

MEMORANDUM FOR ALLISON H. AZEVEDO  
ASSISTANT COMMISSIONER,  
OFFICE OF LEASING (PD)

AND MICHAEL GELBER  
DEPUTY COMMISSIONER  
PUBLIC BUILDINGS SERVICE (PR)

AND TRACY MARCINOWSKI  
ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION MANAGEMENT (PQ)

FROM: JEFFREY A. KOSES  
SENIOR PROCUREMENT EXECUTIVE (MV)

JEFFREY KOSES  
Digitally signed by JEFFREY  
KOSES  
Date: 2019.06.20 10:31:56 -04'00'

SUBJECT: CONDITIONAL APPROVAL OF CLASS DEVIATION  
TO FAR 16.505 IN SUPPORT OF THE GLS SUPPORT SERVICES  
CONTRACT

Your June 19, 2019, deviation request seeks a deviation to FAR 16.505(b)(1)- to streamline ordering procedures for the next generation GSA Leasing Support Services (GLS) Plus contract.

As you outlined in the business case, Section 877, Individual Acquisition for Commercial Leasing Services, of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) specifically addressed the GLS Support Services program. The legislation itself said “For the purpose of ... Public Law 110-417, an individual acquisition for commercial leasing services shall not be construed as a purchase of property or services if such individual acquisition is made on a no cost basis and pursuant to a multiple award contract awarded in accordance with requirements for full and open competition.” The legislation also directs the Government Accountability Office to complete biennial audits of the GLS program. The authority terminates on December 31, 2022.

Read in context, the effect of the language gives GSA discretion over how to structure task order level competition under the GLS contract.

As the business case explains, over the next five years, approximately half of the 8,100 leases in the GSA portfolio are set to expire and will need to be replaced by a follow on long-term acquisition solution. This presents both a significant challenge and opportunity.

Under PBS's Lease Cost Avoidance Plan, by focusing on high dollar leases, migrating to long term leases, effectively using the AAAP program, and through effective use of the GLS program, PBS is seeking a lease cost avoidance of at least \$4.7 billion.

Based on other conversations we've had over the last few months, I also understand that GSA is currently running at approximately a 50% lease replacement rate and looking to increase that rate to 80% (measured by dollars). We've discussed that part of that shortfall stems from an existing staffing shortage of qualified lease contracting officers. You've separately prepared a business case and had the Office of Human Resources Management request direct hiring authority for Lease Contracting Officers from the Office of Personnel Management. In addition, as I understand it, the PBS Commissioner has been working with the Office of Management and Budget to obtain over 100 additional FTE to hire new lease contracting officers (COs) to manage this workload surge. Such steps are essential to long term success, but it will take time to hire and train these additional lease COs. They may not be able to award leases immediately after coming onboard.

Thus, the following key elements emerge from the combination of the business case and our numerous conversations:

- 1) PBS is looking for a cost avoidance of over \$4.7 billion.
- 2) PBS is currently not capable of managing the full leasing workload.
- 3) PBS has pivoted its focus to emphasize high dollar high impact leases.
- 4) PBS has requested additional staffing and additional hiring authority. It will need time to hire, train, and develop these employees.
- 5) Congress has given PBS temporary authority to streamline the ordering process under the GLS program. Presumably, the purpose of this temporary streamlining is to enable PBS to increase taxpayer savings. While there is a strong belief that we're currently receiving services from "B" team brokers (despite strong past performance) and that this authority will result in lower lease rates. However, this has not been tested and proven to date. Regardless, taxpayer savings through increased lease replacement rates would also achieve a similar end.

Thus, there is a solid foundation for the request.

In relation to the thresholds, the business case recommended two thresholds, one at a \$750,000 commission threshold for a best value award decision, and one at \$2,000,000 commission threshold to negotiate price as an element of task order competition. The business case cited limited market research in support of this level. In our conversations, you've amplified this market research, addressing a number of informal conversations held with key industry players. Through these conversations, you've confirmed that identifying a negotiation threshold is a best commercial practice and that not having one poses an unacceptable risk.

In the business case, you've also explained that PBS intends to use the GLS Plus contract differently than it did past broker contracts. Some of these changes include tasking the brokers earlier, increased emphasis on tasking by tenant agency and geographic location, and focusing on opportunities to downsize and shape requirements. Based on the life cycle for leases, some may not receive payment for a period of years. These changes will increase overall cost of brokers' performance.

These changes are essential to achieving that \$4.7 billion cost avoidance and to increasing the lease replacement ratio. They are also directly related to GSA efforts to downsize the overall federal footprint.

Out of this, I understood that you are telling me there is a threshold where a small number of actions can yield a large taxpayer savings.

With an undersized workforce, aggressive program goals, and your expertise in the arena, you found that the \$750,000 and \$2,000,000 commission thresholds are the points at which interests reach balance. Based on the outline provided and ordering procedures discussed, below these threshold levels, the administrative effort in competing task orders removes our focus from the bigger dollar savings opportunities. Above these thresholds, we risk overpaying commissions if we don't compete.

Considering both the information included in the business case and our several conversations on this program, I've concluded that there is a reasonable potential, but no assurance, that the deviation will result in a significant cost-avoidance to the taxpayer.

In the spirit of GSA's responsible acquisition innovation model, the deviation is approved, subject to the following conditions:

- 1) The legislation requires that there be multiple awards. You may only use this methodology if you make at least two awards in each zone. In addition, you must retain at least two contractors in each zone. If, at any point you fall below two contractors in the zone, you may not use this authority. For this reason, as we've discussed, I encourage you to consider the use of back-up awards. This way, if a contractor is acquired, folds, or changes its line of business, you will be able to continue this effort.
- 2) The authority sunsets on December 31, 2022. Unless Congress extends the authority, you will need to revert to task order competition after that date. This is your exit strategy.
- 3) We need a solid basis for evaluation. You will need to update your metrics in and around broker performance. All the data I've seen to date suggests the current contractors' performance has been at a very high level. Based on our conversations, there is a theory that we've been getting "B" team brokers and are leaving money on the table. Unless we're measuring the wrong things, it's not possible for both of these things to be true. Prepare and send me a new contractor performance metrics within three

months of contract award. These metrics should address how you will evaluate whether the deviation is resulting in the anticipated level of cost-savings.

- 4) Provide an annual assessment of contractor performance against these savings metrics. I recognize that based on the life cycle of lease establishment, it will be some time before there is initial data. Therefore, it may take until the second year of the contract before there is any data to share. We will use this annual check-in to evaluate whether the deviation is achieving its intended purpose and to determine next steps.
- 5) You will need to have a clear training strategy for ordering COs and for industry in a very different way to do business. Advise me upon completion of delivery of the training.

Thank you for championing responsible acquisition innovation.

I would be happy to further discuss any of these conditions if you find them unclear or if you have concerns.



MEMORANDUM FOR: JEFFREY A. KOSES **JEFFREY KOSES** Digitally signed by JEFFREY KOSES  
Date: 2019.06.20 10:09:44 -04'00'  
SENIOR PROCUREMENT EXECUTIVE  
OFFICE OF ACQUISITION POLICY - OGP

THROUGH: MICHAEL GELBER **MICHAEL GELBER** Digitally signed by  
MICHAEL GELBER  
Date: 2019.06.19  
09:27:35 -04'00'  
DEPUTY COMMISSIONER  
PUBLIC BUILDINGS SERVICE - PD

FROM: ALLISON H. AZEVEDO **ALLISON AZEVEDO** Digitally signed by ALLISON  
AZEVEDO  
Date: 2019.06.18 18:00:59 -04'00'  
ASSISTANT COMMISSIONER  
OFFICE OF LEASING – PR

**TRACY MARCINOWSKI** **TRACY MARCINOWSKI** Digitally signed by TRACY MARCINOWSKI  
Date: 2019.06.19 08:59:11 -04'00'  
ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION MANAGEMENT - PQ

SUBJECT: BUSINESS CASE IN SUPPORT OF CLASS DEVIATION TO FAR  
16.505 IN SUPPORT OF THE GSA LEASING SUPPORT  
SERVICES (GLS *PLUS*) CONTRACT

## 1.0 REQUEST

The General Services Administration (GSA), Public Buildings Service (PBS) requests a class deviation in accordance with Federal Acquisition Regulation (FAR) Subpart 1.404 to (1) modify the threshold requirement at 16.505(b)ii and allow for the use of streamlined ordering procedures for task orders with an estimated commission up to \$750,000.00 against the GSA Leasing Support Services (GLS) Plus contract, and (2) implement modified, more efficient ordering procedures, including price evaluation at the base Indefinite Delivery Indefinite Quantity (IDIQ) contract, for task orders estimated to provide a commission above \$750,000.00 up to \$2,000,000.00.

This deviation will only apply to the GLS *Plus* contract for the period of time allowed by the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) (NDAA), Section 877 Individual Acquisition for Commercial Leasing Services, Public Law 115-232. This section is currently anticipated to terminate on December 31, 2022.

## 1.1 AREAS OF THE FAR AND GSAM TO BE REVISED

FAR 16.505(b).

## **2.0 PURPOSE**

FAR 16.505(b)(1)(i) requires agencies to provide awardees a fair opportunity to be considered for task order awards exceeding the micro-purchase threshold under multiple award contracts. FAR 16.505(b)(1)(ii) allows the Contracting Officer (CO) to exercise broad discretion in developing appropriate order placement procedures. NDAA, Section 877, Individual Acquisition for Commercial Leasing Services, includes language to temporarily remove the statutory requirement that led to the FAR 16.505 competition requirements for individual task orders above the simplified acquisition threshold (SAT). The requested FAR deviation will allow for development and use, consistent with the NDAA, of streamlined ordering procedures under GLS *Plus* in line with the procedures outlined in FAR 16.505(b)(1)(ii).

PBS requests this deviation to resolve the current discrepancy between statutory and FAR requirements.

## **3.0 BACKGROUND**

PBS has a strategic priority to save taxpayer dollars by shaping demand for and improving execution of leases. This priority is implemented through increased lease replacement rates as measured by the PBS Lease Cost Avoidance Plan (LCAP) with a goal of avoiding \$4.7 billion dollars in negotiated lease contracts by Fiscal Year 2023.

PBS's broker contractors play a pivotal role in an effort to better manage its expiring lease portfolio and meet GSA's strategic priority of saving money through real estate, namely, through the Lease Cost Avoidance initiative. Typically, contractors are tasked to provide services on PBS's highest value most complex lease projects, with above standard special space requirements, and long standing leases that present the greatest opportunity to achieve lease cost avoidance. The top 20% of PBS's highest value leases represent 77% of the total rental dollars, which is why PBS leverages the expertise of broker contractors to assist with replacing nearly all high value expiring leases to generate the greatest value for the American taxpayer through reducing the square footage of these leases, negotiating longer term leases at or below the current market rate, and replacing leases on time without the need for costly lease extensions.

Since 2005, the PBS Office of Leasing has administered a national multiple award no-cost IDIQ contract for lease acquisition services that support the PBS regional real estate programs. The most recent GLS contract was awarded in 2015. GLS is currently in the fourth year of performance, with the current option period expiring on January 18, 2020.

On August 13, 2018, the President signed into law the NDAA. Section 877, Individual Acquisition for Commercial Leasing Services, temporarily removes the statutory requirement to compete price for task orders for commercial leasing services. The legislation specifies that Section 877 shall terminate on December 31, 2022. As a result of this change, PBS has determined it to be in the best interest of the Government to not exercise the final option period

of GLS and fulfill the continuing need for national real estate leasing support services with the award of the GLS *Plus* contracts under modified ordering procedures.

Similar to National Broker Contract (NBC) 1, NBC 2, and GLS, GLS *Plus* contractors will be compensated through a commission paid by the lessor on lease awards. As under GLS, the total negotiated commission from each lease award will be shared by the GLS *Plus* awardee and the Government (in the form of a rent abatement to the tenant agency). The percentage of the total negotiated commission the contractors will receive as compensation will be incorporated into the GLS *Plus* base contracts; however, the final value of the commission will depend on the total commission the contractor negotiates with the lessor.

#### **4.0 SUPPORTING JUSTIFICATION**

##### **4.1 Organization(s) Covered by the Request**

PBS is the organization covered by this request.

##### **4.2 Explanation of Affected Contract(s)**

PBS has a lease inventory of over 8,100 leases across the nation that represents approximately 190 million square feet. The rent dollars paid out for these leases is \$5.6 billion dollars annually. Over the next five years, more than 4,000 of the 8,100 leases (representing more than 100 million square feet) are set to expire and thus will need to be replaced by a follow on long term lease acquisition solution. Broker contractors will play a vital role over the next five years and PBS will utilize the new GLS *Plus* contracts to support replacement of expiring leases, especially those in the top 20% that make up 77% of the rent dollars.

##### **4.3 Market Research**

Under GLS *Plus*, PBS is placing increased emphasis on high value lease transactions. The GLS *Plus* scope of work requires contractors to perform enhanced requirements development services to assist the Government in reducing the amount of space it is acquiring, and to perform a higher level of post lease award oversight to ensure the leases are occupied on schedule with minimal change orders that could increase the cost of the lease. For PBS lease transactions, it is important for contractors to hire and retain the highest quality leasing personnel that perform pre award, lease acquisition, and post award services. To support this requirement, PBS conducted both formal and informal market research.

The GLS *Plus* draft solicitation was posted on the Federal Business Opportunities website on December 19, 2018. The draft solicitation included price competition for task orders with an estimated commission greater than \$750,000.00. PBS solicited feedback from the commercial real estate industry regarding the \$750,000.00 threshold for price competition, asking contractors to keep in mind that equitable allocation/distribution is not allowable by the FAR.

PBS aimed to determine the appropriate threshold for a contractor to be able to provide the most highly qualified team.

The responses received on this ordering procedure are summarized in the table below. PBS received responses which ranged from establishing the threshold at \$750,000.00 to removing the threshold altogether. A total of nine firms responded to the request.

Industry Feedback	Number of Responses
No Comment Regarding \$750,000.00 Price Competition Threshold	3
\$750,000.00 Price Competition Threshold Seems Fair	2
Raise Price Competition Threshold to \$1,000,000.00	1
Raise Price Competition Threshold to \$2,000,000.00	1
Raise Price Competition Threshold to \$5,000,000.00	1
Remove All Price Competition	1

Concurrent with soliciting feedback on the draft solicitation, PBS solicited feedback through ongoing outreach efforts with senior industry executives. As a result of market research, industry feedback, and analysis of the expiring lease portfolio, PBS identified a threshold of \$2,000,000.00 as the appropriate level to seek an additional reduction in broker commission at the task order level. This threshold ensures contractors are adequately compensated in order to perform enhanced requirements development, lease acquisition, and post award oversight services to hire and retain the most qualified personnel to manage PBS's most complex transactions. The threshold, based on standard industry practices, provides an acceptable limit to manage risk and achieve the benefits of incorporating the revised streamlined ordering procedures, ultimately aimed at achieving \$4.7 billion in lease cost avoidance by 2023.

## 5.0 EFFECTS

### 5.1 Effect on the Agency, Contracting Officers, and the Acquisition Teams

The PBS leasing community will benefit from this change as the scope of work for the brokers has significantly increased in GLS *Plus* as compared to previous broker contracts; specifically as it relates to pre and post award services. While PBS is increasing its lease workforce by over 170 personnel to address the expiring lease portfolio with timely replacement of leases in the most cost effective manner, the GLS *Plus* contract will offer additional resources to assist in these efforts.

The change sought by this deviation may reduce the procurement lead time and administrative burden for task orders placed by zonal (task order level) COs as the zonal CO would not have

to allow additional time to afford contractors the opportunity to develop reduced commission rates. By requesting additional tiers of pricing at the base contract level, for the majority of task orders, the zonal COs will focus on evaluating competition as it relates to price only on the highest value lease procurements. The high value leases are where the Government has the greatest ability to avoid lease costs. The award of highest value task orders will be made to the most capable, technically proficient contractor. Within a request for technical proposals, contractors will be asked to not only demonstrate past experience in working similar projects for various clients and geographic dispersion, but also to describe innovative workplace solutions they will employ to bolster the most efficient space utilization and expedite lease project delivery. This flexibility will ensure the Government is well positioned within commercial real estate markets across the country and leases real estate that represents the most efficient use of taxpayer dollars.

The use of the new GLS *Plus* higher-threshold, streamlined ordering procedures have not been used before in the previous broker services contracts. The PBS Office of Leasing is committed to working with the GSA Office of Government-wide Policy (OGP) to develop tracking mechanisms which will aid in demonstrating that these ordering procedures will result in the best value for the taxpayer. Upon contract award, the PBS Office of Leasing will coordinate with the OGP to develop measures to track the impact of increasing the threshold prior to the issuance of the Notice to Proceed for this contract.

## **5.2 Effect on Contractors**

As a result of awarding commission percentages in the base contract for multiple thresholds, there will be a reduced administrative burden to the GLS *Plus* awardees in preparing responses to fair opportunity notices. The CO will ensure that each awardee is provided a fair opportunity and issue task order awards based upon available performance information.

For the vast majority of orders estimated to provide a commission to the contractor less than \$750,000.00, the intent is for fair opportunity award decisions to be made based on performance and base contract pricing at the appropriate pricing tier. For highly technical or complex lease acquisitions estimated at this value, contractors may be asked to respond to a fair opportunity notice and provide a technical response that will be evaluated to make an award decision. Under GLS, contractors have an opportunity to offer a lower price on specific task orders when the commission exceeds \$250,000. Under GLS *Plus*, the contractor will be awarded the task order based on their tier pricing up to \$2,000,000. Contractors will have an opportunity to offer a lower commission rate when the commission exceeds \$2,000,000. GLS *Plus* contractors will be required to respond to fair opportunity notices for commissions at the \$750,000.00 threshold and above, as specialized experience will be used as an evaluation factor in the selection of the most qualified contractor based on the tenant agency's needs and requirements. The level of effort required by the contractors to prepare their technical proposals in order to compete for task orders over the \$750,000,000 threshold will be higher, thereby ensuring the Government is getting the best contractor to perform the services for those medium to high value lease acquisitions.

Under the current GLS contract, contractors are required to prepare price proposals for every task order above the SAT. The contractors informed PBS this work takes up to several hours to assess market conditions in order to establish price proposals and technical submissions. Additionally, they have indicated they cannot afford to hire highly skilled brokers due to this price competition requirement for every task order. PBS believes if contractors spend more time providing actual broker services to the Government and being able to plan their management of the program based on already negotiated rates in lieu of providing pricing proposals for every task order above the SAT, an increase in broker performance and greater lease cost avoidance can be achieved.

Under the GLS *Plus* scope of work, GSA has added an increased emphasis in tasking brokers with portfolios of expiring leases (by tenant agency and/or geographic location), and tasking the brokers earlier in the requirements development phase of the leasing project, particularly for high value leases where there is the greatest opportunity to appropriately downsize and shape the requirement. By engaging the broker earlier, the brokers are applying resources to the leasing project earlier. Brokers may not get compensated for three to five years of when they were originally assigned this work. The outcome of asking the contractors to perform additional services for a longer duration during the lease procurement may be reflected in how they bid the contract.

### **5.3 Effect on Customer Agencies**

Rent charged to Federal agencies which GSA satisfies through a lease contract is a pass-through, therefore, agencies will directly benefit from lease cost avoidance that is achieved as follows: skillful requirements development, expert lease negotiations, and post award services aimed at minimizing agency-funded change orders during construction. The broker contractors will provide value-added services which augment existing PBS staff resources and positively impact the space the tenant agencies occupy. The commission that the brokers negotiate is credited back to the agency in the form of rent; the more skillful the contractors are, the greater the impact on the customer in terms of executing their mission and reducing their rent payments made to GSA.

### **5.4 Effect on Small Businesses**

None.

### **5.5 Effect on Other Services**

None.

### **5.6 Effect on Automated Systems (i.e. Financial and Procurement)**

None.

## 6.0 OPPORTUNITIES FOR EFFICIENCY UNDER THE PROPOSED STRATEGY

Given that nearly 50% of the lease inventory is expiring and opportunity for substantial savings on new leases, streamlined ordering procedures under GLS *Plus* will simplify the process through which the Government receives commission credit on new lease acquisitions. FAR 16.505(b) states that each contractor shall be given a fair opportunity to be considered for each task order and that price must be considered in making the award of each order. Under GLS, there was one price, the standard commission percentage, for each service to be provided to the Government. For all task orders estimated to exceed the SAT, contractors were contacted and given an opportunity to submit an offer and, if they chose, to propose a lower standard commission percentage. For GLS *Plus*, three different sets of pricing, or commission percentages, will be requested from the contractors for services to be provided to the Government at the base level. One set of commission percentages will be for lease acquisitions estimated to provide a commission to the contractor less than the SAT, a second set of commission percentages for lease acquisitions estimated to provide a commission to the contractor between the SAT and \$750,000.00, and a final set of commission percentages for lease acquisitions estimated to provide a commission to the contractor greater than \$750,000.00.

The streamlined ordering procedures provided for under the FAR deviation requires that all contractors are notified, and they are requested to provide a technical response to a fair opportunity notice for services associated with lease acquisitions estimated to provide a commission in excess of \$750,000.00. For services for lease acquisitions estimated to exceed \$2,000,000.00, contractors will be asked to provide a technical response to the fair opportunity notice and be given an opportunity to submit a lower price (however, pricing cannot exceed base contract pricing for the \$750,000.00 and above threshold).

As shown in the table below, for commissions that exceed \$2,000,000, contractors will be provided an opportunity to re-compete pricing at the task order level; however, pricing cannot exceed base contract pricing for the \$750,000,000 and above threshold. For projects at the \$750,000,000 threshold and above, including over \$2,000,000, specialized experience will be used as a determining factor to ensure the most qualified broker contractor, based on the agency's needs and requirements, is assigned to that task order. Task orders below the \$750,000,000 threshold will be awarded using base contract pricing, past performance and other factors if necessary as described below.

Commission Value	Example Technical Factors	Pricing Structure
Less than SAT	Past Performance	Base Pricing Used for Task Order Awards

SAT to \$750,000	Past Performance & Key Personnel	Base Pricing Used for Task Order Awards
Over \$750,000 to \$2,000,000	Specialized Experience	Base Pricing Used for Task Order Awards
Greater than \$2,000,000	Specialized Experience	Price Competition above \$2,000,000 (Pricing cannot Exceed Base Contract Pricing for the \$750,000 to \$2,000,000Threshold)

As required by FAR16.505, price will be considered for all awards. When making best value fair opportunity award decisions on all awards estimated to yield a net commission to the contractor in excess of the Micro-Purchase Threshold (MPT), the CO will estimate and compare the commission to be retained by each potential awardee utilizing the applicable commission rate set in the base award. The estimates will be calculated using the awardee's commission percentage to be retained from the total negotiated commission.

The following fair opportunity procedures are proposed for GLS *Plus* to ensure efficiency and effectiveness of the new contract:

Task orders may be issued to one contractor for an individual lease acquisition or for a group of lease acquisitions. For example, lease acquisitions may be grouped for some or all of a particular agency's requirements, for a particular geographic area, or for a multi-agency requirement.

- A. For task orders estimated to yield a net commission to the contractor at or below MPT, the selection of a contractor within the zone will be at the discretion of the Zonal Contracting Officer.
- B. For task orders estimated to yield a net commission to the contractor in excess of MPT, all contractors within the zone will be provided a fair opportunity to be considered for award of the task order.
  - 1. A best value selection will be made for all task order awards. Best value selections may be based on, but not limited to, the factors below:
    - i. Past performance (Past performance may include, but is not limited to, performance on earlier orders under the contract, performance as evaluated during this procurement, performance on other broker assignments including predecessor contracts, and CPARS.)
    - ii. Demonstrated lease cost avoidance on previous lease acquisitions

- iii. Contractor’s specialized knowledge, experience, or capability, based on the specific requiring need of the tenant agency
  - iv. Potential impact on other task orders placed with the contractor (workload)
  - v. Price<sup>1</sup>
2. Contractors may be requested to provide submissions (e.g. specialized experience) to fair opportunity notices to assist the Government in making fair opportunity determinations.
  3. Technical factors will be considered significantly more important than price.
  4. Post award debriefings will be provided upon request for task orders in accordance with FAR 16.505(b)(6).

C. Exceptions to the fair opportunity process apply as outlined in FAR 16.505(b)(2).

## 7.0 PROPOSED MILESTONES FOR INITIATION, INCLUDING TRAINING

<b>Milestone</b>	<b>Current Planned Date</b>
<b>Solicitation Issuance</b>	<b>06/20/2019</b>
<b>Solicitation Close</b>	<b>08/01/2019</b>
<b>Evaluations Begin</b>	<b>08/12/2019</b>
<b>Source Selection Evaluation Board Complete</b>	<b>09/30/2019</b>
<b>Award</b>	<b>02/10/2020</b>
<b>Contract Training</b>	<b>02/17/2020 - 3/31/2020</b>

<sup>1</sup> If PBS requests a competitive commission rate for any task order, the contractor is not required to provide a lower commission rate. The contractor may respond with a commission rate equal to or less than the applicable awarded commission rate. Revisions to competition regulation may require the ordering CO to provide an opportunity for competitive commission rates for all orders estimated to provide a commission to the contractor greater than the SAT.

## 8.0 RECOMMENDED FAR AND GSAM LANGUAGE

See Attachment A.

### Legal Sufficiency Statement

The LR legal counsel concurs that there is no legal barrier to proceeding with the proposed deviation.

Counsel Signature:  \_\_\_\_\_

Date: ---- 6/18/19

## ATTACHMENT A

### FAR DEVIATION TEXT

#### FAR Baseline: Change 2019-02 effective 5/06/2019

- Additions to baseline made by rule are indicated by [bold text in brackets]
- Deletions to baseline made by rule are indicated by ~~strikethroughs~~
- Five asterisks (\*\*\*\*\* ) indicate that there are no revisions between the preceding and following sections
- Three asterisks (\*\*\*) indicate that there are no revisions between the material shown within a subsection

### Subpart - 16.5 - Indefinite- Delivery Contracts

#### 16.505 - Ordering.

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(b) *Orders under multiple-award contracts—*

1. *Fair opportunity.*

- (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.
- (ii) The contracting officer may exercise broad discretion in developing appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. If the order does not exceed **\$750,000.00**, the contracting officer need not contact each of the multiple awardees under the contract before selecting a task order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each task order. The competition requirements in [part 6](#) and the policies in [subpart 15.3](#) do not apply to the ordering process. However, the contracting officer must—
  - (A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;
  - (B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;
  - (C) Tailor the procedures to each acquisition;
  - (D) Include the procedures in the solicitation and the contract; and
  - (E) Consider price or cost under each order as one of the factors in the selection decision.
- (iii) Orders exceeding **\$750,000.00**.

- (A) Each task order exceeding **\$750,000.00** shall be placed on a competitive basis in accordance with paragraph (b)(1)(iii)(B) of this section, unless supported by a written determination that one of the circumstances described at [16.505\(b\)\(2\)\(i\)](#) applies to the order and the requirement is waived on the basis of a justification that is prepared in accordance with [16.505\(b\)\(2\)\(ii\)\(B\)](#);
- (B) The contracting officer must—
- (1) Provide a fair notice of the intent to make a purchase, including a clear description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made to all contractors offering the required supplies or services under the multiple-award contract; and
  - (2) Afford all contractors responding to the notice a fair opportunity to submit an offer, including price at a rate equal to or less than the contract commission rate, and have that offer fairly considered.

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FAR and GSAM Clause and Provision Class Deviation  
GSA Leasing Support Services *Plus* (GLS *Plus*)

## Background

The PBS Office of Leasing / Center for Broker Services has a continuing requirement for national real estate leasing support services. The services to support the regional real estate programs will be provided through no-cost Indefinite Delivery, Indefinite Quantity (IDIQ) contracts.

The General Services Administration received an advisory ruling from the Government Accountability Office, B-291947, "General Services Administration: Real Estate Brokers' Commissions" dated August 15, 2003. The opinion concluded that contractors could collect commissions typically available in the commercial market as compensation. Subsequently, three (3) national IDIQ contracts for broker services have been issued by the Office of Leasing as "no-cost" contracts; the contract and task orders issued under them do not involve any obligation of funds. GSA awarded four (4) no-cost contracts as the first "no-cost" concept under the National Broker IDIQ Contract for a one (1) year base and four (4) option years. This contract expired on March 31, 2010. A second generation contract, known as National Broker Contract 2 (NBC2), was awarded June 21, 2010, with performance beginning October 1, 2010. This contract also was a multiple award IDIQ contract, with a one (1) year base period and four (4) option years. The NBC2 contract expired on January 18, 2016. The third generation contract known as GLS (GSA Leasing Support Services) was awarded on September 30, 2015 with performance beginning January 19, 2016. This contract also was a multiple award IDIQ contract, with a one (1) year base period and four (4) option years. The final GLS contract option ends on January 18, 2021, however, it is currently anticipated that the final option year will not be exercised. Accordingly, the contract is anticipated to expire on January 18, 2020.

In absence of GSA written guidance for contracts funded from other than appropriated funds, and after consultation with the GSA Office of General Counsel, GSA determined to be in the best interest of the Government to include provisions and clauses in the solicitation and resulting contracts that are normally required for a fixed-price IDIQ service contract over the simplified acquisition threshold. In addition, a request for a deviation from the Federal Acquisition Regulation (FAR) and General Services Acquisition Manual (GSAM) where a clause or provision clearly does not apply, as written, to the terms and conditions of the contracts to be awarded under Solicitation 47PA0519R0001 is necessary. In accordance with FAR 1.402, this deviation is necessary to meet the specific needs and requirements of GSA with respect to this contract for broker services. GSAM 501.404 requires that a deviation for any solicitation that will result in multiple awards be considered to be a class deviation. All class deviations must be

approved by the GSA Senior Procurement Executive in consultation with the Chairman of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a)(1).

### **Application of Dollar Thresholds**

FAR 1.108(c) defines the applicability of dollar thresholds in clauses based on the contract value. For the purpose of contracts to be awarded under this solicitation, the estimated amount of the real estate commissions that a contractor might collect based on the estimated contract workload shall represent the contract value and the dollar threshold for applicability of contract clauses and provisions.

### **Pricing**

Pricing, as defined by FAR 2.1, means the process of establishing a reasonable amount or amounts to be paid for supplies or services. For this contract, for the purpose of price evaluation for award including evaluation of option year pricing, contract pricing will be determined as follows:

Offerors will provide a percentage of the commission that they will receive as their compensation for each service provided. For the purpose of price evaluation for the base contract award, all percentages of commissions proposed will be compared for the Base and all Option Periods, to determine price reasonableness.

### **Section I Contract Clauses**

The following clauses contain a dollar threshold above which the clause becomes applicable. A statement will be added to Section I that for this solicitation and resulting contracts, the dollar value of the contracts will be the actual dollar amount of the commission a contractor or subcontractor collects or an estimated amount if the actual is not available. The Government will establish the estimated contract value based on the estimated contract workload and average commission estimate.

52.203-6	Restrictions on Subcontractor Sales to the Government (SEPT 2006)
52.203-7	Anti-Kickback Procedures (MAY 2014)
52.203-12	Limitations of Payments to Influence Certain Federal Transactions (OCT 2010)
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (OCT 2015)
552.215-70	Examination of Records by GSA (JUL 2016)
52.219-9	Small Business Subcontracting Plan (AUG 2018)
52.219-14	Limitation on Subcontracting (JAN 2017)
552.219-71	Notice to Offerors of Subcontracting Plan Requirements (OCT 2016)
52.222-26	Equal Opportunity (SEPT 2016)
52.222-35	Equal Opportunity for Veterans (OCT 2015)
52.222-36	Equal Opportunity for Workers With Disabilities (JUL 2014)

- 52.222-37 Employment Reports on Veterans (FEB 2016)  
52.244-6 Subcontracts for Commercial Items (OCT 2018)

### FAR DEVIATION TEXT

#### FAR Baseline: Change 2019-02 effective 5/06/2019

- Additions to baseline made by rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by rule are indicated by **strikethroughs**
- Five asterisks (**\* \* \* \* \***) indicate that there are no revisions between the preceding and following sections
- Three asterisks (**\* \* \***) indicate that there are no revisions between the material shown within a subsection

#### Deviation to the following clauses is needed as follows:

- 52.249-4 Termination for the Convenience of the Government (Services)(Short Form)(APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall **[not]** be liable ~~only~~ for payment ~~under the payment provisions of this contract~~ for **[any]** services rendered before the effective date of termination.

**[If this contract is terminated, and work has been completed on an existing task order, commission payments shall continue to be earned. If this contract is terminated, and work has not been completed on an existing task order, no commission payment will be earned.]**

#### Individual Task Orders

The Contracting Officer, by written notice, may terminate task orders, in whole or in part, when it is in the Government's interest. If a task order is terminated, the Government shall not be liable for payment under the payment provisions of this contract for **[any]** services rendered before the effective date of termination.]

- 52.216-19 Order Limitations (OCT 1995)

**[There is no minimum or maximum task order value limitation for this contract. The Contractor shall accept all task orders unless the Contracting Officer for the task order determines that a conflict of interest (Individual or Organizational) exists which would preclude the contractor from performing the work.]**

~~(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \_\_\_\_\_ [insert dollar figure or quantity], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.~~

~~(b) Maximum order. The Contractor is not obligated to honor~~

1. ~~(1) Any order for a single item in excess of \_\_\_\_\_ [insert dollar figure or quantity];~~
2. ~~(2) Any order for a combination of items in excess of \_\_\_\_\_ [insert dollar figure or quantity]; or~~
3. ~~(3) A series of orders from the same ordering office within \_\_\_\_\_ days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.~~

~~(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection [52.216-21](#) of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum order limitations in paragraph (b) of this section.~~

~~(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within \_\_\_\_\_ days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.~~

(End of clause)

52.243-1 (Alternate III) Changes – Fixed-Price (AUG 1987)

\*\*\*\*\*

~~(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.~~

\*\*\*\*\*

(End of clause)

52.243-7 Notification of Changes (JAN 2017)

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(e) Equitable adjustments.

(1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made-

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

\*\*\*\*\*

(End of clause)

52.219-9 Small Business Subcontracting Plan (AUG 2018)

(a) This clause does not apply to small business concerns. [***The term ‘dollars’ in this clause is defined to mean the total estimated amount of commissions.***]

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**Normal fixed price clauses to be excluded from the solicitation and contracts**

The following payment clauses are normally included in a fixed price IDIQ service contract over the simplified acquisition threshold. Since the Government will not be making payments under the contract, the clauses are not needed.

- 52.232-1 Payments (APR 1984)
- 52.232-8 Discounts for Prompt Payment (FEB 2002)
- 52.232-9 Limitation on Withholding of Payments (APR 1984)
- 52.232-11 Extras (APR 1984)
- 52.232-19 Availability of Funds for the Next Fiscal Year (APR 1984)
- 52.232-23 Assignment of Claims (MAY 2014)
- 552.232-25 Prompt Payment (NOV 2009) (Deviation FAR 52.232.25)
- 52.232-33 Payment by Electronic Funds Transfer – System for Award Management (OCT 2018)
- 52.232-34 Payment by Electronic Funds Transfer – Other than System for Award Management (JUL 2013)
- 52.248-1 Value Engineering (OCT 2010)

**Deviations to Section L provisions with dollar thresholds**

52.222-24 Pre Award On-Site Equal Opportunity Compliance Evaluation (FEB 1999)

If a contract in the amount of \$10 million [***based on the Government’s estimate of the potential commissions that a contractor might collect***] or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

(End of provision)

**Prepared by:**

e-Signed by Breanna Ackley  
on 2019-06-18

\_\_\_\_\_  
Breanna Ackley  
National Contracting Officer  
Center for Broker Services  
PBS Office of Leasing

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Date

e-Signed by Danny Killian  
on 2019-06-17

\_\_\_\_\_  
Danny Killian  
National Contracting Officer  
Center for Broker Services  
PBS Office of Leasing

\_\_\_\_\_  
Date

**Concurrence:**



\_\_\_\_\_  
Heather Cameron  
Senior Assistant General Counsel  
Real Property Division  
GSA Office of General Counsel

\_\_\_\_\_  
6/18/19

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Date

e-Signed by Kameshia Freeman  
on 2019-06-18

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Kameshia Freeman  
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Date

e-Signed by Justin Hawes  
on 2019-06-18

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Justin Hawes  
Director Lease Project Management and Tools Division  
PBS Office of Leasing

\_\_\_\_\_  
Date

ALLISON AZEVEDO Digitally signed by ALLISON AZEVEDO  
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Allison Azevedo  
Assistant Commissioner  
PBS Office of Leasing

\_\_\_\_\_  
Date

**Approved by:**

**MICHAEL  
GELBER**

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Michael Gelber  
PBS Deputy Commissioner  
Head of Contracting Activity  
Public Buildings Service

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Date

**JEFFREY KOSES**

Digitally signed by JEFFREY  
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Jeffrey Koses  
GSA Senior Procurement Executive

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Date