shall provide a requisition to the RECO, and the RECO will reserve the estimated rent as an emergency contract. The RECO will send a formal memo to the Accounting office of the emergency reservation of funds, and to await further instructions from the Accounting on when to make any payments. **Note:** The RECO must document in the file a justification for the emergency reservation of funds. Below is information for dealing with holdover tenant with accounting in the financial system.

1. FAA cannot use its holdover status to avoid its obligation to pay for leased facilities. This may necessitate a a memo for the emergency reservation of funds or temporary supplemental lease agreement so that PRISM can accept the obligation without a signed contract. The interim contract number will be the old lease number with an "OH" suffix to the old lease number, or will be a new lease number.

2. Delphi Miscellaneous Obligating Documents (Delphi MOD) will be used only for FY200X funds that are due to the lessor of a holdover lease where funds have not yet been obligated or paid in FY200X for the time already lapsed. Instructions for recording in Delphi in accordance with year-end closing are on the Delphi website (FAA only)**.** The Delphi M.O.D. is regularly used to accrue utilities, credit card purchases, etc. in Delphi for transactions that will not clear before year-end. A Delphi M.O.D. will not be used for leases where FAA is a holdover tenant except in the instance mentioned above.

3. Note if the LOB validates, it can pay the back rent from current year funds, it is not necessary

to perform the emergency reservation of funds.

During this period the RECO must continue to negotiate an lease extension even if considering a condemnation posture. Once the RECO has negotiated a final lease agreement, the RECO must perform a modification to the emergency lease to document the conversion to a fully executed lease contract. Any difference in lease rental payment should be settled and paid at that time.

2.2.5 Advertising/Market Survey and Appraisal Revised 1/2015

Advertising: If advertising is to be accomplished, the Real Estate Contracting Officer (RECO) shall utilize the publicizing method most likely to result in receipt of offers appropriate to satisfy the specific requirement. The content of the advertisement is at the discretion of the RECO. In most cases, advertisements will be in local newspapers. Also, advertisements may include commercial trade journals, electronic bulletin boards, and the Commerce Business Daily. Multiple advertising may be utilized, if necessary. If the RECO chooses to advertise, the RECO shall place the largest circulation in the geographic delineated area and include placement on the days when the "Real Estate" Section is published.

Advertising is not required when the RECO determines that it is not warranted, or reasonable competition can be achieved. Data from an advertisement or market survey may be used to determine the competitive range.

Market Survey: A market survey is a tool used to help the RECO determine the following when leasing a space:

- ☐ the FAA's needs and requirements,
- ☐ determines the fair market rental value and the rental price, and
- ☐ allows for the determination of the competitive range.

A market survey must be conducted in both competitive and single source space acquisitions for all new, succeeding, renewal or small space lease.

Market Information for a Business Case

Under the Space Council Administrative Space Standard Operating Procedures, all lines of business are required to submit a copy of an approved business case to the RECO for all new administrative space requirements. The AFI will submit a copy of an approved business case to the RECO for all technical space. The RECO will assist the LOB with the business case by providing limited market information.

A limited market survey is used for assisting the customer in the development of a business case. A limited market survey is basic fact finding, and includes gathering data that answers the following questions:

- ☐ Is space available in the delineated area?
- ☐ What is the cost per square foot?
- ☐ What are the general terms in the surveyed area?

In addition, the customer must provide initial information on their space requirements to the RECO to conduct a limited market survey.

The RECO has the authority to proceed with a full market survey only after receiving a copy of the approved business case for all new space acquisition, either technical or administrative. The RECO must place a copy of the approved business case in the lease documentation file.

There is one exception to this requirement for an approved business case. In the case of an emergency, which creates an immediate threat to the life or safety of FAA employees, such as a fire or an earthquake, the requesting servicing organization can contact the RECO to proceed immediately with a full market survey.

The business case must not identify a pre-selected location when the intent is to procure the requirements using competitive method. If a business case identifies a specific site location when competition is available within the geographically delineated area, the RECO must notify the customer that the AMS policy requires a RECO to use competition when available.

Full Market Survey

Once a copy of an approved business case is received by the RECO, a "full" market survey is conducted by the RECO with their customer. Prior to initiating a full market survey for a new space requirement, the RECO and the customer must determine space requirements such as square footage, security, parking, electrical, data/telephone and any special build-out requirements. Time frames must be established for the acquisition of the space and a delineated geographic area must be identified. The RECO will conduct a full market survey based upon the requirements received from the customer including receiving a zero dollar purchase request.

The RECO will request funding from the customer to ensure that the RECO and customer are able to participate fully in the market survey process. However, if funding is not available, the RECO must send a copy of the space market survey form to the potential lessor(s) to fill in the required information and either by fax or e-mail a completed copy to the RECO within 5 business days from the date the RECO sent the request to the potential lessor(s).

New Lease Market Survey

With respect to the acquisition of new space leases, a full market survey must be conducted. This ensures that the RECO leases space that meets the FAA's requirements and is in the FAA's best interest. As mentioned above, the RECO needs to receive a copy of an approved business case with a zero dollar purchase request in order to proceed with a full market survey.

The following are guidelines for performing a full market survey for new space:

- ☐ The RECO must check if other government space is available for occupancy prior to initiating a market survey. Your local General Services Administration (GSA) point of contact is one potential source for such information.
- ☐ The RECO must ask the customer/facility manager if he/she has developed information concerning space available in the geographic delineated area. If so, the RECO must request specific points of contact and follow up with the named individuals/companies.

If possible, the RECO must physically canvas the geographic delineated area for space offerings, and listings of competing space by looking for vacancy signs, or reviewing the available real estate listings as published in the local paper serving the geographic delineated area. An on-site market survey visit is important in both a competitive and single source acquisition. However, if the RECO is unable to attend the on-site market survey, the RECO must fax or e-mail the market survey form to the potential lessor(s) to fill in and contact the customer to visit the site with the form, if possible.

- ☐ Communicate with other RECOs and review existing files to determine if there have been other recent surveys (e.g. within the last 6 months) completed with respect to the delineated area that may provide points of contact (brokers, property managers and property owners), leads for buildings with available space, or associated information on rent, operating costs, tenant improvements, etc.
- ☐ Contact and communicate with other federal agency real estate representatives (GSA, Corps of Engineers, etc.) to see if they have completed recent surveys or lease negotiations in the geographic delineated area.
- ☐ The RECO is recommended to use Loop net or GSASales.gov or other market tools to gather data. These tools are extremely helpful when the RECO is gathering limited market information.

Succeeding, Renewal and Small Lease Market Survey

It should be noted that a copy of an approved business case is **not** required for succeeding lease (a new lease succeeds the lease expired) or lease renewals (exercising an option to stay in the same location) for standard or small space requirements; however, the RECO should receive a continuing need statement before proceeding with the process of a succeeding lease or a renewal lease including a zero dollar purchase request. This statement should include sufficient and verifiable justification that the requirement for the space is ongoing.

With the above information, (i.e., approved business case or continuing need statement), the RECO can proceed with a full or limited market survey. For most succeeding leases, when a lease has expired and a continuing need statement indicates requirements to remain at the existing location, the RECO **must** conduct a full market survey (see above information on full market survey). For a renewal lease or a small lease (3,000 square foot or less) a full market survey is not required. However, at a minimum, the RECO is required to gather limited market information. As mentioned above a limited market information gathering must be conducted by 3 or more telephone calls to owners of potential sites located within the delineated area to evaluate present market conditions. This would be sufficient information for the RECO's assessment. The RECO must document the lease file with the limited market information.

Market Survey Form

For all new or succeeding space leases the RECO **must** use the 2.6.10 Space Market Survey Form when conducting a full market survey. The RECO **must** complete the market survey form or have designated FAA personnel complete the if the RECO cannot travel to the site. A completed Space Market Survey form(s) must be placed in the lease contract file for each location.

The RECO must request a block plan from the potential lessor(s) (owner or owner representative) outlining the space being offered. This plan will assist the RECO and customer in determining if the potential lessor(s) can meet the requirements of the FAA.

- ☐ The space form will be completed by the RECO (part I-III) and the potential lessor(s) (part IV-V). When the RECO is conducting a market survey, part of the form can be given to the potential lessor(s) to fill in onsite, or it may be sent to a potential lessor(s) to fill in sections VI-VII. This information will assist the RECO and the customer to decide the acceptability of the space for further consideration.
- ☐ If the RECO is unable to attend the market survey, the potential lessor(s) must fill in the form. Then the potential lessor(s) must send back the completed form to the RECO either by fax or e-mail to the RECO within 5 business days from the date the RECO sent the form to the potential lessor(s).

Developing a List of Potential Lessors to whom FAA's Requirements will be provided

Once a full market survey is completed and the market information has been collected, the RECO must determine a reasonable range for rents, anticipated operating expenses and tenant improvement allowances for potential space that meets the customer's needs. This information forms the basis for discussions with potential lessors. The market survey is a vital tool for the RECO to use to determine the price reasonableness of offers that are otherwise likely to qualify for an award based upon the FAA's requirements. The market survey is essential for making a determination of the fair market value (FMV) of the rent and the FMV of asset under lease. Such a determination is necessary in both competitive and single source acquisitions.

The RECO must send the customer a written notification of the selected potential lessor(s) within the competitive range. This will give the customer notice of the potential lessor receiving a Solicitation For Offer (SFO).

2.2.6 Request for Offers/Solicitation for Offers Revised 4/2015

After the market survey is completed, the RECO will decide if they need to send out the Solicitation for Offerors (SFO) to those offerors whose space meets the FAA requirements and whose prices have been determined initially to be fair and reasonable. If the RECO is using the SFO, they **must** use 2.6.1 the Solicitation for Offer form. The SFO will set forth a detailed statement of FAA's space requirements, including any tenant improvement requirements; will set forth pertinent evaluation criteria and the basis for award; will include a schedule for space delivery; will set forth all statutory and regulatory requirements, such as accessibility, life safety, how disputes will be addressed, and labor wage requirements; and will include such additional provisions as are necessary to ensure that the space is acquired in the best interest of FAA. The SFO should be clear and unambiguous. An SFO is not required for a small lease (under 3,000 square feet). However, a modified version of an SFO for small lease is acceptable for the RECO to use.

2.2.7 Negotiation Revised 10/2015

Depending on the acquisition method, the RECO will begin negotiating the FAA's requirements with a single source offeror or with multiple offerors.

If negotiations result in FAA and an offeror reaching an agreement on all of the FAA's requirements, but the rental or an item price is higher than the market survey supports, the offeror can be asked to lower the rental or any other particular item price to be within the amount supported by the market survey. This may be done formally or informally.

Should negotiations not result in an agreement, negotiations with that offeror may be discontinued and the RECO should proceed to negotiate with the remaining offeror(s).

If the RECO cannot reach agreement with any offeror, the RECO shall consult with the Line of Business (LOB) with respect to modifying minimum requirements and/or expanding the delineated area. If the LOB and the RECO agree upon revised requirements, the RECO shall complete a new market survey and re-solicit the lease requirements (RE Guidance 2.2.5 and 2.2.6).

If requirements cannot be modified, or property is not available in the market to meet FAA needs, or the RECO cannot reach an agreement on available properties, the RECO will need to inform the LOB and cancel the request. If the lease being negotiated is a succeeding lease and the RECO reaches an impasse with the Lessor, the RECO should consult with the appropriate Regional, Center, or Headquarters Counsel before proceeding further with the acquisition.

2.2.7.1 – Negotiation for Cost Leases Added 10/2015

Set forth below is the order of preference of the rent structure for all new or succeeding cost leases to be negotiated by the RECOs. RECOs shall negotiate the rent structure of cost leases, including any supplemental lease agreements that extend or modify the lease term or payment, as follows:

1. Fixed Rent: The RECO negotiates a fixed rate over the entire term of the lease. For example - $500 per month for the entire term of the lease.

2. Defined increases at stated intervals (Stepped Rent): Despite best efforts, if the owner is unwilling to agree to a fixed rent over the entire term, then the RECO should negotiate an agreed-upon rent schedule with increases that are calculated (known) in advance. This is commonly called a stepped rent.
   Examples - $2000 per month for the first 12 months, then increase to $2050 for months 13 through 24; or $800 per month for the first five years, then $950 month starting year 6 through year 10.

3. FAA Standard Operating Costs Escalator (CPI)/Tax Adjustment Clauses: If the owner is unwilling to agree to a fixed-or stepped rent cost structure in the lease, the RECO offers to use the FAA's standard Operating Costs Escalator clause and/or the standard Tax Adjustment clause.

The standard Operating Cost Escalator clause is calculated based on changes in a specific Consumer Price Index (CPI), which is spelled out in the lease template, and is applied to that portion of the rent associated with the *operating expenses* only. The tax increase is applied proportionally to the percentage of FAA's occupancy.

The standard Operating Costs Escalator clause and the Tax Adjustment clause require changes in the rental amount in future years that cannot be calculated in advance because the CPI and property tax rates change annually. In order to avoid budget shortfalls, the RECO shall insert an annual maximum "not-to-exceed" cap on any rent or lump sum increases. This can be stated as a not-to-exceed dollar amount or as a not-to-exceed percentage change. The annual maximum cap will be determined by the RECO based on prevailing economic and market conditions and inserted in the standard Operating Costs Escalator clause and the Tax Adjustment clause.

4. Any other type of alternate rent adjustment clause: If, after making a good faith effort to negotiate either a level rent, a stepped rent, or use of the FAA standard Operating Costs Escalator and/or Tax Adjustment clauses – in that order – the RECO is unable to come to an agreement with the property owner, then the RECO can consider an alternate cost structure proposed by an owner.

   Cost structures that provide for alternate rent adjustments in a lease are known by various names. Some of the more common ones are described as "pass-through", which are actual Lessor expenses that are higher than the initial base established in the lease; "CAM" charges, which are shared costs of common area maintenance (CAM) expenses; other "CPI-type" clauses, which are increases based upon other than the index used in the standard Operating Costs Escalator clause. This list is not all-inclusive.

   Use of an alternate rent adjustment clause requires careful review to ensure: 1) that the method proposed by the offeror to calculate adjustments in rent is readily understood, 2) the proposed lease clause is clearly written and can be calculated in the future by the FAA, 3) it will contain a not-to-exceed cap; and 4) it cannot cause FAA to exceed budget limitations.

   Prior to incorporating an alternate adjustment clause into the lease, the RECO must obtain written approval, on a case-by-case basis, from the Real Estate Group Manager and from the appropriate Regional, Center, or Headquarters Counsel.

If the property owner is unwilling to negotiate a fixed rent (option #1 above), then the RECO, - prior to lease award - must notify the LOB and the appropriate budget office, in writing, that the proposed lease will contain a cost structure that will result in rent adjustments in future years.

Regardless of the structure of the cost lease ultimately negotiated, the RECO must be able to

support the proposed rent, including any proposed adjustments, by market survey data or appraisal information. This shall be documented in the Negotiator's Report.

2.2.8 Evaluation of Offers

If the competitive range method is used, once offers are determined to be within the competitive range, selection for final award may be made without further consideration of the selection criteria. Selection from the competitive range group may be made based upon that proposed offer that is best suited to the FAA's needs, in the RECO's opinion. This includes benefits offered that have not previously been addressed in the FAA's requirements provided. Any new benefits identified do not change the evaluation criteria used to develop the competitive range group. The evaluation criteria should be in writing and the lease file should indicate how the criteria would be used. Use of the evaluation criteria should be consistent through out the procurement. The use of "best and final" offers is generally not used in real property acquisitions. Negotiations may be terminated at anytime by the RECO.

When using the competitive range method in determining the offer most advantageous to the FAA the reason for selection should be some characteristic (or group of characteristics) that cannot be obtained from one or more of the other offerors. As an example, the selected offer may be located very near the main gate so as to provide ideal access to the FAA by its airport customers.

The RECO should review the offer(s) and make a selection that will represent the best value. Price must always be considered along with the other written evaluation criteria. RECO's required for both competitive and sole source procurement conduct a price evaluation of the offeror(s). The length of the lease determines whether actual or discounted dollars are used. Programs to evaluate offers dollars are available.

As part of the evaluation, a fair market value determination must be made. This can be done by appraisal or use of market data. This is true for competitive or non-competitive space.

The requiring office should be advised as soon as possible of the recommendation for award.

2.2.9 Documentation to the Lease File **Revised 7/2014**

Sufficient documentation must be developed to explain and justify the real estate acquisition action taken. RECO's are to use the appropriate checklists (file and/or contract) to ensure the adequacy of contract clauses and to ensure required documentation is in the file to support the acquisition. RECOs must use a 6 part folder for all acquisition files.

Contract Review Process (Space)

RECOs must fill out and sign the appropriate Contract Review Checklist and determine if the contract requires secondary review in accordance with ISO 9001 Real Estate Contract Review Work Instructions. If secondary review is required, the RECO must submit the contract to the designated reviewer prior to sending it out for signature. Any changes made to the contract after the initial review must also be reviewed. A copy of the secondary review, signed by the

reviewer, must be placed in the file.

File Review Process (Space)

The File Review is intended to provide a quality control check of the file for completeness. The review is not intended to replace the judgment exercised by the contracting officer. RECOs must fill out and sign the appropriate File Review Checklist and determine if the file requires secondary review in accordance with ISO 9001 Real Estate File Review Work Instruction. If secondary review is required, the RECO must submit the file to the designated reviewer. A copy of the secondary review, signed by the reviewer, must be placed in the file.

2.2.10 Award

Legal review of leases is recommended where there is deviation from AMS clauses. Legal review is required on all purchases. The Department of Justice rules and requirements must be followed for condemnation and title review.

After negotiations and when all FAA criteria have been met, the RECO will prepare three original leases for signature by the offeror. Prior to the RECO signing the returned lease document it should be compared to the copy retained in the file to ensure that no changes have been made by the offeror. The RECO will execute all originals leases.

After execution, the RECO should ensure that all information is entered into the real property database, i.e. REMS.

2.2.11 Condemnation Added 1/2008

When negotiations reach an impasse and FAA has a need for real property, the FAA may initiate eminent domain proceedings. Generally, protracted negotiations are not in the best interests of either party. Legal participation is required on all condemnations. The Department of Justice rules on condemnation and requirements for title must be followed when real property is acquired through purchase or condemnation proceedings.

The FAA almost exclusively uses Declarations of Taking (DT) when it acquires property by eminent domain since the majority of FAA acquisitions involve property that the FAA currently leases and which already support FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a DT to acquire immediate title to the property, which permits the agency to continue operating the facility on the property. The Agency should avoid using condemnation for short-term acquisitions.

The RECO must follow the FAA procedural guide on “Acquisition of Real Property by Eminent Domain” see 1.1.19.1. When preparing the condemnation file, the RECO must use the condemnation checklist see 1.1.19.2.

For further information on condemnation please see guidance under section 1.1.19.