

CHAPTER 14:

# Lease Acquisitions Involving New Building Construction

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# Overview – Lease Acquisition Involving New Building Construction

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## Chapter Outline

This Chapter provides guidance relating to policies and regulations impacting leasing solutions to meet agency space needs that might result in the construction of a new building. Occasionally, there are instances where limited existing building supply in a real estate market will drive new building construction to meet an agency's requirements. Alternatively, some markets may actually have existing building inventory, but still respond to an agency's requirements with new building construction as well. This Chapter identifies and addresses the various complexities inherent with new building construction, including the delineation between Lease Construction and Market Driven Construction, and provides guidance to ensure proper implementation of policies and processes for all scenarios. Finally, risk mitigation strategies, including the required internal review process, will be discussed in greater detail.

Conducting a lease procurement involving new building construction is similar to the new or new/replacing procurement process with the addition of a few extra steps. This Chapter mirrors the process outline from the Leasing Desk Guide ("LDG") Chapter 2 with additional guidance at each stage of the project specific to procurements involving new building construction. It is assumed that the reader is familiar with that guidance as this Chapter provides supplemental, not replacement guidance to LDG Chapters 1 and 2. It should be noted that new building construction possibilities can present themselves at different stages of the project life cycle (i.e., before and after advertisement); therefore, it is important to initiate the review process as early as possible in order to minimize delays. It is also important to note that project teams are required to obtain approval where new building construction is anticipated. That approval must come from either Central Office or the Regional Leasing and Portfolio Directors, depending upon project circumstances, as described later in this Chapter. Lastly, in accordance with the Competition in Contracting Act (CICA), Lease Contracting Officers (LCOs) must consider offers of new building construction that are capable of meeting technical requirements and the project's delivery schedules.

## Background

PBS seeks to provide housing to federal agencies in a fiscally and environmentally responsible manner. Existing office space typically provides the lowest cost, the least environmental impact, and the fastest housing solution to meet the space requirements of the Federal Government. These market principles will generally result in PBS awarding leases to existing facilities. However, there are cases where new building construction is a potential market response. In order to promote competition to the maximum extent practical, PBS considers all viable offered solutions that respond to the identified requirements, as long as they are able to meet the agency's required occupancy date, and not exceed existing building market rental rates for comparable space.

Historically, new building construction is a small percentage of GSA's lease acquisition projects. Because of the additional complexities in new building construction projects, such as site acquisition, site development, zoning, shell construction, market rent cap consideration, funding implications, delivery schedule, and differences in the client conversation, project teams should be led by experienced personnel. While PBS policy addresses these additional risks with

appropriate assistance and guidance, additional due diligence is required for these high risk projects to provide risk mitigating parameters for each project in which new building construction is a possibility.

## Key Definitions and Concepts

It is important to understand the definition of key terms and concepts in order to facilitate understanding of the proper procedures that apply to specific projects.

**Lease Construction**, as defined in this desk guide Chapter, is a leasing solution to a Government space requirement where the Government mandates that only new building construction will be able to meet the Government's technical requirements. This is relatively rare, and typically occurs when there are highly unique (specialized) requirements that are not found in existing space. A National Office of Leasing (NOL) review is required for all Lease Construction procurements. (See Part 1, Section 2 of this LDG Chapter for information on the NOL review). Project teams may not issue RLPs for Lease Construction without the written approval from both the Assistant Commissioners for Leasing and Portfolio Management via an Authorized to Proceed Approval Letter provided by a NOL Zone Manager.

**Market Driven Construction** - While the Government typically enters a market seeking existing building solutions, new building construction might be offered based on lack of supply (there are no existing buildings meeting the Government's requirements). Also, a Lessor that does not own an existing building that meets the requirement may desire to compete via new building construction. When existing buildings respond to a Government space requirement in conjunction with a new building construction offer, it is referred to as a "mixed, market driven procurement", more formally defined within PBS (not an industry definition) as a type of "*Market Driven Construction*"; (the other type of Market Driven Construction being when existing buildings are sought but only new building construction offers are received). Market Driven Construction procurements are either reviewed regionally or nationally depending upon the details of the procurement. Full details on whether national or regional review applies are provided later in this Chapter and in Attachment 1. If a NOL review of a Market Driven Construction procurement will be required (typically revealed upon receipt of market intelligence or responses to an advertisement), the project team must notify the National Office of Leasing Zone Manager to initiate the Market Driven Construction NOL review process as soon as possible.

**Speculative Construction**, commonly referred to in the industry as "spec buildings," are buildings being constructed in the market independent of the Government's leasing action. In these cases, the addition of the building to the local market inventory will occur with or without award of a Government lease to that location. To be considered by PBS as Speculative Construction the building must meet the PBS Spec Building criteria listed later in this Chapter in the Market Survey Process section. Spec buildings that meet these criteria are exempt from NOL and regional new building construction review.

**Market Levelized Rent Cap**, is the high end of the market fully serviced rent rate comprising shell (which itself includes taxes), operating costs, and agency tier TI allowance rent components. NOL determines the cap by first conducting an analysis of the shell rate utilizing a blended average of CBRE, Reis, and CoStar Class "A" data for the delineated area. NOL then uses Reis data to conduct a separate calculation of the market TI allowance which also considers market rent concessions. After arriving at the levelized shell rent rate cap, it is totaled with the operating and the market TI allowance rate component, (that is derived from market data and not based upon the agency's TI tier), to arrive at the high end "fully serviced" Market Levelized Rent Cap. This cap is the comparable for PBS derived "fully serviced" rent rates for purposes of negotiation objectives and lease award offer evaluations.

# 1 - Acquisition Planning/Pre-Solicitation Requirements

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As outlined in LDG Chapters 1 and 2, during the requirements development process a determination is made whether there is available space in owned or vacant leased inventory that is capable of meeting the identified space requirement. This Chapter assumes that no owned or vacant leased space is available in PBS inventory that can satisfy the identified requirements. Additionally, if a project requires Prospectus approval, follow the Prospectus procedures outlined in LDG Chapter 11.

Projects that include new building construction as part of the delivery solution carry a higher level of risk than those awarded to existing buildings. Because of this, identifying the potential for new building construction early allows for more effective risk management and can lower project risk considerably, in addition to expediting required reviews.

## a. Requirements Development

Delivering an agency's housing solution begins with a process of identifying their facility technical requirements. These technical requirements may include a Program of Requirements (POR), if the project team determines that more details are needed. This process is described in detail in LDG Chapter 1. Design Excellence should also be discussed with the client agency during Requirements Development for Lease Construction and Market Driven Construction procurements where only offers of new building construction are anticipated. During the Requirements Development process, PBS should carefully examine any agency requests which may have the impact of driving a project towards Lease Construction or Market Driven Construction where only offers of new building construction are anticipated. Prior to a regional project team pursuing Lease Construction, detailed functional requirements such as a POR or equivalent is needed in order to obtain optimum pricing. Common potential drivers for new building construction are:

### Legitimate Drivers:

- Security requirements which cannot reasonably be provided in existing buildings or which in practice eliminate most existing buildings in the market
- Single tenancy requirements
- Highly unique and extensive build-out requirements that exceed the shell definition under PBS's Pricing Desk Guide, including specifications for base building systems or other building infrastructure (note that such above standard shell specifications are considered TI)
- Interior construction requirements that cannot reasonably be retro-fitted in an existing building (example would be an office, warehouse and lab requirement with differing ceiling heights and ventilation requirements)

### Questionable Drivers:

- Overly restrictive delineated areas, unusual delineated areas, delineated areas which unnecessarily eliminate the Central Business Area (CBA), or parts of the CBA without strong justification
- Extensive incompatible adjacency or co-location restrictions
- Requirements that may appear to be insurmountable for incumbent Lessors from competing under a succeeding lease (e.g., column spacing changes; setbacks; building/clear span height(s))

- Generally, requirements arbitrarily used by an agency to exclude existing buildings on a project-by-project basis

PBS should always examine all requirements in consideration of their impact on competition; agency requirements may drive projects towards new building construction by eliminating existing buildings that otherwise would submit offers for consideration. While all restrictions should be thoughtfully reviewed by PBS, those requirements which appear to eliminate existing facilities in favor of new building construction should be questioned by the regional project team carefully and, where necessary, either removed, reduced, or more practical alternatives developed.

It is recommended that project teams consider similar facilities in the existing lease inventory to see if other offices have been placed without these requirements. For example, an agency may request a deep security setback. While the agency may not view this request as specifically requiring the construction of a new facility, in practice existing buildings are not generally constructed with deep setbacks and do not have sufficient surplus land to provide the ability to restructure their site design to provide one. In this instance, while the agency may cite a legitimate security concern (the need for protection from possible attacks), the legitimate security concerns of the agency can be satisfied through other solutions which do not restrict competition. In this example, where security setbacks were once common, the Interagency Security Committee (ISC) protocols now provide guidance on how to achieve equal levels of protection without deep setbacks through other mitigation strategies which can be retro-fitted in existing buildings. This is an example of how a legitimate agency requirement may have multiple solutions, one which will not necessarily drive a project towards new building construction.

Lease Construction, and Market Driven Construction where only to-be-constructed buildings are offered, should be avoided whenever possible. PBS does recognize that the needs of the Government in rare cases may result in an extremely small percentage of the lease inventory which can only be met through the construction of a new facility. When the project team determines that there is no other alternative, they should begin to assemble the new building construction review package and initiate the appropriate NOL or regional review process.

Federal Management Regulation (FMR) Part 102-73.110—Real Estate Acquisition, Lease Construction, describes the rules to follow for new building construction. Specifically, when acquiring leasehold interests in buildings to be constructed for Federal Government use, Executive agencies must:

- Establish detailed building specifications before agreeing to a contract that will result in the construction of a building;
- Use competitive procedures;
- Inspect every building during construction for compliance with the Government's specifications;
- Evaluate every building after completion of construction to determine that the building complies with the Government's specifications; and

### TIP:

New building construction may require the use of additional processes or technical specifications, such as NEPA, Design Excellence, Davis-Bacon, and LEED/Green Globes. It is recommended that the project team begin to familiarize themselves early with these requirements (see Part 3 of this Chapter) whenever the possibility of new building construction is identified.

- Include provisions permitting the Government to reduce the rent during any period when the building does not comply with the Government's specifications in any contract that will result in the construction of a building.

### Schedule

During requirements development, the project team should discuss any critical required occupancy dates with the agency. Construction of a new facility takes considerably longer than fulfilling an agency's requirement in an existing building. Accordingly, projects teams should be aware that offers for new building construction must be carefully analyzed for compliance with the project schedule's occupancy date requirement (either mission-driven or tied to the expiration of an existing lease). See Part 3, Solicitation Process, for suggested submittal language to address project schedule concerns.

Below is a list of considerations along with durations that each step may add to a project. One can see that **new building construction can add approximately 15-40 months** as compared to a replacing lease project schedule involving existing buildings. Project teams should plan for this longer schedule, recognizing that timeframes are dependent upon the project's complexity. In addition, there are other considerations associated with new building construction that can affect the project schedule, as also outlined below:

<i>Milestone</i>	<i>Increases to an existing building Project Schedule</i>
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<b>Internal review and approval</b>	<b>1-3 months</b>
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Considerations for additional time includes:

- Independent Government Estimate (IGE) development
- Internal review and approval process
- Client engagement to discuss additional RWA funding needed to deliver the project with agency commitment of funds to be provided before lease award

<b>Assignable site option (if applicable)</b>	<b>5-15 months</b>
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See further details within Part 9 of this LDG Chapter 14

<b>Solicitation</b>	<b>1-7 months</b>
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Considerations for additional time include:

- Completion of required environmental and historic due diligence studies
- Use of Best Value Trade Off (BVTO) source selection procurement method (BVTO will necessitate more time, BVTO is recommended but is optional for Lease Construction projects)
- Offeror's development of technical submittals and Government review of submittals
- Offeror's pricing submission and Government negotiation of pricing

<b>Post award</b>	<b>6-12 months</b>
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These factors are additional steps within a project not required for existing buildings:

- Site acquisition
- Application of Design Excellence (if applicable)
- Environmental Remediation (if applicable)
- Historical Considerations (if applicable)
- Permitting and site development (utilities, grading, etc.)



- Shell construction

## b. The New Building Construction Review Process (Lease Construction and Market Driven Construction Leases)

Like prospectus level projects, Lease Construction projects are identified as high risk projects that require additional review and approval by National Office. Similarly, Market Driven Construction with inadequate competition or only offers of new building construction are also riskier. Therefore, regions are encouraged to assume a proactive stance of identifying possible new building construction projects when reviewing their upcoming expiring lease portfolio plans. Lease projects currently located in tertiary real estate markets (e.g., non CBRE or REIS established markets) and/or locations with historically low building inventory, are potential red flags that should alert project teams early in the planning stages of their lease portfolio review. Previously, advanced identification was not a focus and new building construction often was not identified as a potential solution until the market survey or later, thus triggering the review process late in the procurement stage resulting in associated delays. Note that a new building construction project is added work for all, so project teams should have an awareness about the potential for offers involving new building construction as early as possible.

Reviews are required for all Lease Construction and Market Driven Construction lease projects, but many Market Driven Construction projects will be reviewed on the Regional level rather than by NOL. See the NOL-Regional New Building Construction Review flowchart under Attachment 1 to determine whether the review will be done regionally or by NOL. Either way, the review process is the same.

Building expansions of any size (where space is being added to an existing building) are not subject to this new building construction review process.

### Preliminary Market Research

As projects are identified for new building construction potential, project teams should consider early market research via FedBizOpps as a tool to further verify if new building construction will be a market offering and the need to go through the review process. Preliminary market research is a tool that may provide early indication if a review is a possibility or not and provide a higher level of certainty of new building construction being a potential solution.

Once the project team has confirmed whether NOL or regional review of new building construction is required, the Project Manager, or LCO, or other regional designee should prepare a review package using the “Project Summary / Panel Findings and Resolutions” template (referred to throughout this chapter as the “Project Summary” template). The Project Summary template, shown in Attachment 2 of this chapter, is posted on the NOL Google site in the New Construction folder under the Lease Forms tab. The Project Summary also directs the user to other templates required for new building construction projects. Regions are highly encouraged to submit a project for formal review as soon as market research indicates that new building construction is a possible solution. In any event, a RLP cannot be issued for a project that requires NOL or Regional approval until that approval has been granted.

Should an unexpected offer of new building construction appear after issuance of a RLP, then the Leasing Specialist must immediately commence the review process, explaining fully why the new

### TIP:

See the flow chart under Attachment 1 for determining whether the review will be a regional or national one.



building construction was not identified earlier. Discovery late in the process is not an acceptable basis to categorically exclude the offer of new building construction.

### National Office of Leasing (NOL) Reviews

NOL reviews are required for all Lease Construction as well as all Market Driven Construction projects where only offers of new building construction are anticipated or received. Additionally, certain high risk mixed Market Driven Construction procurements (those projects where both existing buildings and new building construction are competing) also require NOL review, including all that exceed 50,000 ABOA square feet. See the flowchart in Figure 14-1 for the process for a NOL review. See “Initiating The Review Process” for specific criteria required in preparation for a review.

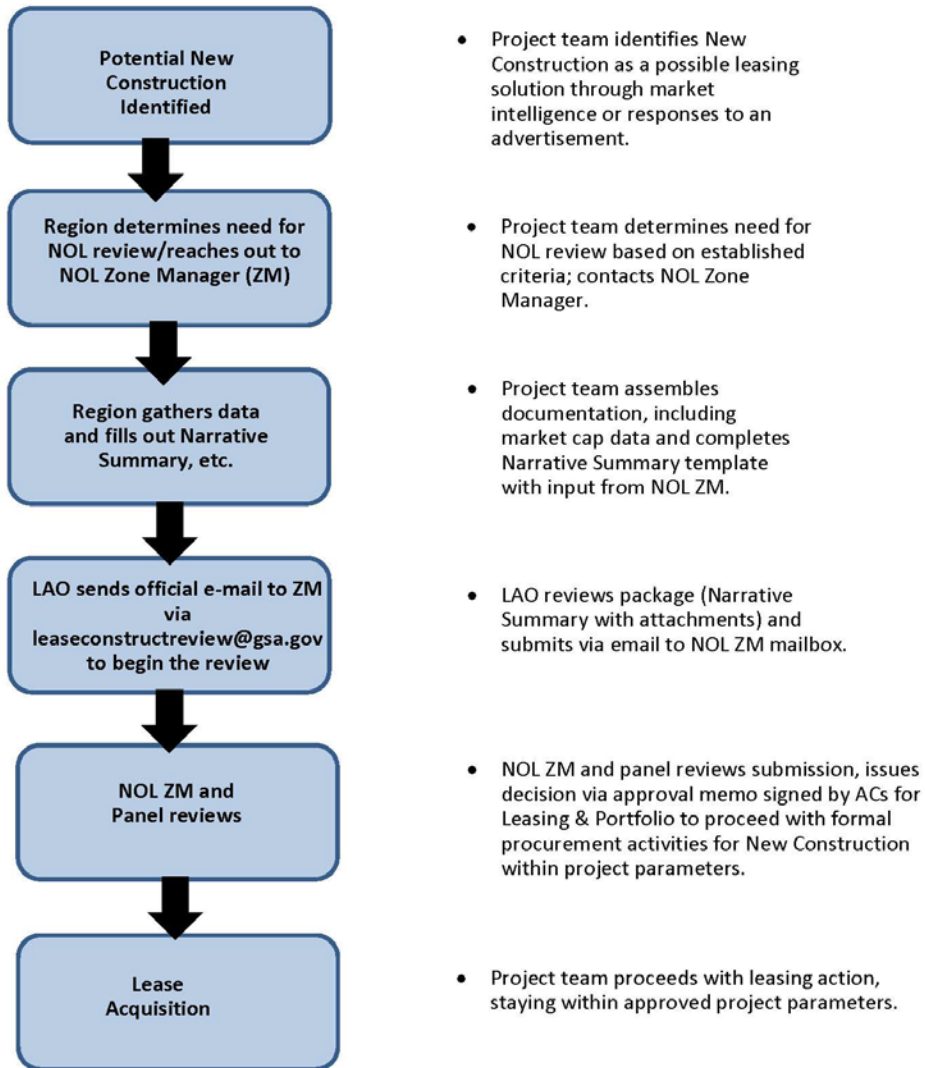
For NOL reviews, once the review package, as described later in this chapter, is complete for submission, the Lease Acquisition Officer (LAO) will confirm all required documents are complete before sending the official review e-mail to the Zone Manager at [leaseconstructreview@gsa.gov](mailto:leaseconstructreview@gsa.gov) to commence a NOL review. The Zone Manager, upon completion of their review (targeted at two weeks, provided documentation is complete), will forward their recommendation of approval for the project to the NOL/PT review panel, who will have two weeks to review the submission. The panel consists of one representative from both NOL and the Office of Portfolio Management and Customer Engagement. If the two member panel approves the project, an Authorized to Proceed Approval Memorandum (“Approval Memo”) will be signed by the Assistant Commissioners for Leasing and Portfolio. Projects submitted for a review must not proceed with issuing any formal solicitation documents to the market until the project team is provided the signed Approval Memo by the Zone Manager.

The Zone Manager will share the Approval Memo containing the official decision to proceed with the region’s LAO once it is signed. The memo will contain an approved rent cap and other relevant project requirements implemented as part of the approval decision process. These will include the approved Utilization Rate (U/R) target number, the approved delineated area, and the square footage cap (note that any offered free space must be included when determining whether the project meets imposed U/R and the square footage caps). Once approved to proceed, no changes to the project parameters stated in the original Approval Memo may be made without approval by the NOL review team. See Attachment 3 for a sample NOL Approval Memo.

Labeling a project “Not to Proceed” does not necessarily indicate that the project must be cancelled. If a decision not to proceed is made, a report of findings will be provided that may identify requirements for further consideration. Projects designated as not to proceed may be re-submitted for reconsideration by the LAO if accompanied by modifications to address the concerns cited in the initial decision.

Figure 14-1  
NOL New Construction Review Process

**NOL Review Process**



## Regional Reviews

Reviews for Market Driven Construction lease acquisition projects where both existing and new building construction are competing can often be done on the regional level. The criteria for a regional review of a mixed Market Driven Construction procurement are:

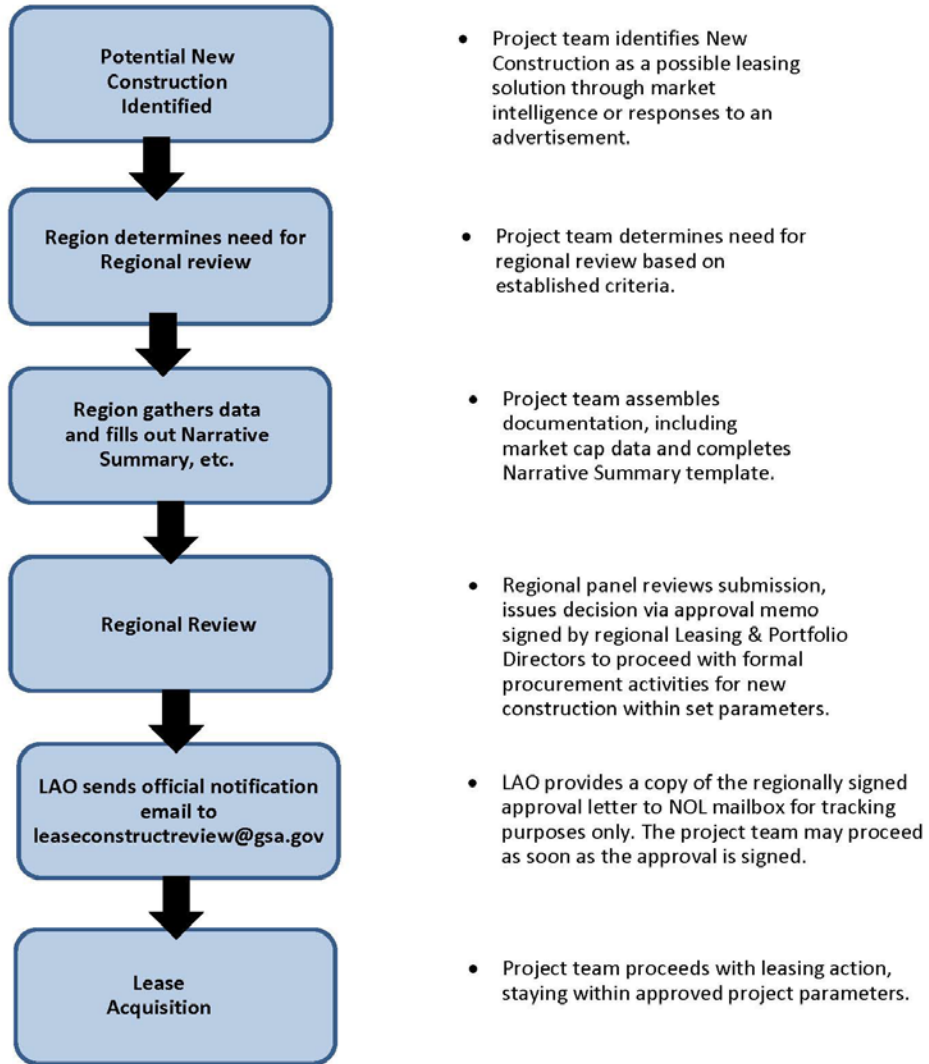
1. Delineated area is compliant with location policy and is not overly restrictive of competition;
2. Utilization Rate will meet agency target;
3. There are no overly restrictive Go/No Go criteria; and
4. Depending upon the amount of space being sought, a minimum of 2 or 3 locations being solicited that are expected to result in viable offers (at least one of which must be an existing building):
  - a.  $\leq$  20,000 ABOA SF: At least 2 locations (at least 1 of which must be an existing building)
  - b. 20,001 to 50,000 ABOA SF: At least 3 locations (at least 1 of which must be an existing building)  
(Note: all Market Driven Construction projects greater than 50k ABOA SF require NOL review).

Note that all of the above-stated criteria must be met in order to qualify for a regional review. New building construction projects not meeting all of the above criteria must be submitted for NOL review.

Regional reviews are conducted in the same manner as NOL reviews except that the region determines the review panel members and the Approval Memo is signed by the regional Leasing and Portfolio Directors. The regional Authorized to Proceed Approval Memo template, which mirrors the national template, can be found under Attachment 4. The regional LAO must forward a copy of the signed Approval Memo to the Zone Manager at [leaseconstructreview@gsa.gov](mailto:leaseconstructreview@gsa.gov) within 15 days for notification purposes only.

Figure 14-2  
Regional New Construction Review Process

**Regional Review Process**



## Initiating the Review Process

The review process begins with the regional project team reaching out to their appropriate LAO (regional reviews) or respective NOL Zone Manager (NOL reviews) for an initial project assessment. Even on NOL reviews, it is recommended that the region's LAO always be a part of these discussions. This initial discussion will cover summary level project information which will eventually be transmitted through the Project Summary template previously described. For NOL reviews, it is important for the Zone Manager to have this upfront planning discussion with the regions in order to set expectations for the project's review.

Once the region has communicated the project details to the Zone Manager (NOL reviews) or regional LAO (regional reviews), they should begin assembling the package of required documents, if not gathered already. For NOL reviews, the Zone Manager will create an internal folder with the project's location and requesting agency in the title. This folder will house any and all required submission documents plus any additional documents the project team feels pertinent to share to strengthen the project's justification for new building construction. Below is a list of documents required for submission with detailed explanations for completion. This list is also identified on the submission template. Note that, for regional reviews, similar information must be in the lease project file to support the Leasing and Portfolio Directors' written approval.

The majority of these documents are required for all new/new replacing procurements and should therefore not be an additional burden for the project team to complete. However, the level of detail requested may be above what the project team is typically used to providing and the Leasing Specialist should therefore pay close attention to the evaluation criteria and narrative questions to ensure the appropriate level of information is shared for the review. Sufficient time should be allocated to the project schedule to complete these documents and for a thorough review and discussion period. It is important that the LS or LCO recognize that the submission package is not complete until the reviewer can look at the documents without having to request additional information because the project team only provided minimal answers in the package. The package needs to tell the entire story and clearly demonstrate the driver(s) for new building construction. For NOL reviews, the project team should allocate approximately 4 weeks (2 weeks for the Zone Manager review and 2 weeks for the panel review) after submission of a complete package (complete package indicates that all required documents have been given thorough thought, analysis and can speak for themselves without significant follow on questions). Partial packages may be returned without review. Project teams should not submit items piecemeal. Lastly, remember to allow time after the review panel meets for obtaining signatures on the Authorized to Proceed Approval Memo (see Attachments 3 and 4) from the appropriate regional or national approvers.

- 1.) **Summary level information** (the story or project narrative) – For NOL review, regions must use the Project Summary template to summarize project details. This submission template also serves as a project checklist and transaction summary. The template is available on the NOL Google site in the New Construction folder under the Lease Forms tab.

Note: if agency is currently housed in a Federal Building, additional backfill analysis and Portfolio review will be required. If the Federal Building has been identified for disposal, make sure to include the Disposal Schedule and provide confirmation from the tenants that they are in agreement with the plan to dispose.

- 2.) **Housing Plan-** Space Request and Space Break out (template similar to the Prospectus Housing Plan template is to be used). This template is available via a link in the Project Summary template.

It is important that the number of employees are identified (current and projected) and that the square footage is identified by type of space and calculated correctly. Any special or unique space such as a laboratory, fitness center, special storage (e.g., evidence or ammunition), warehouse, etc. must be identified. Include agency approved and proposed Utilization Rate (U/R), All-in and Office. All projects must meet the agency's approved guidance for U/R target rates for both All-In and Office metrics. In the absence of an agency having targets, the default targets are 200 ABOA square feet per person All-In and 130 AOBA square feet per person for Office area U/Rs. These thresholds reflect standards routinely approved for other high risk projects such as prospectus level projects. Space classifications used to determine U/R rates must be consistent with PBS U/R calculation methods which can be found at <https://sites.google.com/a/gsa.gov/reduceofficespace/>. In the event that there is a disagreement between NOL and the region regarding the proposed U/R, the regional Leasing Director must elevate the issue to the Assistant Commissioner for the Office of Leasing for a final decision regarding approved U/Rs.

- 3.) **Proposed Market Rental Rate (Rent Cap) with supporting data and justification** - Market analysis is a critical aspect of the review process. Before the regional procurement team proposes a market rental rate (Market Rent Cap), the regional team should prepare a detailed analysis of the market, based on their (or their Broker's) Market Intelligence. NOL and the regional approval hierarchy seek unique aspects and insights of the market that cannot be readily found in a typical real estate database. Information on both the delineated area and the larger market surrounding it will assist in creating a market context for either the NOL or regional review of the proposed Market Rate Cap. Note that market analysis, as described here, is a precursor to the steps taken as part of the market survey process (i.e., formal advertisement on FedBizOpps, market survey tour, market survey report) which takes place later in the procurement process (see Part 2 of this Chapter). Market analysis should include regionally supported Market Data for existing buildings in the submarket, (including office, flex, warehouse (if applicable), and retail space), and Market Data detailing rates for new construction if known, (including shell, operating costs, & tenant improvements when possible). The Approval Memo will state the project's approved Market Rate Cap, which may differ from that proposed by the region. In the event that there is a disagreement between NOL and the region regarding the Market Rate Cap stated in the memo, the regional Leasing Director may elevate the issue to the Assistant Commissioner for the Office of Leasing for a final decision regarding the approved cap.
- 4.) **Delineated area map**, including street names of boundaries - If the agency is in an existing GSA location, address their current site and submit the delineated area and map associated with the current lease location. The project team must make certain that the delineated area is substantial enough to promote adequate competition and not one that unduly results in new building construction. Delineated areas that function to exclude existing buildings that could otherwise fulfill the agency's requirements will be disapproved unless strongly supported by the client agency's mission requirements.
- 5.) **Unique Agency Requirements (Go/No-Go Criteria)** - This item includes any agency submitted requirements, including special requirements, locational restrictions, and any go/no-go requirements unique to the agency which will be used to determine the eligibility of a building or property. The primary focus of this deliverable is to examine if the requirements necessitate the use of Lease Construction or might be driving Market Driven Construction. As discussed earlier in the Chapter, the project team should carefully examine the validity of requirements which drive a project towards a new building construction solution. Regional project teams should prepare, in a collaborative effort with the requesting agency, a thorough alternative analysis and defense of those unique agency requirements.



The customer requirements and analysis submitted by the regional office should examine not only the specific requirement, but the underlying reason for that requirement along with a thorough review of possible alternatives to address the underlying concern with provisions that can be accommodated in existing buildings. GSA will not approve new building construction driven by requirements that are not mission related.

- 6.) **Scoring workbook and result (complete set)**- The initial scoring is completed during the requirements development phase and updated throughout the project as specifics change. Further information on scoring can be found in LDG Appendix F.
- 7.) **Project Cost Planning Guide (PCPG)** -including Site Estimate as applicable and Lump-sum Reimbursable Work Authorization (RWA) estimate details (from an Independent Government Estimate or other source) (approved by D&C). The Project Cost Planning Guide (PCPG) is a tool developed by the PBS Office of Design and Construction (ODC) that aids in proper budgeting of Lump Sum and RWA requirements resulting from TI costs.
- 8.) **FBO Advertisement with date of posting**- (only if the requirement has been advertised prior to submission). Review of this document is necessary to assess if overly restrictive requirements were listed that might have caused existing buildings not to respond.
- 9.) **Market Survey Forms**- both Land Survey and Existing Building forms are required only if a Market Survey has already been performed. Survey forms must be complete with clear determinations on any excluded properties with the criteria for doing so and agency approval.

Projects may require additional documentation based on individual project specifics. Guidance on completing some of these items is provided below.

### Estimating Lump Sum and RWA Needs

RWA requirements for new building construction leases may be significantly higher than those required for leases in existing office space. This can result from buy downs to the Rent Cap in addition to TI that exceeds the agency's TI tier allowance. Traditional leases generally only require RWAs for the cost of tenant improvements that exceed the TI allowance. In a new building construction lease procurement, it is not unheard of for offers to exceed the high end of the market (the Rent Cap) because of the agency's requirements. This would preclude obtaining a TI tier increase pricing deviation in those instances. More specifically, the Rent Cap is equal to a levelized high end of the market rental rate for the specific space type(s), rounded up to the nearest whole dollar. When rent caps are reached, any additional amounts must be paid as lump sums. Therefore, new building construction lease projects can sometimes require significant amounts of RWA funding to reduce the offered rate to comply with the Rent Cap. Note that this "buy-down" can only apply towards the TI or BSAC rental components and not the shell or operating rent. This practice is explained in the solicitation and negotiation sections of this Chapter. As already stated, the amount of this lump sum buy down can exceed the cost of the RWA funding required for above tier tenant improvements because it may also include a lump sum amount for the agency's required upgrades. In these situations, the agency needs to be informed early of the RWA amount and the requirement to provide an RWA prior to award to meet the lump sum funding requirement. One approach to accomplish this is to include an ad hoc clause in the initial draft OA communicating the requirement for the agency to submit the RWA prior to lease award, along with the estimated amount of funding required and the anticipated date of lease award.. The project team should provide documentation (typically from a source within the PBS Office of Design and Construction) demonstrating the lump sum costs with the new building construction review submittal.



Using the detailed agency requirements developed during requirements development, the regional team should prepare an IGE in conjunction with the PBS Office of Design and Construction and work with the client agency to determine the expected RWA required. It is important to note, in particular for specialized new building construction lease projects, that agency required upgrades (such as wareyard or fencing requirements beyond local industry standards) to the standard shell definition are considered tenant improvements and must be funded as a tenant improvement, and are likely to result in a RWA if the cost exceeds the TIA.

### **Occupancy Agreement (OA)**

OA designation of cancelable or non-cancelable must be made in the first draft of the OA and at the beginning of an OA term.

PBS must obtain a signed non-cancelable Occupancy Agreement (OA) from the agency prior to award for all Lease Construction projects. Unlike terms for cancelable OAs, the non-cancelable OA term must be the same as the lease term. Space assignment for a Lease Construction project cannot have the non-cancelable designation changed unless the space qualities and market conditions support GSA assuming the vacancy risk and a pricing deviation is approved by the Regional Portfolio Director and the Regional Commissioner.

The OA for Speculative Construction, Market Driven Construction, or existing buildings offered in a procurement are to be designated cancelable unless there is a low probability of PBS finding a backfill tenant based on the characteristics of the space. See PDG Section 5 regarding the specific space qualities that contribute to the low probability of a backfill.

If the space needs include parking and/or wareyard, these costs should be clearly defined within the OA.

## **c. Acquisition Strategy**

The procurement method to be used for any procurement should always be carefully considered, but there are further implications that need to be taken into account for new building construction projects. The method selected can have a significant impact on the outcome, and therefore the selection method should always be made in the best interest of the Government based on the requirements to be met, and never to influence the outcome in favor of a particular offeror or type of delivery solution (existing facility or new building construction). The two major types of award selection methods are Lowest Price Technically Acceptable (LPTA) and Best Value Trade-Off (BVTO). Both are acceptable for projects involving new building construction, but each has its pros and cons. A brief discussion of each type of selection method, focusing on offers for new building construction, is below. Further information on LPTA and BVTO procedures can be found in LDG Chapters 2 and 13.

### **Lowest Price Technically Acceptable (LPTA)**

LPTA, also commonly referred to as “low-bid,” is the most common award selection method used in the leasing program. The advantages of LPTA include a faster procurement and a very clear decision method, relying solely on a determination of the lowest offer which meets the requirements of the RLP. LPTA is usually used for lease acquisitions involving existing buildings, where the Government has the opportunity to physically view and tour the proposed facilities. While most LPTAs do not require elevation drawings, architectural renderings, and similar technical submittals, it is recommended that these requirements be added to RLPs where there is some expectation that new building construction may be offered to allow the Government to have sufficient evidence to determine that the proposed new building will meet the minimum requirements of the RLP.

## Best Value Trade-Off (BVTO)

The General Services Acquisition Manual (GSAM) Section 570.304(d)(1) authorizes the use of best value source selection methods for leasehold procurement. BVTO allows the Government to specify certain award factors which will be used to evaluate offers beyond a simple determination whether the offer meets the RLP's requirements. Using BVTO, PBS reserves the right to award to an offer that is higher than the lowest priced offer when that offer provides substantively more value to the Government in terms of the evaluated award factors. In a best-value tradeoff award, the LCO, in consultation with the client agency, must determine what technical award factors will be used and their relative ranking/weights (past performance must be one of the factors, in addition to price). Further, the LCO must determine the relative importance of the overall technical proposal to price (e.g., substantially greater than, approximately equal to, or substantially less than). See LDG Chapters 2 and 13 for further information. In cases where the RLP seeks government mandated Lease Construction, project teams should consider the advantages of utilizing a Best Value Trade-off (BVTO) procurement. While the decision ultimately rests with the LCO, such decision should be made in consultation with the NOL Zone Manager, as part of the review process. Further, where Market Driven New Building Construction Only is anticipated, but not guaranteed, BVTO, with evaluation factors focused on workspace layout, building location, setback, etc., may also be appropriate, enabling the LCO to better manage a wider variety of offerings.

### Award Factors and Sub-factors

Award factors in best value procurements must comply with FAR 15.304 and FAR 15.101-2. In particular, FAR 15.304(b) states that the award factors must "Represent the key areas of importance and emphasis to be considered in the source selection decision; and Support meaningful comparison and discrimination between and among competing proposals."

For new building construction lease projects, award factors should include the following or other award factors substantially similar to these factors:

- Quality of the Building
- Quality of the Site/Location
- Past Performance and Experience of the Offeror and Offeror's Key Team Members (especially important on projects with complexities such as new building construction)

### **Single-Phase versus Two-Phase Design Build**

There are two methods available for new building construction lease procurements utilizing BVTO source selection procedures: Single-phase method, as authorized under GSAM 570.304(d)(1) and two-phase design-build, as authorized under GSAM 570.105-2 and 570.305. Both methods are discussed below.

#### Single-Phase – New Building Construction Only

A single-phase best value trade-off selection is where offerors submit a full proposal as part of their initial offer, including technical submittals addressing evaluation factors, along with price. A single-phase BVTO procurement offers a lot of similarities to LPTA procurements while providing the Government with more flexibility to perform a more detailed evaluation of offers. Simple, single-phase BVTO procurements are more appropriate for smaller new building construction lease projects.

Two-Phase Design Build– New Building Construction Only

Under two-phase design-build procedures, the Government separates the evaluation process into two separate, distinct phases. Under the first phase, the Government only considers an offeror's team qualifications as part of the evaluation process. The Government selects those offerors having the most highly qualified teams and allows these offerors to submit price and technical proposals during the second phase of the procurement. Section 4105(b)(1) of the Federal Acquisition Reform Act (FARA) of 1995, Public Law 104-106, amended the Federal Property and Administrative Services Act of 1949 to add Section 303M authorizing the use of two-phase design-build selection procedures 41 USC § 3309. These procedures were authorized for leasehold acquisition under certain conditions via GSAM 570.105-2. GSAM 570.305 further describes the procedures authorized by GSAM 570.105-2.

GSAM 570.305 identifies RLP elements required when using the procedures and the factors included in Phases 1 and 2. The two-phase design-build solicitation was formulated to identify the most experienced development teams so that only the most highly qualified team that present the least risk of unsuccessful contract performance were required to submit comprehensive and costly-to-prepare proposals. GSAM 570.105-2 states, in part, that the two-phase design-build is to be used when the Lease Contracting Officer (LCO) expects three or more offers, offerors will need to perform design work before developing a price, and offerors will incur a substantial amount of expense in preparing offers. RLPs must clearly state the maximum number of offerors to be selected for Phase 2 (generally not to exceed five).

The use of two-phase design-build selection procedures does not necessarily require the issuance of two RLPs, (one for each phase). Leasing Specialists and LCOs may also use the following alternative forms of solicitation:

- Issue one solicitation that clearly and separately identifies Phase 1 and Phase 2 requirements, or
- Issuing two solicitations in sequence (one for each phase) when there is a need to protect sensitive security or other program requirements. In this case, issue the full technical requirements in Phase 2, and include in the Phase 1 solicitation a notice to potential offerors that only offerors selected for Phase 2 will receive the full RLP requirements and the client agency's complete technical requirements.

As an example, RLP paragraphs in the Phase 1 RLP may include statements advising offerors that only offerors advancing to Phase 2 will receive the requirements, as indicated below:

**BUILDING SHELL REQUIREMENTS (PHASE 1)**

Additional requirements will be provided to the Offerors advancing to Phase 2 of this solicitation.

Phase 1 of the solicitation must include a description of the project scope and Phase 1 evaluation factors, typically including general experience with projects of similar size and complexity, appropriate specialized experience, technical competence, capability to perform, past performance of the offeror's team, and other appropriate factors, such as site or location. Offerors must not be required to submit detailed design information or cost or price information in Phase 1.

Phase 2 evaluation factors include detailed technical and price proposals. If using one solicitation incorporating two-phase design-build procedures, Leasing Specialists, working under the direction of the LCO, must request Phase 2 detailed technical and price proposal information only from the short list of offerors moving on to Phase 2.

Two-phase best value trade-off selection is best suited for very large new building construction lease projects (typically Lease Construction projects) or those where the build-out requirements are highly technical and complex. This type of procurement method allows the most opportunity for the Government to examine an offeror's ability to deliver a highly complex building by closely examining the past performance and previous experience of the offeror as an entity as well as their architect, key engineering positions, general contractor, etc. This procurement method is often used to address key concerns pertaining to specialized build-out requirements. For example, for a project to construct a laboratory facility, the team could closely examine the mechanical engineering lead and the general contractor's ability to deliver that type of building.

Two-phase best value selection procedures are also a very effective method to increase competition for projects where the cost of bidding is expected to be very high. The cost of submitting Phase 1 offers is reduced and those offerors who progress to Phase 2 are more apt to be willing to absorb the costs of bidding large and complex projects when they are aware that they are competing against a smaller field of qualified "short-listed" competitors. A two-phase best value procurement can also be helpful in markets where Lease Construction is desired, but available high quality building sites are limited. In a two-phase procurement, the offerors can be requested to provide sites only upon progressing to Phase 2. This means that only the short listed offerors (typically 5 or less) are approaching the market and seeking to obtain options on sites as opposed to a much larger pool of Phase 1 offerors.

#### **d. Lease Terms**

Lease terms should fully leverage the PBS authority to enter into leases with a maximum duration of 20 years plus renewal options, consistent with the guidance issued in the Leasing Alert dated April 20, 2016 entitled "Lease Term Strategy." Longer firm terms can often have a significant impact on the negotiation leverage LCOs have to obtain rates at or below market benchmarks. For Lease Construction projects, 20-year firm terms, with multiple renewal options, are encouraged, assuming such terms comply with lease scoring rules for an operating lease. For other projects where new building construction is anticipated, significant firm terms, generally 10 years or more, are often necessary for offers to be within the rental rate cap. It is common for offerors to have to borrow significantly higher amounts of money than with existing buildings due to the need to finance the construction of the base building in addition to the interior build-out.

##### Purchase Options

Project teams may consider requesting an option or options to purchase at various times over the course of the lease. Be aware though that bargain-priced purchase options can cause a lease to score under OMB Circular A-11 as a capital lease (see LDG Chapter 2 and Appendix F for more information on lease scoring). The decision to request a purchase option should be made in consultation with the regional Portfolio office, the NOL Zone Manager, and, for Lease Construction, the Regional Chief Architect (RCA).

Note that the inclusion of a purchase option for Lease Construction procurements may result in the application of PBS' P100 design standards. Because of the significant added costs for the P100, this is determined on a case by case basis, in consultation with the PBS Office of Design and Construction, based upon the probability of the Government exercising the purchase option. Nonetheless, should PBS obtain a purchase option and decide later to exercise the option, the Government may then choose to modify the building at that time to comply with the requirements

for Federally owned buildings. The inclusion of a purchase option has several other factors, such as the effect on rental rates and the level of competition, that need to be considered and which could possibly affect the terms of the lease. Consultation with the NOL Zone Manager will help to ensure that all of the appropriate parties are in agreement and concur with the project parameters.

While there is no special warrant authority needed for an LCO to include a purchase option in the lease contract, the person exercising a purchase option must have a warrant that specifically includes language for the purchase of buildings.

Further information on purchase options may be found in Part 9, Section 2 of this LDG Chapter.

## e. Negotiation Objectives

As mentioned, negotiation objectives in a new building construction procurement are typically more complex than a procurement within the existing building market. There is a rent cap setting forth the maximum rent that is established in collaboration with the project team and which generally impacts TI and Building Specific Amortized Capital (“BSAC”). In acquisitions using rent caps it is often perceived by offerors and leasing specialists that there is little to negotiate within the cap, with the assumption all offerors will need to use the full cap amount and likely require additional lump sum funding. Because of this, it is especially critical with a rent cap to ensure costs are correctly delineated between shell and tenant improvement costs. The better the results of the negotiation of the shell and operating expense components, the more room for tenant improvement costs within the rent cap, requiring less of a lump sum. For Lease Construction especially, it is important to have an understanding of the many factors that can play a role in pricing. This can include implications of different space types, site cost distribution and tax treatment (which may serve to offset costs). When present, a lump sum amount is sometimes a significant cost component that must be part of the negotiation. Further information on negotiating lump sums is available in the *Negotiating With a Rent Cap* section of this LDG Chapter.

### Shell Component

One may use the component rate derived for shell within the market levelized rent cap as the high end of the shell negotiation range.

#### Site expenses

Costs associated with the acquisition of the site and preparation for the building footprint (including local code setbacks and parking to meet code) are captured as a part of the shell cost. Clear delineation between shell and tenant improvement costs for client requirements for parking in excess of code and/or wareyard improvements may make a significant difference to the shell rate.

#### Blended Rates

Flex space is any combination of office and another general space type such as warehouse or lab in which rates are typically offered as a blend of rates for each space type. If comparable blended space rates are not available for a market, market data by space type should be gathered and used towards establishing a weighted average to establish a blended rate. The PBS team establishing the market rental rate cap will do this as needed.

Project teams should confirm that RLP language requiring different costs for different space types is included in the shell cost analysis. This could be very important if warehouse space is included in the mix as warehouse space has a very different (lower) definition of what is considered shell; which may affect the cost and funding of TIs if not addressed up front.

### Other Cost Factors

Davis Bacon wage requirements, security, seismic, Design Excellence, and sustainability requirements may be a cost consideration for the offeror; leasing specialists and LCOs should approach the negotiation with awareness of costs for these items should they be applicable.

So long as they are within local market standards, costs for requirements such as parking and/or wareyard should be developed as rates using market data and developed within the rent cap rate determination process.

### **Operating Expense Component**

In acquisitions involving different space types in which the intent is to request different rates for negotiation of shell and/or operating expenses by space type, the RLP should clearly state how the offeror should submit cost information on GSA Forms 1364 and 1217 so as to clearly delineate between the space types.

### **Tenant Improvement (TI) & Lump Sum Components**

Due to Pricing Policy restrictions to stay within the high end of the market, Project Managers should note that when TIs, if financed through the lease, result in a fully serviced rental rate beyond the high end of the market, then they must be funded lump sum via a RWA. See Pricing Desk Guide Section 2 for further details.

As mentioned earlier, new building construction lease costs often exceed the rent cap creating a need to provide a lump sum payment to deliver the project. The lump sum amount also consists of costs associated with BSAC and any portion of tenant improvement costs that are not covered within the rent cap. This underscores the significance of effectively negotiating the shell and operating expenses. It also typically means that the lump sum amount is another cost component that must be evaluated and negotiated. However, reduction of the TI allowance below what is necessary to provide functional space (i.e., the general portion of the TI allowance), requires a national pricing deviation.

### **TI Negotiation Strategy**

Detailed information can be found in LDG Chapters 1 and 2, which cover two processes for negotiating the cost of tenant improvements described as TI allowance (TIA) or turnkey bidding. Each has strengths and weaknesses and the decision should be based on the project characteristics and available information on the client agency's requirements.

### **TI Allowance Process**

Most RLPs are issued using an allowance approach for the pricing of Tenant Improvements. RLPs using a TI allowance approach identify a tenant improvement allowance (TIA) that offerors must include as part of their offer, with the provision that all actual TI costs will be negotiated and determined *after lease award* as part of the Lessor's bids based on the construction drawings.

### **Turnkey Process**

Turnkey bidding requires that the entire cost of the lease, including the actual cost of all tenant improvements, be negotiated *prior to lease award*. The TI allowance is still applied but the lump sum RWA amounts required will be based on actual costs as reflected in the offeror's price. Turnkey negotiations offer advantages over the TI allowance process as the Government is able to evaluate offers based on the actual cost to build-out and occupy each space as opposed to relying on a preliminary budget estimate which may not be enough to fully construct all of the



required tenant improvements. It is especially suited to new building construction leases with uncomplicated design.

Additional information on the turnkey approach to TI, including developing Agency Specific Requirements (ASRs), and turnkey with a DID (Design Intent Drawings) Workshop can be found in LDG Chapter 1.

For new building construction lease projects including Lease Construction and Market Driven Construction where only offers of new building construction are received, ASRs should provide more in depth information on the following:

- A description of special site building or auxiliary facility requirements;
- Program data with ANSI/BOMA Office Area (ABOA) square footage requirements broken down by space types, requirements defined for each space, a list of requirements for each auxiliary facility, diagrams of relationships among occupant groups (adjacency diagrams), diagrams or descriptions of features of key spaces, tabulations of requirements based upon the number of occupants, and tabulations of floor areas;
- An overview of site and facility design requirements, including flexibility of layout, potential for facility growth, and zoning of site and facility for public and secure areas;
- Security design requirements, communication, and special space requirement (being mindful that it is often less costly and more reliable to meet blast mitigation through set-backs rather than structural reinforcement; and to incorporate whatever security measures are deemed necessary early on into the design);
- Requirements for thermal design, acoustical design, lighting, and HVAC, as applicable;

Concept floor plans with annotations of key issues and supplementary drawings of special features, layouts, equipment, furnishings, and details may also be included if necessary.

## **f. Assembling the Project Team**

Due to the complexities of projects involving the construction of a new facility, the regional Project Manager (“PM”) should assemble a project team that includes, in addition to the LS and LCO all of the necessary skill sets required for successful completion. All Lease Construction projects and many Market Driven Construction projects will benefit through support of technical Subject Matter Experts (“SMEs”). The Office of Design and Construction has produced a Project Intake Guide for assembling a project management team for lease construction projects. The guide can be found on GSA Insite under the Office of Design and Construction / Global Project Management / Project Intake (<https://insite.gsa.gov/portal/category/532962> ). It may also be beneficial to include a physical security specialist on the Project Team to help in the design so that important security countermeasures are incorporated early in the process in order to achieve maximum effect at minimal cost.

For Lease Construction projects, a key team member is the Regional Chief Architect (RCA), who will collaborate with the PM to support Design Excellence criteria including finalization of design submittal and evaluation requirements of the RLP in addition to participating in design submittal evaluations. Depending upon project complexity, the Chief Architect or the RCA may nominate staff experts, or Indefinite Delivery Indefinite Quantity (IDIQ) contractors, and peers appointed by the Office of the Chief Architect (OCA) to act as advisors to the Source Selection Evaluation Board (SSEB). The team should refer to the current edition of the Design Excellence for Leasing Desk Guide for guidance to confirm Design Excellence principles are incorporated into the Lease



Construction and Market Driven new building construction offers only processes. The Guide is located under the Design and Construction tab on PBS Insite.

## g. Design Excellence

The Design Excellence Program represents GSA's long-term commitment to excellence in public architecture, engineering, and construction. In leasing, Design Excellence can include a streamlined two-step architect/engineer selection process and the use of private-sector peers to provide feedback to the contract architect/engineer, project team, or developer team.

Design Excellence provides best practices to leasing professionals that make it simpler, faster and easier to incorporate quality design into leasing. Regional Chief Architects (RCA) assist with the process for incorporating Design Excellence into Lease Construction and those Market Driven Construction lease procurements where only new building construction is offered. The goal is to select the process that generates the best value for each GSA client and encourage innovation and creativity in the process for new building construction leased facilities. It results in a collaborative best practices design effort between GSA, client agencies, design firms and developers in the design of leased space.

Design Excellence has established several leasing models which respond to the variety of leasing situations encountered by GSA professionals. The models range from LPTA to BVTO and to various Design-Build scenarios. Descriptions of the Design Excellence Leasing Models can be found in the Design Excellence in Leasing Guide. Project teams collaborate with the RCA to determine which model is most appropriate for their lease procurement and provides the best value. Each model differs in its requirements for design submittals, reviews, evaluation, and selection, yet has the same goal of ensuring tenant satisfaction and value.

In addition to RCA's, Design Excellence can incorporate private sector peer professionals in the selection of the Architect/Engineer (A/E) design teams and the review of proposed designs. Peer professionals may be utilized as advisors to the Source Selection Authority.

When Design Excellence applies, the RCA (or designee) will be available to participate in the evaluation of proposed building sites when assignable site options are utilized, in the review of POR's, to provide advice for procurements, in the review of the Offeror's project team (experience and past performance), or in the review of the designs submitted. For Lease Construction and Market Driven Construction where only offers of new building construction are received, (and, depending upon a project's size and significance in the community), the RCA may have other experts, from the Office of the Chief Architect (OCA) and Peer Professionals, to provide assistance in conducting technical design reviews and making recommendations to the LCO on the Technical rankings of the project team's proposed design, or both. Design Excellence program resources include, but are not limited to:

Literature / Resources: (see *Design Excellence InSite Page*)

- Design Excellence in Leasing Guide
- Design Excellence Policies and Procedures
- Facilities Standards for the Public Buildings Service
- GSA Accessibility Desk Guide
- Historic Preservation Leased Property Project Tools
- Price Preference for Historic Properties in Lease Acquisitions
- Chapter 2 of the LDG for Lease Acquisition Circular (LAC) 2014-06, "Lease Requirements for Protection of Environmental, Archaeological, and Historic Resources"
- Total Workplace Program Literature.

In Lease Construction and Market Driven Construction where only offers of new building construction are received pre-award, Design Excellence must be considered as early into the leasing process as possible so that the additional procurement time is taken into account. For Lease Construction and Market Driven Construction where all offers are for new building construction, Design Excellence requires that the LCO consider the qualifications of the Lead Designer and A/E during successful Offeror selection.

Once a lease specifying Design Excellence is awarded, the RCA (or designee) will participate in ongoing technical design reviews at each submittal stage and make recommendations that are within the scope of the lease.

Design Excellence in Leasing also includes collaboration with Design Excellence programs such as Work-Place, Historic Preservation, Engineering, and Accessibility, to name a few.

This Chapter is not intended to set forth all the requirements for Design Excellence with new building construction projects. The regional project team should work closely with the RCA or his or her designee to address Design Excellence standards for new building construction projects.

## **h. Architectural Barriers Act Accessibility Standards (ABAAS)**

The Architectural Barriers Act (ABA) is the primary law that ensures Federal facilities are accessible to people with disabilities and is required to be implemented in all new building construction leases. The ABA Accessibility Standards (ABAAS) apply only to the Federal Government (facilities that are owned, designed, built, altered, or leased). Many professional practitioners are not familiar with ABA. It is a common misconception that the widely applied American with Disabilities Act (ADA) Standards for Accessible Design is equivalent to the ABAAS but this is not the case. Some key differences in the ABAAS include:

- more extensive access in employee work areas and to building additions
- less latitude to provide alternative solutions to requirements, and
- specific provisions addressing leased properties that are not included at all in the ADA Standards.

## **2 - Market Survey Process**

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The market survey process begins with advertising the requirement to the market. For Lease Construction projects, project teams would have already initiated the NOL review/approval process prior to this phase. However, for Market Driven Construction opportunities, responses to advertising may identify the market's intent to offer new building construction and therefore indicate to the project team the need to submit information to initiate the national or regional review process. This part of the Chapter will address aspects of the market survey process unique to both Lease Construction and Market Driven Construction (both mixed and only new building construction Market Driven) projects.

### **a. Advertising the Requirement**

The requirements for advertising, as outlined under GSAR 570.106, and further described under LDG Chapter 2, are generally tied to the associated project square footage (i.e., required for actions exceeding 10,000 ABOA SF). Note, however, GSAR 570.106(b) states that, for

leasehold acquisitions where the solicitation requires the construction of a new building on a preselected site, the LCO, in accordance with the timeframes established in FAR 5.203, must publicize the proposed acquisition in FBO regardless of size or value.

For Lease Construction projects, the FBO ad template should be modified to reflect unique project characteristics and approved Go/No-Go criteria. The minimum site size and security setback should be listed. If there are incompatible adjacent uses, such as churches, schools, daycare facilities, etc. those should be listed as well. This will help to save potential offerors and the Government time reviewing sites which cannot meet the minimum requirements of the RLP (see example below).

“This project includes highly technical and complex building requirements. Expressions of interest should identify the site proposed for consideration. Respondents should also submit evidence of ownership, or at a minimum permission from the site owner to submit this site for consideration. Sites must be a minimum of X acres and should not be irregularly shaped. The site must be zoned for the proposed use, (or able to be re-zoned within the time frame to be specified in the Government’s Request for Lease Proposals).”

For all other projects, including those where the project team anticipates receiving Market Driven Construction offers, the standard advertisement should be generally be used without any special language concerning new building construction. Mixed Market Driven Construction is self-determined by the market and therefore no special language promoting offers for new building construction should be used. In the event that an expression of interest involving new building construction is received, the Leasing Specialist should follow up with a request for additional information as part of the evaluation process discussed below under sub-part b.

## b. Evaluating Expressions of Interest

Evaluating expressions of interest in response to an ad is part of the usual lease acquisition process. However, when the project involves the submission of building sites in addition to existing buildings, there are important additional elements to consider that can save the project team significant amounts of time and help reduce the risk of the project. Some of those elements include:

- Delivery timeframe
- Evidence of ownership or authority to submit the site for consideration
- Site size
- Adjacent uses
- Zoning compliance

When receiving expressions of interest, in particular for projects which are not specifically seeking Lease Construction, it is important to evaluate if the Government’s requirements, including any required occupancy dates, allow sufficient time for new building construction. Project teams are not required to modify legitimate agency occupancy date requirements simply to allow time for new building construction when the market provides existing building lease opportunities that are capable of meeting that occupancy date requirement. In this event, after consultation with regional counsel, the LCO should exclude offers for new building construction (and major renovations as well) based on an inability to meet the requirements of the Government in the same manner that it would exclude any offer incapable of meeting the established requirements.

Submissions of interest for new building construction, whether pre-approved Lease Construction or Market Driven Construction should include a description of the site being submitted and as mentioned above, some form of evidence that the offeror is authorized to submit that site for consideration. This is important to prevent the project team from wasting time evaluating numerous submissions of property which can lead to long, multiple day market surveys. Also, if an offeror cannot obtain a letter of permission to show the property for purposes of a market survey, there is no realistic expectation that the offeror could gain control of the site should they receive the award.

After all expressions of interest have been received, it is important to pre-screen for those sites which do not meet the approved location criteria, including the determined minimum site size. For example, a project that has been approved with 50 foot setbacks, may require a minimum acreage of 3 acres to accommodate the building, parking, and the setback. Sites less than 3 acres should then be eliminated. If a law enforcement agency has an approved location requirement that prevents being located immediately adjacent to schools, daycares, etc. then it is beneficial to screen the surrounding area for those concerns as well. It is very common to receive large numbers of submissions for Lease Construction projects, and pre-screening is a valuable tool for time and resource management for both the Government and private sector developers.

With new building construction, it is not uncommon for the same site to be presented by more than one offeror. At this stage of the competition this is acceptable, provided they can submit the letter of authorization indicating site control as outlined above. For procurement integrity, other than requesting proof of ownership or the owner's authorization for the potential offeror to submit the site into consideration, project teams may not disclose to a potential offeror that their site has been submitted by another offeror as well. This may mean that, in scheduling the market survey a project team may have to view a site multiple times, once with potential Offeror A and a second time with potential Offeror B. It is also not uncommon for one offeror to submit multiple sites. Provided that the potential offeror can obtain approval to present the site, it is recommended that the project team allow the submission of multiple sites to the extent practical. Generally, there will not be an overabundance of properly zoned commercial land for sale in a given delineated area and this will prevent the market from submitting an overwhelming number of sites.

Conformity with zoning is an important consideration. This is often overlooked with existing buildings as the building is operating within the market and has a valid certificate of occupancy. For evaluating sites, it is important to verify that the site is zoned or can be zoned within a reasonable time frame for the appropriate use, including the size and mass of the proposed new building. If a site does not have the appropriate zoning classification, the Government should carefully evaluate the zoning situation and the resulting project risk. Promises by developers to re-zone property cannot be relied upon as the civic process to re-zone property can be unreliable and there is no guarantee that, if successful, it can be done without compromising the project schedule. In short, a property that requires a zoning change may be incapable of meeting the requirements of the RLP until that zoning change has occurred.

Also see Part 9, Sub-paragraph a of this LDG Chapter for information on Government Assignable Purchase Options for site control.

### RLP Requests:

Lessors that appear to be incapable of meeting the RLP requirements may be issued a letter stating that they may not meet the Government's requirements. However, anyone who requests an RLP, including those that appear to not meet requirements, must be given an RLP.

## c. Scheduling and Conducting the Market Survey

When evaluating land sites on a market survey, land market survey forms are required. This will help the project team obtain information that is germane to evaluating sites proposed for development (for example, site description, infrastructure, public utilities, environmental hazards, etc.). It is recommended that the Leasing Specialist send the land market survey form to potential offerors to complete prior to conducting the survey. Viewing raw land does not require as much time as walking through an existing building. However, as discussed above, it is common for one potential offeror to submit more than one site. Therefore, market surveys with developers generally focus on scheduling sufficient time with each developer rather than each building or site. During the survey, the project team should consider adjacent uses, area characteristics, road access, take photos, etc.

#### Creating the Market Survey Report

The market survey report is one of the most important pre-award documents in the lease file. Taking photos and properly labeling those photos are an important part of the evaluation process and properly documenting the market survey in the official file. Unlike with existing buildings, the project team cannot rely on using photos from marketing webpages, CoStar®, etc. It is also important to capture this information when determining that a site cannot meet the needs of the Government. When excluding sites from further consideration, always document the reason for the exclusion and clearly explain how the site cannot meet one or more requirements of the RLP. Agency concurrence on all decisions regarding whether a site meets or is capable of meeting the Government's requirements must also be documented in the file. See LDG Chapter 2 for more information regarding the market survey process.

#### **TIP:**

Raw land is often hard to remember at the end of a survey. Take lots of photos and discuss sites after seeing them rather than waiting until the end of the day.

### **d. Identifying and Classifying Speculative Construction**

Speculative (“spec”) Construction, as defined earlier in the Chapter, are buildings which are being built independent of the Government’s leasing action. While these are buildings undergoing shell construction and, therefore, present risk in meeting the Government’s schedule, they are considered to be existing buildings for purposes of new building construction review policy. Offers for spec buildings have some similarities with Lease Construction and Market Driven Construction offers in that the building often does not yet fully exist in the local inventory. Therefore, the project team must carefully consider whether an offer from a building that is not yet constructed, or not yet fully constructed, is truly a spec building. The following are guidelines on properly classifying these buildings as spec buildings:

- The building size and footprint has already been established and is not based on the Government’s leasing action, and
- The owner has been issued a construction permit prior to RLP issuance to build the building (not just a permit to construct the sitework)

**Regional teams can consider buildings meeting both criteria to be spec buildings**, in which case no further action is required. Properties which meet 1 of the 2 criteria can be submitted by the regional team to the Zone Manager for a determination if they feel that the building should be considered a Spec Building, at the sole discretion of the Zone Manager. In such situations, the NOL Zone Manager must be notified and given reasonable time from receipt of notification with supporting details to concur with a regional determination of Spec Construction. Unless excepted



by the NOL Zone Manager, a building that does not meet both characteristics must be treated as new building construction and go through the appropriate national or regional review process.

## 3 – Solicitation Process

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Drafting the RLP and Lease documents are a critical part of any lease procurement. It is recommended that the project team familiarize themselves with the guidance in LDG Chapter 2, and, for projects intending to use best value trade-off selection procedures, LDG Chapter 13. The process of drafting an RLP package for a project involving Lease or Market Driven Construction contains additional complexities discussed below. Use of the Global or Warehouse RLP and lease templates for Lease Construction or Market Driven Construction projects is mandatory.

### a. Rent Cap Disclosure

One of the concepts often misunderstood by offerors is caused when the rent cap is not high enough to generate interest in offering space; so the solicitation should state that any costs above the rent cap should be addressed via a lump sum price to the Government (via a RWA). In many situations it can also be beneficial to GSA to disclose in the RLP the maximum amount the Government is willing to pay for rent, (as is done in prospectus level projects where rent rate caps are publicized in Congressional resolutions). Thus, at the discretion of the regional project team, it may be beneficial to include the predetermined rent cap in the RLP. However, the rent cap should not be misinterpreted by offerors as the benchmark for pricing, as the Government is expecting to receive offers priced lower than the disclosed rent cap amount. For projects in rural markets with depressed rates, or in situations where there is a high probability that the inclusion of all needed improvements will result in a RWA, informing the market upfront may yield more deliverable options for consideration rather than causing schedule delays through protracted negotiations which could happen when, unknowingly to offerors, all offers exceed the rent cap. Whether to disclose the maximum rent in the RLP is a regional project team decision that will be unique for each new building construction procurement.

### b. Lease Projects Soliciting Existing and New Building Construction Offers (Mixed Market Driven Construction)

As a general rule under the Competition in Contracting Act (“CICA”), all Offerors must be held to the same standard during a procurement. This means that when the market returns both existing and new building construction offers in response to the Government’s requirements, the RLP should use the requirements for existing buildings and should not apply additional standards that are applicable to new building construction lease procurements. It should be noted that while all offerors are held to the same standard, one standard can still have very different impacts on different offerors. For example, all leases must apply ABAAS accessibility standards (ABAAS requirements are discussed in more detail under the Leasing Desk Guide Appendix E, Accessibility). This may require significant renovations on the part of one offeror, but nothing from another offeror. Applying equal standards in the case of projects involving both new building construction and existing buildings can become difficult. The general principle is to apply an equal standard and not hold new building construction to a higher standard than the existing buildings they are competing against (for example, the RLP cannot include a requirement that forces the new building construction offers to include a 50-foot security setback while existing buildings do not have to meet this requirement.) However, there are a few exceptions to this general rule, usually due to statutory requirements.

See below for a description of RLP and Lease requirements and their applicability.

### c. Applicability of RLP and Lease Requirements

#### **Design Excellence (Lease Construction and Some Market Driven Construction Projects under certain conditions)**

Design Excellence language and requirements must be included in all RLPs for Lease Construction. Design Excellence must also be applied whenever an issued RLP for a BVTO or LPTA procurement receives only offers of new building construction even if it was intended to solicit offers of existing buildings. When this happens, the RLP must be amended to add Design Excellence. The paragraph provides for a technical design charrette after lease award to collaboratively develop a final design that follows the Design Excellence principles that are detailed in the lease paragraph.

#### **Davis Bacon Act (Lease, Market Driven, and Speculative Construction)**

The Davis Bacon Act of 1931 (DBA) contains provisions requiring prevailing wages be paid to workers working on certain projects for the Government. The requirements of this law are discussed in more detail in LDG Chapter 2, Part 3. In summary, when a project includes new building construction, whether planned Lease Construction, Market Driven Construction, a Spec Building undergoing construction, or the complete rehabilitation or reconstruction of an existing building, and the Government will be the sole or predominant tenant of the facility such that any other use of the building will be functionally or quantitatively incidental to the Government's use and occupancy, then various FAR clauses implementing the Davis-Bacon Act of 1931 apply. The RLP package must include both the Labor Standards paragraph and the most current Department of Labor (DOL) wage determination for the applicable geographical area. The LCO should then check for wage updates throughout the procurement and amend the RLP as needed to incorporate the updated wage determination. Note that the requirement to pay prevailing wages applies to all aspects of the construction (shell, TI, and BSAC).

In some cases GSA might not receive any offers involving new building construction by the due date for initial offers. If the LCO used the standard language in GSA Form 3516 from GSAR 552.270-1(c)(2)(i) stating that the Government will not consider offers received after the due date for initial offers, and no offers of new building construction were received by the initial offer due date, the LCO should amend the RLP by deleting the Labor Standards paragraph and the wage determinations. However, if the GSA Form 3516 contains the alternate language from 552.270-1(c)(2)(i) that allows the Government to consider initial offers received up to the due date for final proposal revisions, GSA must keep the Labor Standards paragraph in the draft lease and continue to update the wage determinations. This should be rare, however, and the Lease Contracting Officer should only use the GSAR alternate language after consultation with regional counsel.

#### Later Changes to Wage Determination

If a change occurs to the wage determination after the receipt of final proposal revisions but before lease award, GSA is required to reopen negotiations to allow the offeror to revise their price.

With respect to changes to the wage determination after lease award, the Civilian Board of Contract Appeals has held that modifications to the wage rates are not required to be implemented into existing contracts post-award except where a mistake has been made, such as not incorporating one at all, or inserting the wrong determination.



### **Green Building Rating Certification/LEED®/Green Globes® (Lease Construction if over 10k RSF; not applicable to Market Driven Construction or Spec Buildings)**

Lease Construction projects above 10,000 rentable square feet must include language in the RLP package requiring the building to achieve either LEED®-NC “Silver” or Green Globes®-NC “Two Globes” third party green building rating certification.

It is up to the client agency to choose between the two green building rating certification systems based on their mission and needs. This selection must be made prior to issuing the RLP package. The Leasing Specialist must consult with the client agency to determine which new construction green building rating certification to use. If the selected green building rating system is not already specified in the requirements package, then, in accordance with the GSA recommendation letter to DOE, the rating system must reflect the one that the client agency is using on a portfolio-wide basis. See Leasing Alert LA-FY17-03 entitled Green Building Rating Certification for New Construction and Tenant Interiors: LEED® and Green Globes® for additional information.

### **Energy Independence and Security Act (Lease, Market Driven, and Speculative Construction)**

Section 435 of the Energy Independence and Security Act of 2007 (EISA), effectively requires that all new construction of more than 10,000 rentable square feet for the Government’s occupancy must receive the Energy Star® label (a score of 75 or higher on a 100 scale). Since Lease Construction, Market Driven Construction, Speculative Construction, (and also buildings undergoing major renovation), cannot obtain Energy Star® scores until construction is completed and they have attained over 50% average occupancy for a year or more, these types of projects must use EPA’s Target Finder application to obtain the Designed to Earn the Energy Star® designation and are required to proceed to earn the Energy Star® label within 18 months of occupancy by the Government. Additional information on EISA requirements in lease procurements can be found in LDG Chapter 18.

Additionally, EISA Section 438 requires that the sponsor of any development or redevelopment project involving a Federal facility with a footprint that exceeds 5,000 square feet use site planning, design, construction, and maintenance strategies for the property to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow. If a Lessor proposes to satisfy the Government’s space requirements through a development or redevelopment project, and the Government will be the sole or predominant tenant such that any other use of the property will be functionally or quantitatively incidental to the Government’s use, the Lessor is required to implement hydrology maintenance and restoration requirements. Lessors are required to implement these hydrology maintenance and restoration requirements to the maximum extent technically feasible, prior to acceptance of the space.

### **Wildland-Urban Interface (Lease Construction and Market Driven Construction)**

In order to mitigate the rapid spread of wildfires that can occur in urban fringe areas Executive Order (E.O.) 13728 dated May 18, 2016 requires that:

*"Each agency that leases space in a building to be constructed for the predominant use of an agency **above 5,000 rentable square feet** in the Wildland-Urban Interface **in an area of greater than moderate wildfire risk** is strongly encouraged to ensure that the building is designed and constructed in accord with the IWUIC, or an equivalent code."*

The EO goes on to define IWUIC as follows:

*"2015 edition of the International Wildland-Urban Interface Code (IWUIC) promulgated by the International Code Council (ICC), or an equivalent code, consistent with the provisions of and to the extent required by 40 U.S.C. 3312. When the ICC releases a new version of the IWUIC, a determination shall be made whether the new version is a nationally recognized code for the purposes of 40 U.S.C. 3312(b), as expeditiously as practicable, but not later than 2 years after the release of the new version. If a determination is made that a new version is a nationally recognized code, agencies shall ensure that any Federal building covered by this section for which the agency has not completed design is in compliance with that new version, or an equivalent code, consistent with the provisions of and to the extent required by 40 U.S.C. 3312"*

The P100 incorporates the requirements of the IWUIC. Therefore, Lease Construction projects with a purchase option where it has been determined that the P100 applies will also comply with the IWUIC or an equivalent code.

### **Interagency Security Committee (ISC) Requirements (Lease Construction and Market Driven Construction where only offers of new building construction are received)**

The ISC requirements specify special countermeasures be employed in Lease Construction and Market Driven Construction where only offers of new building construction are received. These additional requirements, which go beyond those countermeasures outlined in the Facility Security Level (FSL) attachments to the RLP, may include structural countermeasures such as resistance to collapse, must be ascertained through the requirements development process and in consultation with Federal Protective Service (FPS). An effective way to address this is to include a physical security specialist on the Project Team whenever the procurement is going to be either a Lease Construct or a Market Driven procurement where only offers of new building construction are received.

### **Seismic Considerations (Lease, Market Driven, or Speculative Construction)**

Certain seismic provisions apply for newly constructed facilities located in a medium or high seismic zone. The Offeror must complete and sign the "Pre-award Commitment" in Seismic Form C, Part 2 and must specify the engineer responsible for designing the building and the applicable design code. Leases for new building construction also have post-award requirements and the Lessor must submit post-award documentation. See LDG Appendix G for further information.

### **Fire Protection (Lease Construction and Market Driven Construction where only offers of new building construction are received)**

Additional fire protection and life safety requirements apply for Lease Construction and Market Driven Construction where only offers for new building construction are received (for example, sprinkler installation is mandatory, irrespective of the floor of occupancy). See LDG Appendix D for further information.

### **Additional Offer Submittals (Lease, Market Driven, and Speculative Construction; also complete rehabilitation or reconstruction)**

Lease projects involving new building construction should include a requirement for submittals addressing the risk associated with such offers, in order to provide the Government with a better understanding of the facility being proposed for construction. Such submittals may include:

- Evidence of site control
- Site plan showing placement of the building, parking, and any other critical design features such as a guard booth or setback distances
- Architectural renderings

- Elevation drawings showing all 4 major orientations

For projects using BVTO source selection procedures, these submittals will be required to properly evaluate the quality of the building and site (not applicable to Spec Buildings that are already constructed enough to provide these answers). The source selection plan will set forth what information is required and the RLP and source selection plan must be coordinated with each other. For projects using LPTA, these submittals may still be required in order to determine that the proposed site and building meet the minimum requirements of the RLP. LCOs should not rely on information submitted with the initial expression of interest, as this is not part of their formal offer. When considering an offer from an existing building or a Spec Building that is already under construction, the project team can usually visually verify the characteristics and acceptability of the building during the market survey. For new building construction offers, these submittals serve as an important substitute to physically inspecting a building. As discussed in the award section of this Chapter, these submittals must be incorporated into the awarded lease to further ensure that the building the Government receives conforms to the offered plans and specifications.

### **National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA)**

In the case of new building construction, NEPA and Section 106 of the NHPA are applied to all offers, but their impact on an existing building may be negligible while an offer proposing new building construction may have additional standards to comply with in order to meet the requirements of NEPA and NHPA. The LCO and project team should work closely with the Regional Environmental Quality Advisor (REQA) and Regional Historic Preservation Officer (RHPO) to complete the appropriate level of compliance for each offer. For new building construction, additional studies or compliance actions may be required in order to determine the level of impact or effect resulting from the Government's leasing action. Such studies may include an Environmental Site Assessment (due diligence), archeological investigations or cultural resource surveys, a Categorical Exclusion (CATEX) checklist, an Environmental Assessment (EA), or an Environmental Impact Statement (EIS).

Note that, per the NEPA paragraph in the RLP, the Government reserves the right to reject an offer where (i) the NEPA-related documentation provided by the Offeror for the offered Property is inadequate, (ii) the offer entails unacceptably adverse impacts on the human environment, (iii) the identified adverse impacts cannot be readily mitigated, or (iv) the level of NEPA analysis is more extensive than is acceptable to the Government (e.g., offers must be of a nature that would allow NEPA to be satisfied by preparation of a Categorical Exclusion (CATEX) NEPA study or an Environmental Assessment (EA) with or without mandatory mitigation).

As discussed throughout the Chapter, new building construction, whether planned Lease Construction, Market Driven Construction, or Speculative Construction, involves additional time during both the procurement and construction phases of the project. Project teams should carefully consider the time required for all required NEPA and NHPA studies when determining if new building construction is capable of complying with any mission-driven occupancy date requirements. Project teams should also consider the costs associated with these studies, which are funded by the client agency via RWA. The REQA and RHPO must be consulted with on all offers involving Lease or Market Driven Construction.

Additional information on NEPA and NHPA compliance can be found under LDG Chapters 2 and 18, and for Lease Action Circular 2014-06, "Lease Requirements for Protection of Environmental, Archaeological, and Historic Resources.

## Relocation Assistance

GSA is responsible for confirming compliance with the requirements of 49 CFR 24 concerning relocation assistance to displaced persons and businesses. This regulation requires that people and businesses displaced by Lease Construction and Market Driven Construction must be offered relocation assistance under specific conditions. When an offer could involve Lease Construction or Market Driven Construction, the lease must require the lessor to provide satisfactory assurances that fair and reasonable relocation payments and assistance will be provided to or for displaced persons.

Additionally, the RLP must direct offerors to include the cost of relocation assistance to displaced tenants (when applicable) in the shell rent. To establish this requirement with potential lessors, the Leasing Specialist must include the Relocation Assistance paragraph in the RLP.

The successful Offeror must give GSA the name of the person(s) and/or agency(s) that will be receiving any relocation assistance.

## d. Schedule Submittal

For those procurements where new building construction is a known possibility, the LCO should add a submittal requirement for a detailed schedule showing how the offeror intends to deliver the space by the required occupancy date, including language stating that failure to demonstrate to the LCO's satisfaction that new building construction can be accomplished in accordance with the Government's timeline is a valid basis for eliminating the offer as technically unacceptable.

# 4 – Pre-Negotiation/Negotiation

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## a. Confirming Site Control

Confirming ownership and proper authority is a standard requirement covered in LDG Chapter 2. However, for Lease Construction and Market Driven Construction offers, offerors will frequently not own the property at the time they submit their offer. Accordingly, it is important for the LCO to confirm that offerors have firm control of the site when they are not the official site owners in order to ensure that the selected offeror is capable of meeting the requirements of the RLP when they receive the award. The most common form of site control, other than deeded ownership, is through a purchase option that is binding upon the land owner upon an offeror's exercise of the purchase option. However, leasehold control of the site may also be sufficient if it will allow the project to proceed as intended. While riskier, purchase options can take the form of a Letter of Intent (LOI) so long as they are binding upon the land owner, and any terms and conditions in the LOI are deemed acceptable to the Government.

Purchase options, as discussed in section 9 of this LDG Chapter, are contracts that give the holder the right, but not the obligation, to purchase a site. A firm option is one that an offeror can exercise and the site owner will be legally required to proceed with the sale of the property. Critical elements of a purchase option are:

- Legal description of the site or land to be purchased
- Purchase price
- Length of the option contract and exercise instructions
- Unilateral right by the potential buyer to purchase the property based on the conditions expressed above

A highly desirable element of a purchase option also includes:

- A copy of the purchase contract to be signed by the buyer and seller after exercise of the option

A purchase option without the first four elements is not a firm option and should not be considered sufficient evidence of site control by the offeror. For example, an option which specifies that the purchase price “to be mutually agreed upon” or otherwise not specified is not a firm contract which the holder can use to force a sale of the underlying property. In this case, the purchase price is left to be negotiated and should the parties not be able to reach an agreed upon price, the purchase will not go through, leaving the offeror without the ability to deliver the building on the evaluated site. The option must also be valid long enough for the Government to complete its evaluation and award the lease, or the offeror must provide evidence of executed extensions. Legal review of all site options, including site options obtained by offerors, is required under GSA Order ADM 5000.4B.

## b. Discussions and Clarifications with Offerors

The type and amount of feedback which the project team can provide to offerors will depend on the award selection method (LPTA or Best Value). In LPTA procurements, there are no evaluation factors other than price and past performance, and therefore the project team can only evaluate offers against the minimum requirements established in the RLP package. In best value procurements, the Government team evaluates offers not only for compliance with the minimum standards, but provides more targeted reviews based on the award factors set forth in the RLP and source selection plan. Providing feedback for best value procurements is more fully described in LDG Chapter 13. However, regardless of whether LPTA or best value source selection method is used, the LCO must provide meaningful feedback to all offerors within the competitive range (i.e., an indication or discussion of deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond) (see FAR 15.306(d)(3)). When providing feedback to offers for new building construction, project teams should avoid specifying solutions or requesting specific design changes to the building or site design. The project team should not become a design partner through the feedback to the offeror.

When evaluating a building design, the project team should first determine if it meets the minimum requirements of the RLP package. For example, the RLP may require offers for space located in a “modern quality building of sound and substantial construction with a facade of stone, marble, brick, stainless steel, aluminum or other permanent materials in good condition and acceptable to the LCO.” Accordingly, even in a procurement using LPTA award methods, it is appropriate for a project team to identify an unacceptable building design that does not meet the minimum requirements of the RLP. For example, an offer intending to use corrugated metal building construction would not be considered prime office space. Additionally, a building with few or no windows would not be considered acceptable. After identifying deficiencies, if using best value award methodology, the project team should proceed to follow the procedures in the approved source selection plan to evaluate the offer against the award factors and provide feedback on identified strengths, significant weaknesses, and deficiencies in accordance with the RLP and source selection plan. Even when using award factors, the project team should still refrain from directly modifying the

### Providing Meaningful Feedback

Feedback provided by the project team should not specify a specific design solution to an identified concern. The Government should not directly participate in designing an offeror's response to an RLP.



building or site design. This is to prevent an offeror, after losing a competition, from arguing that following specific design direction from the Government prohibited them from offering other innovative solutions which may have won them the competition. Offers, including all facets of building design and the offered price, must be self-determined by offerors.

Acceptable Feedback	Not Acceptable Feedback
The building does not have enough windows. There is little natural light that would reach the center of the floorplan.	<b>Add more windows to the west side of the building or add a clear-story to the top to add more natural light to the interior of the building.</b>
The RLP requires a minimum 20 ft. setback from the building to the parking lot. The submitted site plan does not meet this requirement.	<b>Move the parking lot 10 ft. back.</b>

### c. Offerors with Multiple Sites

After the market survey and when issuing the RLP, it is important to notify the potential offeror as to which site(s) were deemed capable of meeting the Government's requirements (based strictly on project minimum requirements and not preferences). Offerors may have more than one site that is deemed to be acceptable.

While it is up to the potential offeror to determine which site(s) they will ultimately submit, their determination may be guided by the award method contained in the RLP. RLPs issued using LPTA procedures will tend to result in offerors choosing the most economical site(s). RLPs issued using BVTO award procedures may result in offerors choosing more costly sites that they feel will be evaluated more favorably. Choosing a site to use for the competition is a business decision which offerors must make independently. The project team should not provide assistance or guidance in making this determination.

### d. Offers with Multiple Site Layouts or Design Configurations

Project teams should refrain from allowing offerors to submit multiple site layouts or design configurations. An offeror may attempt to submit 3 or 4 design concepts intending for the project team to provide them with feedback on each one and help them narrow down their final proposal. Offerors should determine their offer using the guidance provided by the project team and RLP to all offerors, including the design concept or site layout. Offerors may refine their offer after receiving feedback throughout the negotiation process, but should only submit one building design at a time.

### e. Negotiating with a Rent Cap

In many new building construction projects, offers may be submitted, either unknowingly or knowingly (if disclosed in the RLP), at or over the rent cap, and a lump sum payment may be required at occupancy. Such lump sum payments may require a Pricing Policy deviation. While there is a rent cap adjudication process available, when a lump sum payment is needed LCOs should seek to negotiate the lump sum amount and use negotiation techniques and tools such as the market survey and the new building construction levelized market rate to obtain the best price for the Government. In a Best Value Trade Off (BVTO) source selection the award is not completely dependent on price; however, the amount of the lump sum can have a significant

impact on the outcome of the award decision. When using BVTO, LCOs must still pay close attention to maintaining fiscal responsibility, make the best deal for the American taxpayer, and not allow designs and lump sum payments to become excessive, (even when the agency is capable of funding the amount). The market survey and other tools will help the LCO to determine what is appropriate in terms of a lump sum payment. When conducting a present value analysis (PVA) in a new building construction lease project involving a lump sum payment as a result of the rent cap being exceeded, the LCO must follow the price evaluation directions under the RLP to evaluate the required lump sum payment in order to get the appropriate PVA.

Other aspects of negotiation remain consistent with other projects. The LCO should set the negotiation range for operating costs using market data but may need to adjust for non-standard operating requirements that may exist in some specialized facilities. For example, a lab facility with significantly higher cleaning requirements may not correspond to market data for office space. In these situations, competition among offerors and using market survey data is recommended.

## **f. Establishing a Real Estate Tax Base**

The most common and desirable method of setting the real estate tax base, as outlined in the “Real Estate Tax Adjustment” paragraph in the lease, occurs with the lessor submitting paid tax receipts for the first full tax year following lease commencement, based on full assessment. This method is sufficient in most instances and protects the Government from possible errors in setting an unreasonable tax base at lease award, which can have unintended impacts on the cost of the lease contract. Setting a tax base that is too low will result in significantly higher lump sum reimbursements over the life of the lease that were not expected during the price evaluation process and may place a burden on the tenant agency. Alternatively, setting a tax base that is too high, as base year taxes are included in the shell rent, will result in an artificially-high shell rent (or a lump sum payment if the rent is at the rent cap).

In the rare event that the LCO determines that establishing a pre-determined tax base amount is in the best interest of the Government, the leasing specialist should carefully examine market data and contact the local taxing authority for additional information that may be helpful in determining an appropriate tax base. ).

## **g. Determining Financial Responsibility**

The LCO must confirm that offers getting final consideration for award are from offerors that are capable of fully performing financially. This is even more important when new building construction is involved because of the greater risk of cost overruns when constructing a building. This can be addressed by having evidence by the time of the due date for Final Proposal Revisions of loan and/or equity commitments for the monies necessary for completing the project. General responsibility criteria and standards are stated in GSAM 509.105, GSAM 570.108, and FAR 9.104.

## **h. Schedule Requirements**

Offers for new building construction must be able to meet the schedule requirements outlined in the RLP package. Should the offeror be unable to demonstrate to the LCO's satisfaction that the space can be delivered timely in accordance with the RLP, the LCO should deem the offer incapable of meeting the Government's requirements. In such situations, the LCO should eliminate the new building construction offer for being technically unacceptable.



## 5 – Award Determination

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The basic process of awarding a lease for new building construction follows the procedures in Chapter 2, Part 5 of this Leasing Desk Guide. For determining the successful offeror for projects utilizing Best Value Trade Off procedures follow LDG Chapter 13 (Note: for Two-Phased Design Build procedures, see GSAR parts 570.105-2, 570.305, and 570.306.

When awarding leases for offers that include new building construction, it is important to include the offeror's technical submittals in the final lease. Important elements to incorporate into the lease include:

- Building elevation drawings and architectural renderings
- Site plans, including landscape details
- SF330 (Architect-Engineer Qualifications) or other submittals as specified in the RLP identifying the key personnel of the offeror's team

Other items may be included as determined by the project team. It is important to properly capture the entire agreement between the successful Offeror and the Government and provide a platform for the LCO to hold the new Lessor accountable should they deviate from the proposal that was the basis for the award decision.

## 6 – Design, TI and BSAC Negotiations, and Notice to Proceed

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### a. Post Award Changes to Approved Project Parameters

Projects for Lease Construction or Market Driven Construction are authorized subject to approved parameters. Any change post award that modifies the approved parameters in the Approval Memo (regardless of whether the memo was issued by the region or Central Office) requires re-submission to the approving authority. For this reason, it is important that regional project teams and the tenant agency perform thorough due diligence prior to submitting projects for approval. Submitting projects for an additional review can cause schedule delays which post award can also have contractual ramifications. A re-review by NOL will be performed as expeditiously as possible.

Some examples of post award changes that will cause a project to be re-submitted include:

- Increases in approved square feet
- Increases in the approved utilization rate
- Changes to the lease term
- Deletion of a purchase option
- Design changes that result in a significant change to the lump sum payment required to comply with the approved rent cap

This list is not all-inclusive and project teams will need to refer to the Approval Memo for additional parameters that may apply to their particular project. Until the request for modification is approved, the current parameters remain in effect.

Compliance will be verified through Procurement Management Reviews (PMRs).

**In no event should the LCO modify the initial approved lease post award to increase the all-inclusive rental rate above the approved rent cap. Requests for post award increases in the allowable rental rate in order to reduce lump sum funding costs will not be considered (the one exception being a lessor claim for equitable relief).**

### **Post-award Submittals**

The project manager is responsible for managing post-award submittals. These mirror the submittals for new or replacing leases where tenant improvements are required. See Chapter 2, Part 6, paragraph 2, Setting Up Post Award, for additional information on these submittals.

## **b. Cost Management**

The best way to ensure optimum cost management is to assign a cost estimator to the project team to support the LCO throughout the post-award phase of a lease project. Estimators provide valuable assistance to the LCO by preparing detailed Independent Government Estimates (IGEs), reviewing proposals for initial buildout and change orders, and assisting in negotiations. These services are especially critical for projects involving new building construction, for the following reasons:

- The overall project costs for new building construction, especially for shell work, are generally higher than those associated with pre-existing space. Project teams need to ensure that no shell pricing is included in Tenant Improvement (TI) or Building Specific Amortized Capital (BSAC) bids.
- New building construction projects may experience unexpected conditions or cost overruns. Project teams need to safeguard against such costs being inappropriately assessed against the Government.
- New building construction projects frequently involve more complex requirements, which often result in more agency-driven change orders than for a typical layout. Project teams need to ensure fair and reasonable pricing for these change orders.

See Leasing Desk Guide Chapter 2, Part 6, subpart 5 for additional guidance regarding the post-award Tenant Improvement and BSAC negotiation process.

# **7 – Construction Phase**

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## **a. Construction Management**

The construction phase introduces a significant shift in the project management structure. The post-award phase requires a focused and specific skill set. During this phase, the project lead should shift to a CM or PM with qualified CM experience, while the LCO and Leasing Specialist take a supporting role in officiating over the contract and administering any changes necessary in the lease. Note, however, that the LCO retains ultimate responsibility for matters of lease interpretation and enforcement and has exclusive authority to enter into, amend, and administer leases on the Government's behalf to the extent provided in his or her certificate of appointment as a contracting officer.

## **b. Post Award Technical Design Reviews**

In an effort to increase competition and reduce cost of submitting an offer, only massing and early conceptual (schematic) designs that convey offerors' visions should be required for submission by offerors prior to lease award. The Lessor will be required to develop detailed core and shell

design after award. For Lease Construction and Market Driven Construction lease projects where only new building construction is being considered, after the selection of the successful offeror, the Regional Chief Architect or designee must participate in ongoing Technical Design Reviews at each submittal stage and make recommendations that are within the scope of the lease to improve the design. The appropriate level of design review that is incorporated into the leasing process must be determined by the project team based upon the project's size, significance in the community, annual rent, lease term, and other conditions.

### c. Construction Schedule Management and Inspections

The amount of oversight that PBS exercises for lease projects is heavily driven by the project characteristics, such as square feet, complexity of build-out, project visibility, etc. It is recommended that all projects have some form of monitoring during the construction phase; however, for new building construction (including speculative construction) it is exceptionally important that PBS monitor the construction progress very closely to ensure that the project will be completed on time. The construction of the base building adds a significant amount of risk to the delivery process, in particular in the area of schedule management. Monitoring the progress on site against detailed construction schedules is an important risk management activity to proactively identify schedule delays and initiate mitigation strategies.

Following the award, the Lessor is required to prepare and submit a detailed construction schedule in accordance with the terms of the Lease. For projects in existing buildings, this schedule focuses on the tenant improvement build-out. When the project involves new building construction, the site preparation and base building construction activities should be included on that schedule. The regional project team should include someone qualified to perform detailed construction inspections and compare that progress against the schedule. Each inspection should be followed by an inspection report using GSA Form 220 or another form approved by the LCO.

#### Determining the frequency and timing of inspections

The frequency of construction inspections should be set by the regional project team in collaboration with the tenant agency. While practical concerns such as availability of manpower and travel costs are a factor, PBS has a responsibility to adequately monitor the performance of the Lessor and construction inspections are an important method of verifying whether the Lessor is meeting the Government's requirements for both schedule and construction quality. Some items to consider when determining inspection frequency include:

- Project characteristics (square feet, complexity of build-out, etc.)
- Special construction milestones such as the installation of wire mesh or ballistic protection behind drywall
- Standard building milestones such as completing the exterior of the building, closing up walls, etc.

While it is common for project teams to use monthly or bi-monthly inspections that are purely calendar driven, it is still important to discuss critical build-out milestones and inspection needs with the agency, in particular law enforcement agencies with special build-out requirements that may not be able to be visually inspected before or after a certain point. As an alternative to on-site inspections, photos can be used but should not be the sole method of inspection as photos can be deceiving. For example, a Lessor could take photos that show a building as almost complete, while a physical inspection would reveal that the Lessor is actually far behind schedule. The frequency and timing of inspections should be discussed with the Lessor's team at the beginning of construction so that the Lessor can prepare for the inspection. "Surprise inspections" or unannounced visits to a construction site can be counterproductive and should be used

sparingly and only when necessary. While the Government is not required to announce a visit, Lessors with proper construction safety programs will not allow for a surprise visitor to wander a construction site unescorted and this is a positive aspect of proper construction management that should be supported. Additionally, relying on surprise visits can also convey a lack of trust that is not beneficial to the success of the project in a holistic sense. Ultimately, a skilled construction inspector will be able to accurately determine the progress of construction just as easily during an announced visit as a surprise one.

## 8 – Lease Commencement and Close-Out

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Commencement of the lease occurs when the Government accepts the building as substantially complete. The basic processes for commencing a new building construction lease follow the same procedures as leases in existing buildings. LCOs should refer to LDG Chapter 2 for more guidance on this topic.

### Building Acceptance

It is strongly recommended that the LCO is accompanied by the PM and the CM during the acceptance walk-through. Larger and more complex projects are recommended to include technical SMEs such as mechanical and electrical engineers.

### As-Built Drawings

For Lease Construction, Market Driven Construction, and Speculative Construction projects it is extremely important that the Lessor turn over complete construction drawings showing both the shell as well as the tenant improvements. It is not uncommon for newly constructed buildings with a major tenant such as the Government to be sold immediately after occupancy as these buildings are highly sought after investments. PBS should not rely on the new owner having these drawings if they are needed during occupancy as he/she may have no relationship with the firms that constructed the building.

## 9 – Purchase Options

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### a. Government Assignable Site Purchase Options

Most purchase contracts for land or other real property are fairly straightforward in that the owner of the property agrees to sell the property to the buyer for an agreed upon price. A purchase option is slightly more complicated in that the seller agrees to give the holder of the purchase option the right, but not the obligation, to purchase the property. In the case of a Lease Construction procurement, the Government may decide to acquire a purchase option for land which is then assigned to the winning Offeror. This is especially useful when there is a specific site that offers unique benefits to the agency's mission, such as a specific site near a courthouse or when a site is provided by a local Government in conjunction with city planning objectives. When the Government acquires an assignable purchase option, it allows the Government to identify and pre-select the best site for the procurement, including weighing all of the factors that can entail. It can also result in more favorable pricing as differing site costs are no longer a determining factor. In procurements where the RLP seeks government mandated Lease Construction, project teams should consider the advantages of obtaining an assignable site

option. While the decision ultimately rests with the LCO, such decisions should be made in consultation with the NOL Zone Manager, as part of the review process.

The Government assigns its purchase option to the winning Offeror who then exercises the option, and enters into a contract with the seller to purchase the property. Critical elements of a Government assignable purchase option include:

- Legal description of the site or land to be purchased
- Purchase price
- Length of the option contract and exercise instructions
- Unilateral right to assign the purchase option
- A copy of the purchase contract to be signed by the buyer and seller after exercise of the option

Obtaining a site option can help to increase competition by removing obstacles that would otherwise increase the cost of bidding. However, obtaining an assignable site option from a private sector owner on the open market can be difficult depending on market characteristics. The market will generally have a limited supply of available, properly zoned, buildable land for sale for commercial development. Additionally, the Government cannot pay for the acquisition of a site option, as the option does not actually convey property to the Government and the intention of an assignable site option for lease procurements is to assign the rights to a private sector entity for them to purchase the land. This creates difficulties in negotiating site options as the site option contract must be valid long enough to complete the procurement and award the contract and the owner of the land is not guaranteed of a sale simply by providing an option to the Government. Should a project require an assignable site option from the open market, it is recommended that the desire to obtain a site option be advertised to notify property owners of the interest as some available land may not be openly marketed. Another recommendation is to actively identify sites that have appealing characteristics capable of meeting the agency's and GSA's requirements for the intended procurement.

#### Preliminary Actions for a Government Assignable Site Purchase Option:

Preliminary actions for the PM of a Government Assignable Site Purchase Option project include developing a work plan, establishing a site selection team, and developing communication plans. These preliminary actions can be accomplished concurrently with developing the site requirements as discussed below.

The work plan must address the status of the project approvals, scope, schedule, budget, and overall approval process. The plan should also establish the site selection team, define the roles and responsibilities of the members, clarify the decision makers, and spell out the reporting structure for the team. The communication plan must define the clients and stakeholders and include the content, time frame, and medium for communicating to each stakeholder group. Lease Construction stakeholders usually include NOL and regional offices, the local community, local governments and organizations, and Congress. The Project Manager also must determine the RWA funding needed for any studies that might take place during the project.

The Office of Regional Counsel must be involved in the site selection process and negotiations.

#### Develop Site Requirements

The client agency's requirement must be confirmed along with other actions discussed below. The project team should plan for 15 days to complete these steps. Developing site requirements involves reviewing feasibility studies and other documents to confirm that the site is still the preferred alternative. Concurrently, the Leasing Specialist must confirm the square footage and

security level for the project. With this information, the Leasing Specialist can open discussions with the client agency to identify potential sites and define evaluation factors, including go/no-go factors such as location within the delineated area, site size, and not in, (or possibly even near, depending upon the critical nature of the facility), a floodplain. Keep in mind that there can be additional criteria that are not go/no-go, but more evaluative (for example, site development flexibility, or proximity to public transit).

After discussions with the client agency and becoming familiar with local zoning, (including density provisions), the Leasing Specialist and Project Team must determine the acreage for the project and confirm the delineated area with the local community. Design Excellence staff, the regional NEPA specialist, and RHPO must also be consulted. Next, the Leasing Specialist, under the direction of the LCO, must draft the preliminary evaluation factors for compliance with Federal mandates, any prospectus, and client location requirements. At this stage, the Leasing Specialist will be able to determine the overall approach to the site (using an assignable option, developer, or a hybrid of those alternatives).

With the approach defined, it should then be decided whether a site advertisement is needed, and if so which medium would be best (local newspapers, Web, FedBizOpps, or others). Regardless of whether GSA doing a site advertisement, Central Office's Center for Site Acquisition must be notified at this stage. The Leasing Specialist must include in this notification pertinent data such as the location, agency requesting the space, square footage need, size of the site, and timing.

### Location

Location of Lease Construction facilities involves both the general area and the specific site. The location of a Lease Construction facility speaks volumes, a message heard years after construction is complete. It dictates almost everything that follows, from transportation access and environmental impact, to the Federal Government's involvement with local initiatives and economies; to the placement, form, and cost of the building. GSA seeks to be an economic catalyst in local communities and site selection can play a significant role in furthering GSA's economic catalyst impact.

The selected site for an assignable purchase option has a major impact on the future Federal occupants in terms of convenience, access, and the quality of the work environment. It also has an impact on the project's initial and life cycle costs and on the community's economy, sense of place, and social fabric.

Many Federal laws and Executive Orders (E.O.s) address location choices. It is also important to keep in mind that laws take precedence over E.O.s. The Rural Development Act (RDA) takes precedence to E.O.s and requires that agencies give first priority to rural areas, unless the agency mission or program requirements call for locations in an urban area. For projects where mission requirements necessitate being located in urban areas, the primary Executive Orders that impact location are:

- E.O. 12072, Federal Space Management, which requires first consideration to centralized community business areas
- E.O. 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, which requires that a hierarchical preference be afforded to historic properties and districts,
- E.O. 13834, Efficient Federal Operations, which requires agencies to meet statutory requirements in a manner that increases efficiency, optimizes performance, eliminates unnecessary use of resources, and protects the environment.



In addition, GSA Order ADM 1097.1, Incorporating Principles of Sustainability, Economic Development and Efficiency into GSA Business Practices and Location Decision-making, reiterates GSA's commitment to sound location policy and includes guidelines for implementing EOs 12072 by analyzing the following four factors:

- Local and regional planning and economic development goals
- Sustainability and transportation infrastructure and plans
- New and existing infrastructure and resources
- Protection of the natural environment

A full listing of locational issues to be considered may be found in LDG Chapter 1.

### Market Research

Before researching the market, the Leasing Specialist, working with the PM, must review and update the communication plan and confirm that the necessary consultation and/or notification with local officials has occurred regarding the delineated area. Next, if required, the Leasing Specialist, under the direction of the LCO, must place an advertisement. Brokers can also be contacted at this stage. The market information gathered will help confirm the go/no-go factors in the evaluation of potential locations. The market research should be expected to take at least 15 business days and can be performed concurrently with developing the site requirements.

### Land Market Survey

After the above steps, the land market survey must be completed to confirm the suitability of available land to meet the project requirements. If sites do not meet the go/no-go factors at this stage, they must be eliminated with no further evaluation. The survey process takes a minimum of 15 business days to complete, assuming a short list of well qualified possibilities. If the list is long (10 or more sites), reaching a viable shortlist can take months depending on how detailed the additional criteria are. Plan for at least 30 business days to complete the land market survey report.

The Leasing Specialist must complete the land market survey form available on the NOL Google Site for each property under consideration. The Leasing Specialist must then document the benefits and risks for each site. This assessment must include the pros and cons for general, technical, time, and financial factors. Among the steps this entails are the following:

- A range of market values must be obtained for the area of consideration. At the discretion of the Leasing Specialist or Lease Contracting Officer, for an assignable purchase option, an appraisal may be obtained if it will help determine this value range.
- The Leasing Specialist must coordinate initial reviews for each site that consider zoning and local master plans to identify potential concerns. For example, if a zoning change is needed, how long will it take? Another example would be confirming that proposed Federal actions conform with master plans for the local area.
- These reviews must assess any existing environmental or cultural reports on each site. The Leasing Specialist must check with the regional NEPA specialist to confirm whether Environmental Site Assessments (ESAs) need to be initiated at this stage. The floodplain determination must be completed at this stage as well. If GSA is selecting the site, then GSA is responsible for completing environment due diligence studies as well.

- Conducting a test fit with the client agency will help confirm that any improvements will fit efficiently on the site.
- The Leasing Specialist must confirm again that the square footage (or acreage) at the site meets the client agency requirements.

After these reviews, the Leasing Specialist must confirm any changes to the preliminary evaluation factors to make them final and apply the go/no-go factors to each site for compliance checks.

#### Land Market Survey Report

As mentioned earlier, the team should plan on at least 30 business days to complete the land market survey report. It must include a summary of findings, regional review, finalized short list, and a determination whether only an automatic categorical exclusion CATEX is required. This determination must be based on the answers to questions in the automatic CATEX checklist, not on expedience in order to rush through the NEPA process. If an automatic CATEX does apply, the Leasing Specialist may collect RWA funding documentation and continue the checklist at step VI, part C, Site Due Diligence. If an automatic CATEX does not apply, the Leasing Specialist may collect RWA funding documentation and continue with the checklist at step VI, part A.

Before funds are committed to surveying any prospective site, leasing specialists must determine if offerors are willing to agree to the terms and conditions of the proposed assignable purchase option.

#### Due Diligence/NEPA/NHPA

If a Government assignable purchase option is being used, site due diligence needs to consider the constructability of the improvements planned on the site. PBS needs to confirm that the site lends itself to efficient placement of the improvements to meet the clients' needs.

Due diligence, NEPA and NHPA-related studies must be conducted on all of the short-listed sites from the market survey. The Leasing Specialist must coordinate these through the REQA and RHPO. If an automatic CATEX applies, further NEPA studies are not required. The Leasing Specialist should start by collecting RWAs from the agency for the studies required. NEPA studies include filling out the CATEX checklist, conducting an environmental assessment if needed, and completing an Environmental Impact Statement (EIS) if needed. Typically NEPA studies concern themselves with the project's potential impact on the specific site and surrounding neighborhood area. Due diligence Phase I ESA studies are required of the shortlisted sites. Phase II ESA studies are rarely necessary, very expensive and time consuming. Phase II ESA studies should be obtained on a case-by-case basis, and only when: a) the results from a Phase I ESA suggest further investigation, and b) it is still possible that the site could be preferred even with added time and cost considerations. Due diligence, NEPA, and NHPA studies must be done in consultation with the REQA and RHPO.

All appropriate inquiry studies need to be completed in this phase. These include:

- The Environmental Site Assessments (ESAs) and EIS (if needed);
- Archeological investigations or cultural resource surveys as required by the National Historic Preservation Act (NHPA);
- Any needed geotechnical studies; and

- Final NEPA studies (CATEX checklist, Environmental Assessment (EA), or EIS).

The NHPA and NEPA studies require completion of specific consultations as well. Central Office's Center for Site Acquisition and Relocation must be notified at this stage (at its Acquisition mailbox [asksites@gsa.gov](mailto:asksites@gsa.gov)).

Due diligence, NEPA, and NHPA studies can add months to the project schedule. Project teams should allow adequate time in project schedules for their completion. The timing for these studies can vary, depending upon project complexities.

## b. Lease Purchase Options

A lease purchase option allows the Government to purchase the building at some point during or at the end of the lease term. This type of option differs from the Government assignable site options discussed in the earlier section which are intended to allow a lessor to purchase a site and then construct a building on that site to lease to the Government. Because of the long term investment and nature of Lease Construction and Market Driven Construction (where only new building construction is expected to be offered), a purchase option clause should be considered within the lease unless there is a compelling reason not to, such as if it would somehow increase project costs. This provides the Government increased long term strategic options that may not be foreseen at the time of the solicitation and as a general rule, should not cost anything to include until the point of execution. Note that at the time of this LDG Chapter, "bargain priced" purchase options will trigger scoring the lease as a capital lease. However, purchase options with purchase prices tied to market value should not encounter this problem.

Purchase options are typically included with an exercise date of approximately two years prior to the lease expiration. If a lease includes renewal options, then purchase options can be included within the first term and subsequent terms also. In cases where GSA's RLP specifies an option for GSA to purchase the building at a future date, per the requirements of the Facilities Standards for the Public Buildings Service PBS P100, the P100 standards can be considered (in consultation with the PBS Office of Design and Construction) for inclusion in the RLP on a case by case basis. Generally speaking, it would typically not be advisable to include P100 requirements at the time of solicitation and award unless there is a very strong belief that the Government will be purchasing the building, and even then on a case by case basis.

### Exercising the Purchase Option

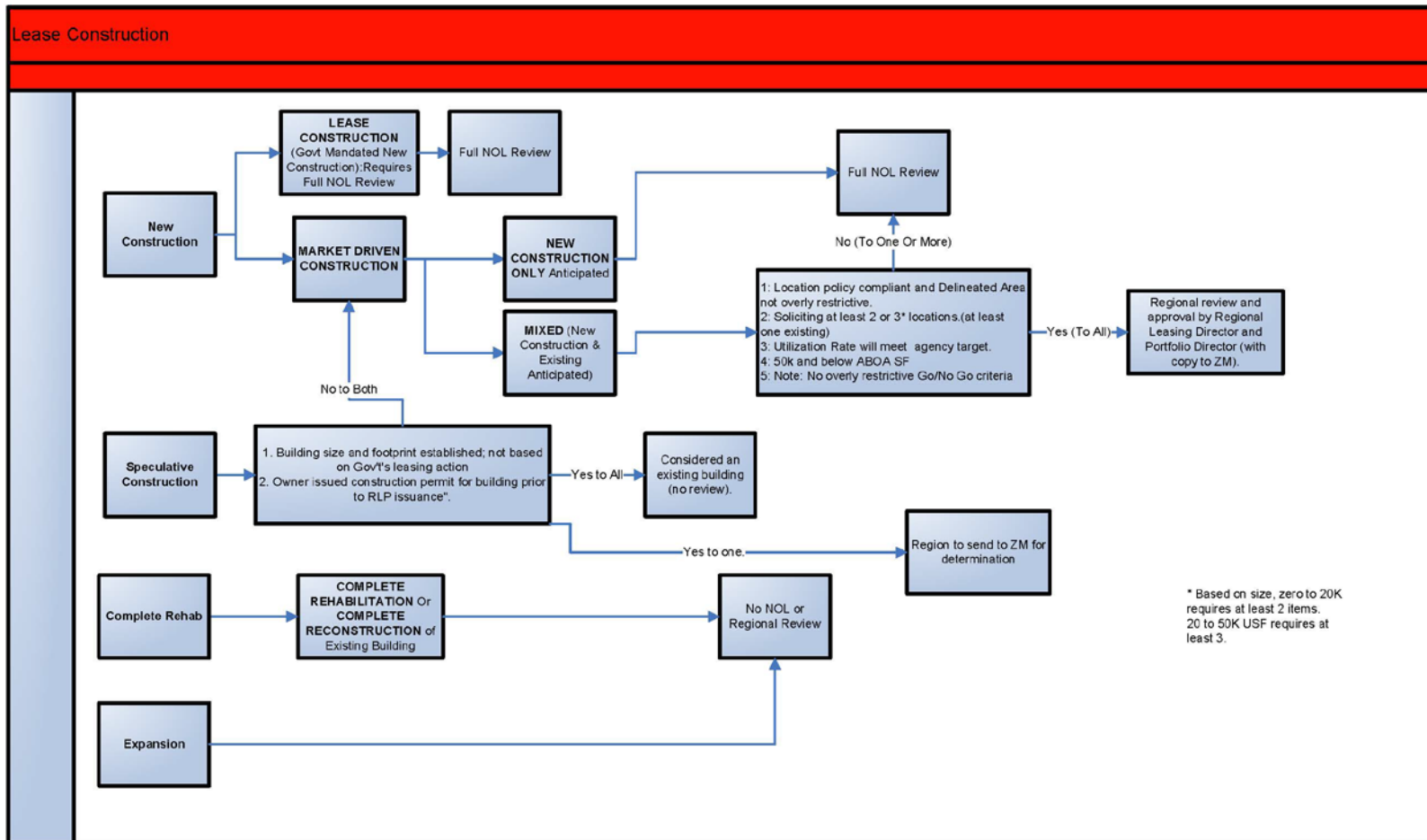
Prior to the point of exercising a purchase option, the Portfolio Management Asset Manager should perform a full assessment of the client's needs and assess other PBS portfolio needs within the same market. If this analysis suggests continuing space needs at this location, additional due diligence includes a thorough financial analysis for business case justification along with a review of the facility state of engineering and design in consultation with the PBS Office of Design and Construction.

A market appraisal may be required and depending on the purchase price, a prospectus approval may be required. It is suggested that the process to assess purchase options are initiated three to four years in advance of the option's expiration date in order to arrange for funding.

Additionally, lease purchase option expiration date is a future milestone that one could easily lose sight of. The PM should clearly identify and record this date so it can be tracked at a programmatic level.



## Attachment 1: NOL / Regional New Building Construction Review Flow Chart



# Attachment 2: Project Summary/Panel Findings and Resolution (“Project Summary”) Template

**Project Summary / Panel Findings and Resolutions**

**Project Summary Information:**

Region		Regional Representative	
City		Agency	
State		Current Address	
Current Lease Number		Rexus Project Number	
Current Exp. Date		Proposed Term	
Current USF		Proposed USF	
Current UR		Proposed UR	

**Summary Project Narrative:** (Summary narrative supporting UPLC approval- What is driving new construction? Why should this be approved?, What should the panel know about this project?)

**Existing Building and Market:** (Provide information about the existing location, whether it could meet the future needs, concerns, issues etc. Market info: ad responses, market survey summary, delineated area information)

**Other Important Info:** (Provide any other information the panel should be aware of)



-----BELOW SPACE FOR ZM USE ONLY-----

**Zone Manager Input:**  
**Required Attachments:**

Document	Link
1. Housing Plan (template link)	
2. Regional proposed market rate (template link)	
3. Delineated Area Map (example link)	
4. Unique Agency Requirements (example link)	
5. Scoring (example link)	
6. PCPG (example link)	
7. FBO Ad (example link)	
8. Market Survey Forms (example link)	

-----BELOW SPACE FOR PANEL USE ONLY-----

**Panel Review Questions and Findings**

<u>Comment</u>	<u>Panel Member</u>	<u>Resolution</u>




**Panel Recommendation:** (Final Approval and conditions will be provided in formal approval letter)

Approval / Denial:		Date:	
Conditions:			

## Attachment 3: NOL Authorized to Proceed Approval Memo



DATE

MEMORANDUM FOR: NAME  
PBS REGIONAL COMMISSIONER, XXX REGION

FROM: NAME  
ASSISTANT COMMISSIONER FOR OFFICE OF  
LEASING (PR)

NAME  
ASSISTANT COMMISSIONER FOR PORTFOLIO  
MANAGEMENT AND CUSTOMER ENGAGEMENT (PT)

SUBJECT: Approval for Under Prospectus New Construction Lease Project

The new construction lease project submitted for AGENCY in CITY, ST (PROJECT #) is approved to proceed within the following criteria:

1. *Rental Rate* - The maximum rental rate is capped at a fully serviced levelized rate of \$XX/RSF, or \$XXXXXXXXXX per annum, with no steps or increases other than those associated with the operating cost and tax adjustments. The final negotiated rental rate or annual rent may be lower.
2. *ABOA SF/RSF Leased Space Maximum* - The total square footage is not to exceed XXXABOA/XXXRSF.
3. *Delineated Area – DELINEATED AREA*
4. *Utilization Rate* - The All-in and Office U/R should not exceed XX/ABOA and XX/ABOA per person respectively.
5. *Term* - no less than XX year full term, XX year firm term.
6. *[Optional – to be included at PR/PT's discretion] Reimbursable Work Authorization (RWA)* - The total RWA amount that may be accepted for the

project, excluding Furniture, Fixtures & Equipment (FF&E), security enhancements, and GSA fees is not to exceed \$XXXXX.XX.

If any changes to these parameters occur, the project team must notify PR immediately for further review prior to proceeding with such changes. If there are any questions or additional information required, please contact your Zone Manager, NAME, at EMAIL ADDRESS.

cc: PRA  
PRAC  
PTB

# Attachment 4: Regional Authorized to Proceed Approval Memo



THE REGIONAL LAO MUST FORWARD A COPY OF THE SIGNED APPROVAL MEMO TO THE NOL ZONE MANAGER AT LEASECONSTRUCTREVIEW@GSA.GOV WITHIN 15 DAYS [FOR NOTIFICATION PURPOSES ONLY]

DATE

MEMORANDUM FOR: NAME  
LEASE CONTRACTING OFFICER

FROM: NAME  
LEASING DIRECTOR, XXXXXXX REGION

NAME  
PORTFOLIO MANAGEMENT AND CUSTOMER  
ENGAGEMENT DIRECTOR, XXXXXXX REGION

SUBJECT: Approval for Under Prospectus New Construction Lease Project

The new construction lease project submitted for AGENCY in CITY, ST (PROJECT #) has been reviewed and approved to proceed. The project meets ALL of the following criteria, as outlined under Leasing Desk Guide Chapter 14, allowing for approval at the regional level:

[NOTE: BOXES 1 THROUGH 5 MUST BE CHECKED IN ORDER TO QUALIFY FOR REGIONAL REVIEW]

1.  Delineated area is compliant with location policy
2.  Delineated area is not overly restrictive of competition.
3.  Utilization Rate will meet agency target of \_\_\_\_ [IDENTIFY WHETHER THIS IS OFFICE OR ALL-IN].
4.  There are no overly restrictive Go/No Go criteria.
5.  The project falls within the parameters below: [CHECK A OR B]

- A.  < 20,000 ABOA SF, with a minimum of two (2) locations being solicited that are expected to result in viable offers, at least one (1) of which must be an existing building
- B.  20,001 to 50,000 ABOA SF, with a minimum of three (3) locations being solicited that are expected to result in viable offers, at least one (1) of which must be an existing building

\*\*\*\*\*

Approved project parameters:

1. *Rental Rate* - The maximum rental rate is capped at a fully serviced levelized annual rate of \$XX/RSF, or \$XXXXXXXXX per annum, with no steps or increases other than those associated with the operating cost and tax adjustments. The final negotiated rental rate may be lower.
2. *ABOA SF/RSF Leased Space Maximum* - The total square footage is not to exceed XXXABOA/XXXRSF.
3. *Delineated Area* – *DELINEATED AREA*
4. *Utilization Rate* - The All-in and Office U/R should not exceed XX/ABOA and XX/ABOA per person respectively.
5. *Term* - no less than XX year full term, XX year firm term.
6. *[Optional – to be included at regional discretion]Reimbursable Work Authorization (RWA)* - The total RWA amount that may be accepted for the project, excluding Furniture, Fixtures & Equipment (FF&E), security enhancements, and GSA fees is not to exceed \$XXXXX.XX.

If any changes to these parameters occur, the project team must immediately notify NAME, our regional Lease Acquisition Officer (LAO), to obtain our further review and approval prior to proceeding with such changes.

cc: PRAC Zone Manager via [leaseconstructreview@gsa.gov](mailto:leaseconstructreview@gsa.gov)