

PBS National Office of Leasing: Industry Outreach Conference Call

Joel Tabatcher: Welcome everyone on the phone, this is the GSA PBS National Office of Leasing Industry Outreach Call. We're going to give it a few minutes to allow for others to join and we'll get started.

Hello everyone on the phone and thank you for joining us. My name is Joel Tabatcher and I'll be moderating the call today. You are going to be listening to the first Industry Outreach Conference Call for National Office of Leasing at GSA.

We have some great topics today that I think everybody will be interested in, and some great speakers, including myself. Joining us from GSA is Chris Wisner our Assistant Commissioner for the National Office of Leasing in PBS and John Thomas the Director of our Lease Policy and Program Execution Division. As I said my name is Joel Tabatcher and I'm the Acting Director of our Real Estate Administration Division

In terms of logistics, for those logged into the meeting space, you'll see a screen with two important resources listed, our central email address, leasingoutreach@gsa.gov and our website, gsa.gov/leasing. For those that are joining us over the phone, we'll be referencing those two links a lot so you'll have the opportunity to jot them down, or they may become ingrained without you even knowing it.

We won't be taking questions during the call today because we have a lot to cover, but questions can be sent to leasingoutreach@gsa.gov at any time. Lastly, we're recording this session today so we'll make the audio available on our website - gsa.gov/leasing - along with the minutes. Expect those items to be posted next week.

Ok, so Chris, would you like to kick us off?

Chris Wisner: Yes, Joel, thank you. I'm excited to announce, today, on our first call, the start of a formal Outreach program at GSA with our external industry stakeholders.

We value the relationships we have with industry. Many people on the phone today have engaged with GSA over the years, and through the time and effort of all involved, we've been able to make substantial improvements to government leasing which saves time and money. I also think our efforts towards transparency and education with regard to the leasing process has made it easier to do business with the government.

So, on today's call I want to say that I'm happy to announce, that through the support of our Commissioner Norman Dong, we have been given the resources to create a formal Industry Outreach Program in my office.

I'd like to take a few minutes to run through what this means for everybody joining us today, and what they can expect from GSA moving forward.

First, is a revamped website that I think people will find very helpful and informative. We've added an "[Leasing Outreach](#)" section to the GSA Leasing website. Moving forward, this section will have an archive of all the audio and materials from previous outreach calls. It will also have frequently asked questions and helpful links to all the source documents that GSA likes to reference.

So the 2nd thing is, we've created a central email box that will provide a direct line of communication to my office. This is the LeasingOutreach@gsa.gov email address that was referenced in the announcement for today's session. We've had email boxes before, but the difference this time is we will have someone taking on that role permanently, which I'll talk more about in a moment.

Another thing this formal outreach program means is that you have a commitment from me that GSA will communicate, at a minimum, to the Industry on a monthly basis. Our goal is to be more inclusive and to reach as many people as possible in order to make doing business with the government easier.

With this in mind, we plan to have sessions like today where we share information via webex. Since having an interactive session with hundreds of participants gets messy, some of our monthly interactions may be in person so that GSA can have a dialogue with the private sector about a given topic. In these instances, the session will be open to the public and we will post the minutes on our website.

The channel for these monthly communications will depend on the material that needs to be covered, but at a minimum we will send an announcement that new information has been posted to our website.

The final thing I want to mention today is that, towards this effort, we are currently onboarding a permanent professional communications specialist who will facilitate the relationship between GSA and the industry. This person will be communicating through multiple channels but mainly

through the leasing outreach mail-box. They will be moderating these conference calls, and they'll be introducing new and innovative communication channels for GSA and the industry. So that's a lot, but I wanted to thank our Commissioner Norm Dong again for supporting our efforts to invest in GSA's relationship with our industry stakeholders. So now I'd like to hand it back to Joel -- He'll introduce our first topic. Thank you Joel.

Joel Tabatcher: Great, thanks for setting the table for how this is going to look moving forward.

Our first topic is very important, especially for those new to doing business with GSA, and that is the different laws, regulations and policies that govern the GSA process.

So John, can you dive a little deeper into this for us?

John Thomas: Yes, thank you Joel. Hi everybody, this is John Thomas. Now I don't want to list for everybody the actual names of all these Laws and Executive Orders that govern our process because everybody would fall asleep, but I do want to highlight a few, then refer everybody to our website where they can find a comprehensive breakdown of this information in our Leasing Desk Guide in the [Introduction chapter](#). We will be updating this chapter to reflect new Laws and Executive Orders that have taken effect since we last updated it.

First I want to highlight some of the Federal statutes or laws that govern GSA. These are the laws passed by Congress that limit GSA to a maximum of a 20 year lease and that require us to get Congressional approval for leases over the prospectus threshold - which is currently a net annual rent over the \$2.85 million dollars. These statutes also direct us to lease space using full and open competitive procedures. That's just naming a few, but in the leasing desk guide you'll find the numerous Federal statutes listed that are relevant to the GSA leasing process.

From there we go to Executive Orders which are issued by the President to the executive branch that have the force and effect of law. These Executive Orders govern many of our location policies including preference to be located in Central Business Districts in historic buildings or historic districts. Also executive orders dictate our policy regarding locating in floodplains and seismic zones as well as our policy towards energy efficiency and security.

As we move down the spectrum from Federal Law towards GSA policy, next are Regulations. The GSAM identifies GSA's acquisition rules and guidance that incorporates the General Services Administration Acquisition Regulation (or "GSAR") as well as internal agency acquisition policy. For the acquisition of leasehold interests, GSA follows the General Services Administration Acquisition Manual Part 570 (or "GSAM Part 570)", entitled "[Acquiring Leasehold Interest In Real Property](#)". A few examples of policy areas addressed in this part are Evaluating Offers, Lease Award, and the requirements to advertise lease requirements. Also, I should mention that the Federal Acquisition Regulations, or "FAR," applies to the acquisition of goods and services. The application of the FAR to leasing is limited to those parts where the

underlying statutory basis for the regulation applies to leasehold acquisitions of real property as listed in GSAM Part 570.

GSA is also responsible for implementing guidance established by the Office of Management and Budget. One such OMB policy that impacts GSA's leasing process is OMB Circular A-11 that provides the rules for budget scorekeeping for leases.

In the National Office of Leasing, our internal policies are usually implemented through the issuance of a [Lease Acquisition Circulars](#) or LACs which have gone through a concurrence process in PBS. Our office also clarifies and emphasizes current policies through Leasing Alerts that are issued to all of our Regional personnel. Our Bible, so to speak, is the [Leasing Desk Guide](#) which is a comprehensive guide outlining all the policies and procedures that our contracting officers must follow when procuring a lease for the government.

Throughout these calls moving forward you'll hear us reference LACs, Leasing Alerts and the Leasing Desk Guide since these are the policy vehicles that our headquarters office uses to implement new policies or clarifies current policies.

And with that, Joel I think you'll introduce the 2nd topic for discussion today.

Joel Tabatcher: Great, thanks John. I think understanding the source of the why and where a lot of what governs government leasing comes from is an important baseline for us to start from.

The 2nd topic we want to talk about today is our redaction process. A question was raised at a previous industry day of how GSA decides which information to redact, and this was specific to a justification for other than full and open competition.

So John, you can take this one for us and maybe start off by letting everybody on the phone know what a justification for other than full and open competition is in case we have some people on today that are not intimately familiar with the GSA process.

John Thomas: Yea sure, thanks Joel. Well first, a justification for other than full and open competition is often called a JOTFO or OTFO depending on which GSA region you're working with and this is a document that lays out the factors including a cost benefit analysis that justifies the government awarding a contract without going through the entire competitive process. In this context we're talking about awarding a follow on lease to the incumbent lessor.

This is addressed in [Chapter 2](#) of our Leasing Desk Guide which is available on our website and will be linked to in the minutes for this conference call. In this chapter we provide guidance concerning the posting of redacted OTFOS which the government posts on the Federal Business Opportunities website, or "FedBizOpps," within 14 days after the lease is awarded.

One note here is GSA is not required to post the OTFO for leases falling under the Simplified Lease Acquisition Threshold, or SLAT, which is currently \$150,000 in net annual rent.

In terms of which specific information is exempt from public disclosure, this is addressed in a federal law, the National Defense Authorization Act of Fiscal Year 2008, and in the Freedom of Information Act or FOIA statute.

Before posting the OTFO on the Federal Business Opportunities website, GSA's Lease Contracting Officers, in consultation with Counsel's Office, must screen the justification to remove all contractor proprietary data, references, and citations as necessary to protect proprietary data under the Freedom of Information Act.

Guidance for our LCOs as well as a sample of redactions for the JOTFOs is contained in the Leasing Desk Guide, [Chapter 5](#) for Succeeding and Superseding Leases on page 5-32.

One last thing to note on this topic, is that if people want to search for JOTFOs on FedBizOpps, the website's Frequently Asked Questions webpage provides guidance on how to search for these documents. On the site they are referred to as "Justification and Approval" or "J&A".

And with that I'll turn it back over to Joel to introduce our next topic.

Joel Tabatcher: Great, thanks John, that was some good high level information regarding the redaction of our lease documents, and for those interested in more specifics, we'll link to the relevant [Leasing Desk Guide Chapter](#) in the minutes for this session which will be posted on GSA.gov/leasing.

The next topic was a suggestion that came to us from our friends in the National Federal Development Association and it has to do with reverse auctions

I'm going to call on John once more to talk a little bit more about this.

John Thomas: Great thanks Joel. So let me just start out by giving a summary for how the majority of GSA lease procurements are handled, and that is what we call lowest cost, technically acceptable approach. In this process we solicit offers from bidders and review them for any errors or inconsistencies then ask for all bidders that meet the minimum requirements of the solicitation to submit their final proposal revisions, or best and final offer. Then, after conducting a present value analysis, the government awards the lease to the bidder with the lowest cost to the government.

So, a reverse auction is a process for pricing contracts supported by an electronic tool where offeror's bid down, as opposed to the traditional auction which requires buyers to submit sequentially higher bids, the main goal of which is to drive prices downward. Offerors are given the opportunity to continually revise their prices during the bidding process until the auction closes.

Overall, GSA recognizes the value of reverse auctioning for certain types of procurements and that the Government has benefitted from reverse auctioning. In terms of implementing a reverse auctioning solution for lease acquisitions, GSA would need to explore the viability and cost associated with such an initiative.

The first condition for a reverse auction is an electronic platform where bids can be submitted by offerors. Currently, GSA has an electronic platform, known as the "[AAAP](#)," where offerors can submit their vacant space for lease to GSA. The AAAP was deployed nationally to all GSA regions in 2015 and, since then, GSA has awarded 89 leases worth \$700 million total contract value representing approximately 2.2 million square feet. It is GSA's intention to continue to grow this platform across all markets and increase the volume of lease awards.

The AAAP makes it easier and faster to do business with the Federal Government. For example, the AAAP employs an online offer submission that's 100% paperless which means offerors no longer need to complete paper forms to submit an offer. In addition, it provides a step by step process which eliminates the need for multiple rounds of revisions and creates live database of best and final offers. One last benefit I'll mention is that AAAP allows building owners to submit and update offers in real time.

Joel Tabatcher: Great, thanks John. I know the expansion of the AAAP platform nationally is a priority and using AAAP cuts down on the cycle time and the resource requirements of our procurements. I think this is something that both the government and the industry seem to find common ground and value in.

Ok, I'm going to take the final 2 topics for us today.

The first one has to do with built-to-suit projects. Specifically with the General Clauses in the GSA lease, we have gotten feedback that there are 3 issues that make financing these projects more difficult. The 3 specific General Clauses referenced by our industry partners were the Subletting and Assignment Clause, Fire and Casualty Damage and Lender Notice and Cure Rights/Penalty Clause.

Now, let me just pause and say that all of GSA's General Clauses and these 3 specifically can be accessed in our lease which is available on the [gsa.gov website](http://gsa.gov).

GSA recognizes that Government lease provisions are different than those found in private sector leases and that some of the Government lease provisions place risk on the lessor. In 2012, GSA issued an LAC which revised the General Clauses as part of our efforts under the Lease Reform initiative to more closely reflect the commercial standard for risk allocation.

Two of the clauses mentioned "Subletting and Assignment" and "Fire and Casualty Damage" were revised as part of that LAC. For example, the "Subletting and Assignment" clause was revised to add a line that requires the Lessor's prior written consent for subletting.

“Fire and Casualty Damage” was revised to allow the Lessor an opportunity to repair the premises in instances of partial damage, where the space is rendered untenable or unusable.

Concerning changes to our leases impacting cure rights and penalties during construction and during the lease term, we are open to hearing alternatives.

Overall, GSA specifically, and the government in general, is concerned about risk and assumption of risks, especially with build to suit projects. So any suggested solutions or revisions to our lease clauses would need to adequately reflect these accretion concerns.

Joel Tabatcher: Ok, now onto the final topic we have today which has to do with Real Estate Taxes.

The Real Estate Administration Division conducted some additional outreach following a previous session with industry and there were 4 issues that were raised.

What we heard is that the current standard real estate tax adjustment Clause is complicated which creates inconsistent application and interpretation among industry and internally in GSA.

While GSA cannot address every possibility through the tax clause language, it's our intention to do a thorough review of the Clause.

Also, one of the options we are researching is omitting the current tax adjustment clause from a greater portion of our leases, specifically in low value leases where financially the administrative cost to the government is not worth it.

From my division's perspective, we are working to drive consistency across the country in terms of how the clause is applied. We are pursuing IT system enhancements to automate some of the process internally and make the process easier and more transparent for our lessor community.

There is the perception in the leasing community that our tax adjustment clause is complicated and we are open to changing the language to something that is more easily understood. If you have examples of tax language or suggestions for how GSA can change it specifically, please send them to us using our central email box, leasingoutreach@gsa.gov

A more specific issue that was raised has to do with GSA's policy to have offerors estimate a base real estate tax for build-to-suit projects. Just to expand on this a little bit, our standard process asks offerors to estimate their taxes in GSA's cost breakdown document, GSA Form 1217 (Lessor's Annual Cost Statement), which is then added into the shell rate for the purposes of the PVA analysis when comparing offers. After the lease becomes effective, the base year real estate tax amount is established using the tax bill from the first full tax year after the government's occupancy starts.

According to some feedback we've received, this standard process becomes problematic in new construction projects because the tax amount is difficult to estimate.

One of the approaches we're discussing internally to address this issue, including GSA establishing a set base year amount to use as part of a solicitation, based on market research, which will be used as a component of the annual rent for all offerors. Step (2) is, after the first fully assessed year, GSA would true-up the value of the real estate tax base and revise the annual rent, and lastly, GSA would use the revised base as the basis for the calculation of the lump sum tax adjustment.

The 3rd issue raised with regard to real estate taxes is GSA's interpretation of tax increases resulting from a change in ownership.

For example:

We have heard that this is particularly problematic in California where the state only reassesses at the time of a sale. GSA, as part of the novation agreement, has been excluding any increases in tax invoices, submitted as part of the lump sum adjustment process that can be associated to the sale of the building.

GSA will explore whether it could establish terms of sale as part of the novation lease agreement, possibly a one-time tax adjustment for sale over the term of the lease.

The last issue regarding real estate taxes is the Tax Appeal Program. This is an area where we've heard that there are inconsistencies across GSA's regional offices, so we'll be working to bring national consistency to the program. Also, GSA will conduct a future industry day to share GSA's end-to-end tax appeal program and talk with lessors about how GSA can work together with them to implement tax appeals.

So that's all we have for today. Stay tuned for an announcement regarding next month's communication. We will be posting on FedBizOpps as well as the GSA National Office of Leasing LinkedIn Group's page. For all the most current information please go to [GSA.gov/leasing](https://www.gsa.gov/leasing).

On behalf of Chris Wisner and John Thomas I'd like to thank you for joining us today and hope that you have a wonderful afternoon and end to your week.