

## CHAPTER 5:

# Succeeding Lease, Superseding Lease

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## 1. Overview

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This chapter defines succeeding and superseding leases, discusses the acquisition process requirements for them, and explains the templates available to accommodate them.

GSAM Subpart 570.402 and 570.404 provide the authority to enable the Government to run an advertisement, conduct market research, perform a cost-benefit analysis, and, if justified, prepare a sole source Justification for Other Than Full and Open Competition (Justification) to negotiate a lease directly with the present lessor for continued space requirements. This approach eliminates the need for the Government to negotiate with all offerors in situations where the acquisition cost is above the simplified acquisition threshold and the Government has determined through a conducted cost benefit analysis (570.402-1(b)(2)) that it cannot expect to recover relocation costs and duplication of costs through competition. This approach also saves the private sector the time and expense associated with developing, submitting, and negotiating proposals in those instances where the Government cannot expect to recover such costs through competition.

The authority for acquiring succeeding and superseding leases can be found in GSAM Subpart 570.402 and 570.404. Lease Contracting Officers (LCOs) may use these authorities to acquire a succeeding lease, used when a “continued occupancy” is sought; or for a superseding lease, used to replace an existing lease when major modifications to the space are required causing material changes to the lease, or when favorable market conditions allow the Government to renegotiate favorable lease terms over a new lease period. Both succeeding and superseding leases establish new terms and conditions and result in a new lease contract with an existing Lessor. The GSAM definition was expanded in its application to distinguish between when to use a succeeding versus a superseding lease; a succeeding lease is one that begins upon expiration of an existing lease for space in the same building; whereas, a superseding lease replaces an existing lease before it expires.

Succeeding and superseding leases are distinguished from other lease actions to fulfill a continuing need for space, such as a replacing lease. In a competitive replacing lease action, PBS seeks full and open competitive offers from the market to replace an expiring lease. PBS performs market research to identify potential locations and advertises for interested parties to submit their properties for consideration to be viewed on a market survey. There is clear intention to solicit offers on a competitive basis and “all responsible sources are permitted to compete.”<sup>1</sup> Several offers may be solicited and received, or the existing Lessor’s offer may be the only one received.

In contrast, for succeeding or superseding lease actions, PBS seeks to negotiate a sole source lease with the current lessor only, based on either a mission-related reason to remain at the current location<sup>2</sup> or because the Government cannot expect to recover relocation and duplication of costs through competition. Similar to a competitive replacing lease action, PBS performs market research within the delineated area to identify potential locations and advertises for interested parties to submit their properties for consideration. The advertisement for a succeeding or superseding action communicates to the market that the Government will consider alternative

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<sup>1</sup> Definition of Full and Open Competition under FAR 2.101

<sup>2</sup> Note that for sole source actions based on mission-related reasons, alternative sources are not sought and that the advertisement serves as an “intent to award” notice. No cost benefit analysis is performed to support the Justification.

space only under certain circumstances; this restriction of competitive sources is a defining feature of a succeeding lease action.

Succeeding and superseding leases are replacing actions at an existing location. Both situations require a Justification to support why there is only one responsible source that will satisfy the agency requirements. In instances where potentially acceptable locations are identified, the Justification must include a cost-benefit analysis to reflect an estimate of the cost to the Government that would be duplicated and how the estimate was derived. PBS must document the absence of acceptable locations or a finding that the Government cannot expect to recover costs in a Justification to negotiate directly with the current Lessor.

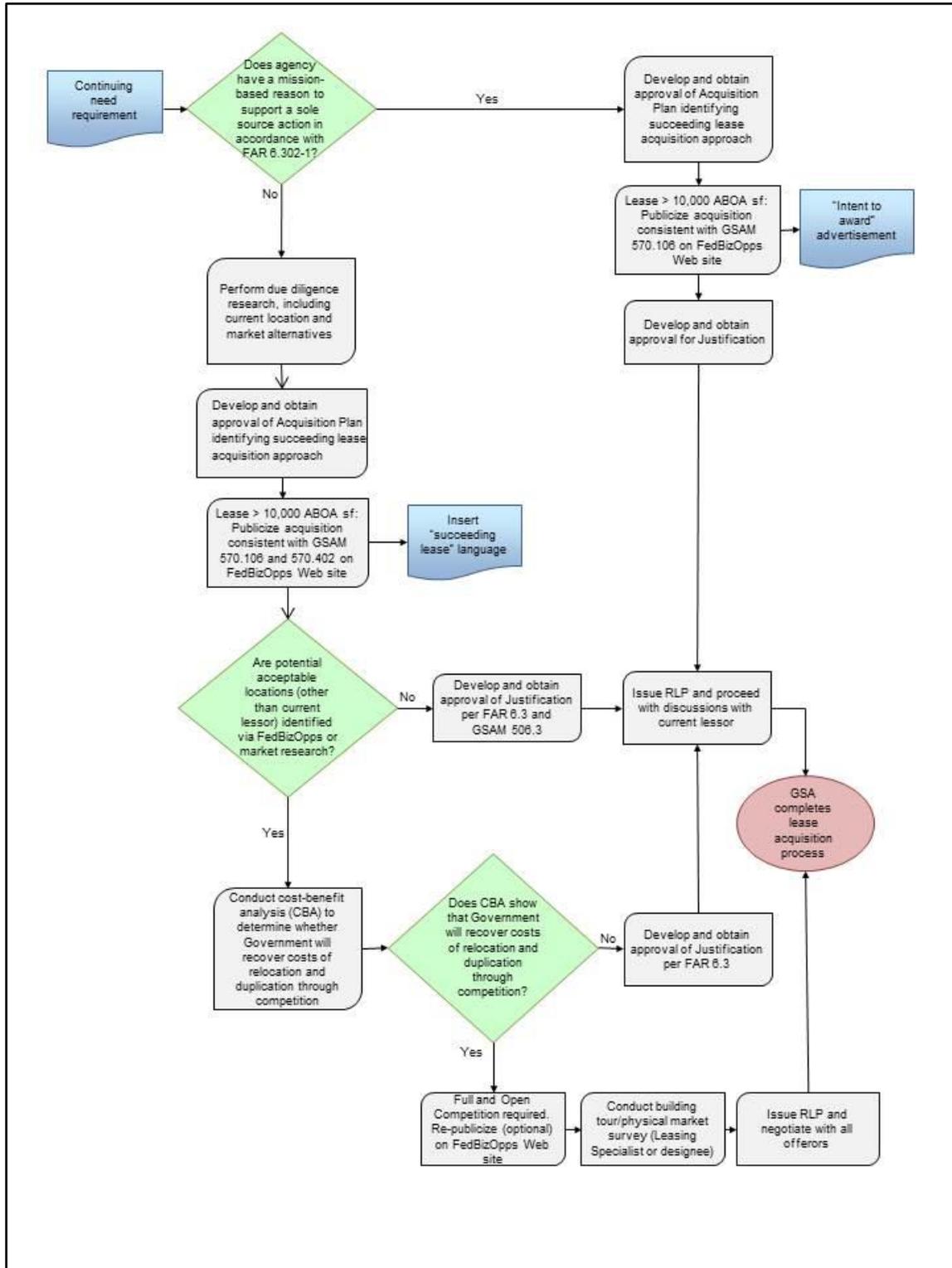
Although succeeding and superseding lease procurements have some marked distinctions from new and replacing lease procurements, many more similarities exist than differences. This chapter highlights primarily the differences. Refer to Chapter 2, New or Replacing Lease, for a comprehensive discussion of the new and replacing lease procurement process, and supplement that information with the guidance in this chapter for a succeeding or superseding lease.

The flow chart on the next page shows the process for succeeding leases. Subsequent sections of this chapter explain these steps in more detail.

Keys to flow chart terminology:

- GSAM: General Services Administration Acquisition Manual.
- FAR: Federal Acquisition Regulation.
- Justification: Justification for Other than Full and Open Competition.
- RLP: Request for Lease Proposals package.

Succeeding Lease Process



## 2. Definitions and Applicability

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### a. Succeeding Lease

A succeeding lease secures long- or intermediate-term continuing occupancy at the current premises at the end of a lease term (or the end of an extension) without a break in tenancy. To pursue a succeeding lease, unless the agency has a mission-based reason to stay in place, the Leasing Specialist must investigate the availability of alternative locations; then, if alternative locations are found, the Leasing Specialist must demonstrate the cost advantages of staying in place through a cost-benefit analysis.

The Leasing Specialist must understand that if a cost-benefit analysis is required but it does not support a Justification under the Competition in Contracting Act (CICA), then a competitive new or replacing lease must be pursued. The Leasing Specialist must update PBS systems to indicate that the lease action is not a succeeding/superseding lease but a new/replacing lease approach if that is the case.

### b. Superseding Lease

A superseding lease replaces an existing lease before its expiration. The existing lease is terminated simultaneously, effective with the commencement of the superseding lease. Generally, a superseding lease is used to significantly change the provisions of an existing lease, usually to the point where additional term years are added, the rent is significantly changed, and the amount or configuration of the space is significantly altered.

The main advantage of using a superseding lease, as opposed to a Lease Amendment, is that all lease provisions are brought up to current standards. The Leasing Specialist must understand that if the cost-benefit analysis does not support a Justification under CICA, then a competitive new or replacing lease must be pursued. The potential cost of remaining liability on the existing lease (in terms of net present value or a buyout) will play a major role in the superseding cost-benefit analysis, unless a backfill candidate has been identified.

As a practical matter, superseding leases are most often used when the space is either being expanded or a reduction in rent is being obtained in exchange for a longer firm-term commitment by the Government.

### Examples of Potential Superseding Lease Scenarios

Not every trigger event—such as a change in the tenant agency's square footage requirement or a space alteration—will necessitate a superseding lease. Space expansions are accommodated by Lease Amendments if they are determined by the LCO to be within the general scope of the lease. However, space expansions outside the general scope of the lease may be considered for a superseding lease if the agency has a mission-related need for the personnel to be co-located, or there are other justifiable reasons for the expansion. For determination of scope, the LCO must consider the factors discussed in detail in Chapter 6, Change in Square Footage—Expansion and Reduction and must consult with the Office of Regional Counsel. Likewise, minor space alterations may fall within the scope of the lease; see Chapter 8, Alterations in Leased Space.

The Government may consider executing a superseding lease to replace an existing lease when various factors make it advantageous to do so. The following are examples of circumstances that

may support a superseding lease. In all circumstances, a Justification is required for superseding leases.

#### Significant Changes in Customer Requirements

A tenant agency may need numerous or detailed modifications to a space that would cause complications or substantially change the existing lease. For example, the agency's needs or organizational goals have changed significantly or it may need to co-locate or consolidate an affiliated agency or organization with itself under the same roof to meet evolving mission needs; and it might need more space to accomplish that. The agency may need the expanded space or extensive alterations now, 2 or 3 years before expiration of its current lease. A superseding lease can solve the space problem and also avert the need to redo the lease again in a couple of years, as well as provide enough additional term to allow a more tolerable amortization of any tenant improvement allowance. Note that a pricing deviation will be necessary if there are TIs remaining from the existing lease that are being amortized in the superseding lease.

#### Opportunities for Economic Advantage

In some cases, a superseding lease could take advantage of favorable market conditions to bring considerable financial savings to the Government. A superseding lease whose only purpose is to secure a longer lease term at the current location would ONLY be an acceptable approach in the case when the lessor is actually offering a rental rate lower than the existing rate for both the remaining term and the additional term. The fact that the lessor is offering an attractive rate to "blend" with the old rate is not necessarily a benefit to the Government, if that "blending" results in an immediate price increase to the tenants.

The "blend and extend" concept oftentimes used in the private sector can be misleading, especially when the Lessor can offer a slightly below current market rate for the extension term that is higher than the existing rate, blend them, and get both an immediate price increase and additional term without competing. Unless the price goes down immediately, it would be hard to prove that competition at the end of the existing term would not produce an overall better deal for the Government. This scenario violates the intent of the CICA, the purpose of which is "to increase the number of competitors and to increase savings through lower, more competitive pricing."

Identifying such opportunities requires analyzing the terms of the existing lease inventory against market conditions to find potential targets. More favorable rental rates may be available now than when the lease began, so executing a superseding lease now can lock in more beneficial terms. Leasing Specialists are encouraged to consider a superseding lease for such scenarios, which can result in renegotiated rent payments lower than those for the existing lease in exchange for a longer firm-term commitment.

#### Administrative Simplification

A superseding lease can be used to consolidate and reduce the number of leases that must be administered for a certain location, or for a particular customer agency. This approach can reduce the cost of administering the leases and make it easier to manage the lease workload, not only for the Government but also the Lessor. This rationale may be especially compelling in scenarios where multiple leases are spread out over highly dispersed or remote locations, and where distances pose a significant challenge in terms of the time and cost of travel and coordination.

In contrast, where space has been backfilled, and now is occupied by two agencies with vastly different needs, this authority could be used to split the lease into two leases. The rationale is the same; this approach seeks to reduce the cost of administering the lease and related occupancy

### 3. Succeeding/Superseding Lease and the Global Templates ↵

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agreements. No new space is being procured; as long as the lease terms remain the same as under the original lease, CICA requirements are not triggered. However, in a scenario where the leases are split and a longer lease term is sought for the backfill space in exchange for tenant improvements, CICA provisions would be triggered, and a Justification would be required.

The coordinating requirements and timelines for executing a single-tenant superseding lease grow significantly when attempting to bring together the needs of multiple tenant agencies. The Leasing Specialist must carefully consider whether:

- the data, tools, and time are sufficient to conduct a thorough and defensible up-front analysis;
- the geographic location and travel issues are compelling;
- the opportunity offers clear advantages;
- the loss of flexibility for the individual tenants or locations is outweighed by the long-term benefits;
- the superseding lease can effectively resolve and harmonize the requirements of different tenant agencies;
- the superseding lease will increase the cost-efficiency of the leases; and
- The consolidated superseding lease will reduce or magnify administrative difficulties, or opportunities for OA rent bill errors.

## 3. Succeeding/Superseding Lease and the Global Templates

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GSAM 570.402 (“Succeeding leases”) establishes the regulatory framework for negotiating sole-source succeeding leases. Lease Reform introduced the Succeeding/Superseding Lease Model in April 2011, which aligned with that framework while offering additional tools and templates to optimize the process. It used a specialized approach to obtaining an offer through the use of an RLP, Lease, and GSA Form 1364 specifically tailored to a succeeding lease action. The model made certain assumptions regarding the level of improvements required (minimal), how they were to be priced (turnkey) and also clearly communicated the Government’s intent to negotiate a sole source succeeding lease.

While having a separate model for succeeding and superseding leases provided structure and consistency, it did not allow for flexibility in drafting RLP packages to meet the requirements of each individual transaction. To address this, the Office of Leasing issued “Global” RLP and Lease templates combining language and logic from this and two other models (Standard and Streamlined), along with a Global 1364 to be used in conjunction with the Global templates. With the Global templates, Leasing Specialists can choose among paragraphs and sub-paragraphs in addressing such project differences as:

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#### 4. Statutory Authority ↗

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- Tenant Improvement (TI) pricing – Do we have a biddable set of requirements allowing us to obtain turnkey Tenant Improvement (TI) pricing or will a TI Allowance be used instead?
- Method of award – Are we communicating this as a competitive or a sole source procurement to the market?
- Stay in place – Are we remaining at the current location (i.e., succeeding or superseding lease action) or are we considering alternative locations?
- Level of Build Out – For succeeding lease actions, is minimal build out expected, or are extensive alterations required?
- Design Intent Drawings (DID) delivery method – who is providing the DIDs and will we require a DID workshop?

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## 4. Statutory Authority

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As discussed under Part 1 of Chapter 2 of this Desk Guide, CICA requires agencies to promote and seek full and open competition in soliciting offers and awarding Government contracts. CICA recognizes seven conditions that allow exceptions to this requirement. The exception most relevant to leasing is that there is “only one responsible source” and no other supplies or services “will satisfy” agency requirements (41 U.S.C. 3304(a) (1)). It is under this exception that PBS may negotiate with the current Lessor and secure a succeeding lease using GSAM 570.402 or a superseding lease using GSAM 570.404. While the GSAM guidance on managing expiring leases is clear, some Leasing Specialists may not be aware of these authorities.

Leasing Specialists must be aware that a Justification is not supportable based on:

- A lack of advance planning by the client agency; or
- Concerns related to the amount of funds available to the agency (FAR 6.301(c)).

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## 5. Timing and Leverage

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It is essential to begin considering the potential for a succeeding lease well in advance of the expiration of the current lease, depending on factors such as the size and complexity of the lease. See Leasing Desk Guide Chapter 1, Requirements Development. This lead time is necessary to allow a thorough analysis of:

- the agency’s long term space needs;
- the current lease terms;
- prevailing market conditions;

- potential points of leverage in PBS's negotiation position with respect to the incumbent Lessor; and
- the relative costs and benefits to the tenant agency of staying in place versus moving to a new location.

Failing to allow enough time to investigate strategic options can impose significant costs on the Government that otherwise might have been avoidable. As the expiration date approaches, the Lessor may begin to regard the Government as a captive tenant unlikely to be lost to a competitor, and the Lessor will enjoy an increasingly stronger negotiating position regarding rental concessions or other terms.

## 6. Acquisition Planning Analysis

This section discusses some of the factors that the Leasing Specialist must consider in performing an analytical review to decide whether to pursue a succeeding lease as an option.

### a. Issues to Consider

As part of due diligence, the Leasing Specialist must consider the following issues before deciding to pursue a succeeding lease:

#### Agency Requirements

- Have the agency's requirements changed significantly? If so, can the existing location meet these new requirements? General requirements for a succeeding lease are largely the same as for a new or replacing lease action, but tenant improvement costs can be significantly less. If the agency is contemplating **major** changes in square footage or alterations, then full and open competition could be more appropriate.
- Is this an opportunity for the agency to reduce their square footage or pursue co-location or consolidation opportunities in order to be in compliance with the Office of Management and Budget's "Reduce the Footprint" policy? Under this policy, agencies are required to reduce their footprint beginning in FY 2016. Agencies are required to set annual square foot reduction targets for federal domestic buildings and adopt design standards to optimize federal domestic office space usage.

#### Acquisition Plan Consistency

The Acquisition Plan must clearly identify when a lease action will follow succeeding or superseding lease procedures. "Succeeding" or "Superseding" must be checked off under "REXUS Action Type" and "Other Than Full and Open Competition" must be checked under "Method of Procurement."

#### Suitability of Location

- Is Government-owned space available that may meet the agency's requirements? Could a historic or other federal building meet the requirement and better serve the Government's fiscal, sustainability, and stewardship goals?
- Does the current location comply with locational policies, such as E.O. 12072, and does it provide for desirable sustainability features such as walkability, and public transit accessibility, as outlined under E.O. 13693?

- Does the location still comply with floodplain and wetland policies?
- Is the agency satisfied with the current location? Does the current location still align with agency mission requirements?
- Does the current Lessor have a good record of past performance regarding heating and air conditioning, janitorial service, maintenance, and alterations? Leasing Specialists should be contacting the Lease Administration Manager (LAM) for their feedback in this area.
- What is the condition of the building? In addition to agency and LAM feedback (such as annual inspections or a building evaluation report), determine the condition based on a physical tour, if at all possible—see the section below on the market survey.

### RLP and Lease Technical Requirements

- Can the existing building or space be altered to meet the current solicitation requirements with respect to standards such as fire safety, accessibility, sustainability, seismicity, and security criteria?
- Will the client agency be able to continue to perform its mission during renovations or will the current Lessor be required to offer alternative solutions to prevent disruption to ongoing agency operations?
  - Will the work need to be done in phases?
  - Will the agency have to temporarily relocate into swing space? Note that, while some improvements may adversely affect an agency's ongoing operations to the point of requiring temporary swing space, this should not be assumed in all instances.
  - If required, will the swing space involve unusual or redundant costs that would not be encountered if the agency were to relocate instead—for example, telecommunications, data, or the physical move? How do these costs affect the cost-benefit analysis?
- Will the incumbent Lessor install cost-effective energy efficiency and conservation improvements? See Chapter 18 of this Leasing Desk Guide for further information on EISA requirements, including details on cost-effective energy efficiency and conservation improvements.

#### Swing Space Considerations

While it is acceptable to include swing space in a lease procurement, PBS must ensure that the anticipated level of work supports its inclusion. In addition, both the RLP and Lease must include clear, unambiguous language addressing how the current Lessor should propose a renovation/phasing plan involving swing space, addressing such issues as minimum square footage, distance requirements, number of allowable moves, who pays for which moves, etc. LCOs are strongly encouraged to consult with regional counsel before finalizing an RLP package which includes swing space requirements.

### Competitive Advantage

- Is the Government well-positioned to negotiate concessions from the current Lessor with regard to rent, TI allowance, or other lease terms?
- Did you consult with field office representatives or LAMs to solicit their knowledge and expertise on post award/lease administration matters?

- Are there advantages to the Government in conducting a full and open competition to meet the agency's requirements?

These factors will help the Leasing Specialist develop a general sense of whether a succeeding or superseding lease is desired and feasible.

### **b. Succeeding/Superseding Lease Decision Tool**

Lease reform introduced the use of the Succeeding/Superseding Lease Decision Tool as a proactive approach in performing the due diligence described above for our expiring lease inventory. The decision tool is intended to assist the LCO in deciding the appropriate procurement strategy based upon a thorough evaluation and analysis of these factors that are typically reviewed as part of acquisition planning. The tool provides an efficient way to capture and array the information necessary to determine whether a stay-in-place solution is appropriate and its use, while not mandatory, is highly recommended. While use of the Succeeding/Superseding Lease Decision Tool itself is not mandatory, much of the information captured in the tool (for example, the current lessor's past performance) is still required as part of the lease file.

This tool also contains an automated cost-benefit analysis spreadsheet that calculates the aggregate cost difference between the anticipated succeeding lease deal and market alternatives. This analysis can be used both for acquisition planning using preliminary market research and to support the Justification for Other Than Full and Open Competition (see paragraph 12, Justification for Other Than Full and Open Competition (Justification), below for additional details).

### **c. Touring the Existing Location**

To the maximum extent practicable, as part of the Requirements Development process, the Leasing Specialist, LCO, or designee (such as property manager, project manager, or GSA broker contractor) will perform due diligence by touring the current lease location. The tour will confirm that the building's condition, accessibility, fire safety features, seismic, energy efficiency/conservation, and other attributes meet current lease standards.

## **7. Occupancy Agreement (OA)**

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As described in other chapters of this Leasing Desk Guide, GSA sends the tenant agency a draft OA as part of requirements development. Tenant agency signature on the OA is required before PBS enters into a lease contract to confirm the agency's financial commitment to pay the rent according to the terms and conditions stated in the OA.

However, in a succeeding lease situation, where the agency is already occupying the space but has not provided its requirements or is unwilling to sign an OA, the LCO may have to protect the government's financial interests without the benefit of an executed OA, to avert a holdover tenancy. In such situations, the LCO should only proceed with awarding a succeeding lease after providing written documentation that carefully weighs the risks and obtaining written concurrence from the Regional Portfolio Director. A superseding lease, in all scenarios, requires a signed OA, without exception.

The following steps will help to protect the Government's legal rights as well as allow the Leasing Specialist flexibility to begin timely follow-on succeeding lease procurement:

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## 8. FedBizOpps Posting and Newspaper Advertisements ↵

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- As a general practice for all leases, customers must be notified well in advance of lease expiration (See Chapter 1, Requirements Development). Subsequent notifications and requests for requirements should clearly state that if PBS does not receive a specific request to terminate or reduce the requirement at the end of the lease term, it will take action to protect the Government's interest and negotiate either a succeeding lease or other contract action at the most favorable terms the Government can acquire.
- This notification also advises the customer that it will be financially obligated to pay the pass through lease contract rent for the space. PBS will negotiate the most appropriate firm term possible. In the absence of instructions from the client agency, GSA will negotiate for the most appropriate terms that it deems to be in the best interest of the Government.
- As part of customer communications to obtain a signature on the OA, LCOs must escalate the notification process to the SDE Executive or Office of Client Solutions in National Office Portfolio, to assist with garnering the needed OA signature(s).
- As a general practice, in such scenarios PBS will seek to avoid the use of a lease extension or, when an extension offers the most advantageous solution, to minimize its term. The term of a lease extension should rarely exceed 2 years, unless it involves a consolidation of leases or lease construction (see Leasing Desk Guide Chapter 7, Lease Extension).
- As part of this process, PBS re-sends a draft Occupancy Agreement to the agency in an additional attempt to gain its concurrence on the leasing action. It may be useful to send the draft OA to an escalated office within the agency, such as an assistant secretary for operations.
- If an agency has not provided a signed copy of the OA and continues to occupy space, no signed OA is required to finalize that assignment, provided no additional TIs were added and square footage did not increase. PBS must continue to seek signatures for succeeding lease projects. Where no signed OA is required, the proposed OA must include the succeeding lease ad hoc clause contained in the OA Tool. Additional text may also be added after the standard clause for further explanations.
- All documentation related to PBS's attempts to obtain a signed OA should be included in the lease file.

## 8. FedBizOpps Posting and Newspaper Advertisements

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GSAM 570.106 requires that all leases exceeding 10,000 square feet be publicized in FBO. This includes both succeeding and superseding leases. As outlined under Leasing Desk Guide Chapter 2, ANSI/BOMA Office Area (ABOA) square feet is the appropriate measurement method to apply. Despite that threshold, in order to promote competition to the greatest extent possible and identify all possible alternatives in the market, LCOs may publicize succeeding and superseding lease projects of any dollar value or square footage in <http://www.FBO.gov> or local newspapers if, in the opinion of the LCO, doing so is necessary to promote competition. The

## 8. FedBizOpps Posting and Newspaper Advertisements ↵

intent is to actively demonstrate that PBS is conducting more than a merely perfunctory effort to finding potential alternative sources of space.

The wording of FBO postings is crucial in determining whether or not the action can be considered full and open competition under CICA. FBO postings and newspaper advertisements for succeeding lease actions differ from those for full and open competition in that they contain language specifically communicating the potential of a sole source action to the market.

At a minimum the succeeding lease advertisement must:

- Indicate that the Government's lease is expiring.
- Describe the requirement in terms of type and quantity of space.
- Indicate that the Government is interested in considering alternative space if it would be economically advantageous.
- Advise prospective offerors that the Government will consider the relocation costs, including the physical move and the voice and data systems move, when deciding whether it should relocate or pursue a sole-source acquisition.
- Provide a contact person for those interested in providing space to the Government.

### a. FBO Posting for Succeeding Lease

The Leasing Specialist seeks expressions of interest using the FBO combined procurement template shown in Attachment 4 to this chapter and described further in Chapter 2 of the Leasing Desk Guide. The attached template contains the following text, which must be included by the Leasing Specialist or broker to specifically address succeeding lease situations:

**ACTION: FOR FBO POSTINGS, INSERT THE FOLLOWING LANGUAGE ONLY FOR POTENTIAL SOLE SOURCE SUCCEEDING LEASE ACTIONS. DELETE FOR PROCUREMENT SUMMARY PAGE. DO NOT USE FOR FULL AND OPEN PROCUREMENTS. NOTE THAT ANY FIGURES USED FOR A COST BENEFIT ANALYSIS (CBA) MUST BE SUPPORTABLE. CONSIDERATION OF "NON-PRODUCTIVE AGENCY DOWNTIME" IN A CBA SHOULD BE RARE.**

The U.S. Government currently occupies office and related space in a building under lease in [City, State], that will be expiring. The Government is considering alternative space if economically advantageous. In making this determination, the Government, will consider, among other things, the availability of alternative space that potentially can satisfy the Government's requirements, as well as costs likely to be incurred through relocating, such as physical move costs, replication of tenant improvements and telecommunication infrastructure, and non-productive agency downtime.

Note that FBO advertisements for full and open competition must not include the succeeding lease text outlined above.

If the Leasing Specialist receives no responses for locations that can meet the requirements—for example, the space is outside the delineated area, is too small, or does not meet other

requirements of the advertisement—then the Leasing Specialist must nevertheless conduct additional market research (described below) to confirm that no other options exist. If the market research also reveals that no other options exist, the Leasing Specialist can begin to prepare the Justification for Other Than Full and Open Competition. If market research indicates that lease construction would offer a lower-cost alternative and if sufficient time remains in the lease, consult Chapter 14, Lease Construction.

If viable responses are identified, then this information is captured for the cost-benefit analysis (described below) and may be included in a potential market survey.

### b. “Intent to Award” Advertisement

There may be rare instances in which an agency’s requirements can only be fulfilled by the unique characteristics of one property. For sole-source succeeding leases where the decision to limit competition is mission-driven, not cost-benefit driven, (for example, Transportation Security Administration’s requirement to remain on airport property), the FBO posting does not include the succeeding lease language described above. Instead, the Leasing Specialist places an Intent to Award advertisement to clearly communicate our intent to remain at the current location. See Chapter 20 of this desk guide for an example.

### c. Superseding Lease Advertisement

As stated previously, superseding lease actions totaling over 10,000 ABOA SF must be advertised in FBO. Superseding lease advertisements are similar to succeeding lease advertisements in that they outline the agency space requirement, seek expressions of interest, and communicate the potential of a sole source action to the market.

## 9. Market Survey

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As used in Chapter 2 of this Leasing Desk Guide, the term “market survey” refers to the full process of gathering information about and actually visiting specific properties in the market to determine whether suitable property is competitively available and how to satisfy the lease requirement in the most competitive manner. For purposes of obtaining a succeeding or superseding lease, however, the requirement for a market survey is fulfilled through market research, using those resources described under Chapter 2, Part 2 (such as the FBO posting, CoStar, LoopNet, regional listing files, and calls to owners and listing brokers). Through this research, the Leasing Specialist identifies all potential locations with sufficient space and corresponding rental rates.

A building tour of potential locations is not necessary at this stage, nor is it necessary to fill out market survey forms for these alternative locations, unless further cost-benefit analysis points to a possible need for a competitive action. The Leasing Specialist or LCO documents the results of this research for the file.

Three scenarios are possible at this point:

1. No potentially acceptable locations (other than the existing Lessor) are identified through the advertisement and the market survey. Posting the expressions of interest or FedBizOpps advertisement is not enough; Leasing Specialists must also conduct market research. Both actions are critical steps toward finding potentially acceptable locations. In this situation, if the

succeeding lease advertisement language was used, a cost-benefit analysis is unnecessary, and the Leasing Specialist should proceed with preparing a Justification to negotiate directly with the current Lessor.

2. Potentially acceptable locations are identified, but the required subsequent cost-benefit analysis indicates that the Government cannot expect to recover relocation costs and duplication of costs through competition. The Leasing Specialist must capture this information for preparing the Justification.
3. Potentially acceptable locations are identified, and the cost-benefit analysis indicates that the Government could recover relocation costs and duplication costs through competition. Under this scenario, the Leasing Specialist must cancel the succeeding lease project and initiate a competitive replacing lease project, touring all potential locations.

## 10. Additional Procurement Resources

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In addition to in-house government resources, Leasing Specialists should consider the Automated Advanced Acquisition Program (AAAP) or the GSA Leasing Support Services (GLS) contract in order to compete or process expiring lease transactions. The GLS enables PBS to use broker contractors to provide additional leasing capacity and supplement the work of the Leasing Specialist and LCO. For more information on GLS refer to Leasing Desk Guide, Chapter 16, National Broker Contract Leases.

The AAAP is a multiple-award platform approach with adaptable technological features to further standardize the lease process, and it leads the commercial real estate industry in improving the delivery of office space to our customer agencies in a cost-effective and timely manner. The AAAP consists of a procurement process and online application that provides building owners or their authorized representatives with the opportunity to offer general purpose office space for lease to the Federal government, in advance of an identified agency requirement. When PBS identifies an agency requirement that would meet the thresholds for the AAAP RLP, the requirement is matched against the submitted offers stored in the AAAP application. Those offers that meet the agency's requirements are ranked by present value and the lowest priced offer is identified. If the identified offer passes a due diligence review of the space and is determined to meet all the Agency's requirements, an award is made to that Offeror. There are several advantages to using AAAP, including reduced lease cycle time and streamlined portfolio/project planning. Another advantage of using AAAP for expiring lease transactions is that the AAAP is a competitive process. Additional guidance can be found in Lease Acquisition Circular 2014-01, Automated Advanced Acquisition Program (AAAP) and a future AAAP Leasing Desk Guide chapter is planned.

## 11. Cost-Benefit Analysis

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If potentially acceptable locations are identified through the advertisement or market research, a cost-benefit analysis becomes necessary for justifying a decision to pursue a succeeding or superseding lease action. The critical issue in this analysis is to determine whether the agency will recover the costs of relocation and duplication through the lower rents and possible concessions that may be achieved through competition.

A cost-benefit analysis must consider the following factors:

- The lowest rates of other potentially available properties;
- Relocation costs for:
  - Moving
  - Telecommunications
  - Alterations amortized over the firm term of the lease
- Duplication of costs to the Government (such as for tenant improvements, loss of productivity and disruptions If applicable);
- Other appropriate factors, such as costs to meet lease security standards in the new location versus retrofitting the existing location to meet lease security standards;
- For superseding leases, the cost of remaining liability for the firm term on the existing lease, unless a backfill candidate can be identified.

#### You cannot skip this step!

Once potentially acceptable locations are identified, the cost-benefit analysis is a critical step in the succeeding lease process.

#### TI Duplication/Replication Costs

When performing a cost-benefit analysis, PBS usually assumes that the alternative location will require use of the client agency's full TI Allowance. PBS may assess TI replication costs above the Allowance if there is supportable evidence, such as an IGE, a past history of the agency exceeding their Allowance, etc., to do so. Note that an agency's prior investment of lump sums may be considered only to the extent that these alterations must be replicated at the new location and that the costs for these alterations are expected to exceed the TI Allowance.

The costs used in the cost benefit analysis must be defensible and supportable. Note that, except as provided above for superseding leases, the cost benefit analysis should be based on the **full** term of the lease, including both the initial "firm" term (the non-cancelable duration) and the "soft" term (any additional years during which the tenant agency may have cancellation rights). The firm and soft terms used for the cost-benefit analysis must be the same for each location being considered.

### a. How to Establish Costs

Leasing Specialists must establish the prices for other potentially available properties by requesting each prospective offeror to provide an informational quotation for standard space for comparison purposes. To establish these prices, Leasing Specialists must:

- a. Provide a general description of the Government's needs that may be accomplished by publishing the requirement in FBO using the succeeding lease language above. A formal RLP is not required to obtain the informational quotation.
- b. Adjust the prices quoted for standard space for any special requirements. For example, adjust prices appropriately for office space versus holding cells. This adjustment could also be addressed in the tenant improvement budget.
- c. The Leasing Specialist must understand that rates quoted may not be fully serviced (to the Government's standards) and may need to be adjusted to compensate for these differences. For example, fully serviced leases in the market might not include charges for snow removal, grounds maintenance, or common area maintenance as required in the RLP. When reviewing

cost proposals, be aware that the private sector's definition of shell is usually what GSA would refer to as "cold dark" space—the foundation and structural work, the roof and all concrete exterior walls, and interior slab flooring—as opposed to the PBS shell definition that GSA typically requires for office space, which is the complete enveloping structure, the base building systems, and the finished common areas that adjoin the tenant areas. This definition, sometimes referred to as "warm lit" space, is detailed in Table 2-2 of the Pricing Desk Guide 4th Edition, Shell Definition. The rate quoted might also not include costs for Government requirements, such as those regarding security, accessibility, fire and life safety, and seismic standards.

- d. Quoted rates may need to be adjusted if they include a partial TI Allowance ("work-letter"). Also, quoted rates are usually "Year 1" rates and may need to be adjusted to reflect annual escalations, if typical in the local market.
- e. For each price quote received, Leasing Specialists must document the following information:
  1. Name and address of the firm solicited (the location must be within the delineated area)
  2. Name of the firm's representative providing the quote
  3. Price quoted
  4. Adjustments made to price
  5. Description of the space and services for which the quote is provided
  6. Name of the Government employee soliciting the quotation
  7. Date of the quote
- f. The Leasing Specialist must compare the informational quotations to the present Lessor's price, adjusted to reflect the anticipated price for a succeeding or superseding lease. The Leasing Specialist must be able to support any adjustments using technical resources, market research, or historical data.

## b. Tools and Templates

To facilitate compliance with GSAM 570.402-6, "Cost-benefit analysis," the sample cost-benefit analysis template appearing under Attachment 2 incorporates the GSAM cost-benefit analysis requirements for succeeding leases. The Succeeding/Superseding Lease Decision Tool, discussed earlier, also contains an automated cost-benefit analysis spreadsheet, the primary purpose of which is to ascertain, in general terms, whether a succeeding or superseding lease strategy is economically viable during the early planning stages of a procurement. Leasing Specialists may also use the tool's cost-benefit analysis spreadsheet to support a Justification, using market sources or information obtained through the FBO posting or market research. Regardless of which format is used, the analysis must reflect the rigor necessary to support a Justification, described in further detail below.

The reason for a cost-benefit analysis is to determine whether the Government can expect to recover relocation costs and duplication of costs through competition. What LCOs and regional decision-makers must determine is whether the analysis clearly supports a non-competitive procurement.

## 12. Justification for Other Than Full and Open Competition (Justification) ↗

When performing the comparison, the LCO should not just rely upon whether the analysis shows a projected savings by remaining at the current location, but also upon the degree of savings relative to the cost of the project. For example, a projected cost savings of \$150,000 for a contract with an aggregate value of \$500,000 reflects a stronger argument for a sole-source succeeding or superseding lease than a projected savings of \$200,000 for a contract with an aggregate value of \$3 million. (An alternative approach is to look at the costs savings from an annual rate/ABOA SF basis. A projected cost savings of \$6.00/ABOA SF represents a more significant savings, and presents a more compelling economic argument for a succeeding lease, than a projected savings of \$1.00/ABOA SF.) However, regardless of whether the comparison is done on the annual or aggregate value, if the cost-benefit analysis does not clearly support a non-competitive procurement, the lease must be competed.

In summary, if a cost-benefit analysis fails to make a strong economic case for negotiating with only the current Lessor, the Leasing Specialist must pursue a full and open competition.

#### Using a Two-Tiered TI Allowance

If the CBA does not clearly support a sole source succeeding lease, consider issuing a competitive RLP with a “modified” (2-tiered) TIA, which reflects a lower level of build out at the current location than what would be required at new locations.

Note that the lower TIA assigned to the incumbent must be supportable. In addition, the agency must agree to the reduced TIA (confirmed in an OA) and cannot ask for the remainder of their allowance, should the incumbent receive the lease award.

## 12. Justification for Other Than Full and Open Competition (Justification)

As outlined under FAR Part 6, a Justification for Other Than Full and Open Competition (Justification) provides the basis for the Leasing Specialist to negotiate with a single source—in this context, the existing Lessor—without full and open competition. The level of approval required increases as the dollar value escalates. The Justification template for succeeding and superseding leases is attached (Attachment 1). A Justification that is not based upon a mission-related rationale or lack of available alternatives must incorporate the cost-benefit analysis. Negotiations with the Lessor must not be conducted until the Justification is approved by the appropriate authority. The LCO will closely coordinate with the Office of Regional Counsel on drafting the actual Justification. The sample template in Attachment 1 is only for illustration and must not be used without careful consideration of the facts in each case. Also See Leasing Desk Guide Chapter 2, New and Replacing Leases for additional information on Justifications.

### Thresholds for Review, Concurrence and Approvals

The thresholds for signature levels are outlined under FAR 6.304. However, there are additional required reviews which are not stated under FAR, as noted below:

#### Legal Review

Per GSA Order 5000.4B, Appendix A, legal review is required for “any acquisition action requiring the approval of the Head of the Contracting Activity (HCA) or higher, including but not limited to, justifications for other than full and open competition under FAR Part 6.” (currently equates to an action with an aggregate value exceeding \$13,500,000.) Since Appendix B of this same Order requires pre-award legal review for all lease awards above SLAT which are based on

### 13. Request for Lease Proposals (RLP) Package and Offer Forms ↵

Justifications Other than Full and Open, it is a best practice to obtain legal review of all Justifications over SLAT.

#### Office of Leasing Review

All Justifications requiring signature by the GSA Competition Advocate (MV) or those involving a prospectus level action, including use of interim leasing authority, must also be reviewed by the Office of Leasing. The purpose of this review is to work out any potential procurement issues or concerns. Once all regional signatures have been obtained, the region should forward the Justification to their appropriate Zone Manager in the Office of Leasing, who will review and then forward to the Assistant Commissioner for Leasing for concurrence.

Note that, once a succeeding or superseding lease has been awarded, a redacted version of the approved Justification must be posted on FedBizOpps within 14 days after lease award. (Attachment 3 to this chapter shows the information elements that are exempt from disclosure under the Freedom of Information Act.) In the case of a lease award permitted on the basis of unusual and compelling urgency, the Justification must be posted within 30 days after lease award. Note that this posting requirement does not apply to actions at or below the Simplified Lease Acquisition Threshold (SLAT). SLAT leases do not require a formal Justification for Other Than Full and Open Competition -- documentation to explain the lack of competition is sufficient.

Before posting, LCOs, in consultation with the Regional Counsel's Office, must screen the Justification to remove all contractor proprietary data, references, and citations as necessary to protect the proprietary data in accordance with the Freedom of Information Act (FOIA). LCOs must be guided by the exemptions to disclosure of information contained in FOIA (5 U.S.C. 552) and the prohibitions against disclosure in determining whether other data should be removed.

## 13. Request for Lease Proposals (RLP) Package and Offer Forms

As discussed earlier under paragraph 3, the Global RLP and lease templates allow the Leasing Specialist greater flexibility in preparing RLP packages to meet the needs of individual succeeding lease transactions. Using the Global templates, Leasing Specialist can now choose paragraphs that convey either a sole source intent to negotiate with the current lessor, or, in instances when disclosure to the current Lessor imposes an undue financial risk upon the Government, the appearance of competition. Tenant improvements can be priced as either turnkey or based on an Allowance. Note that a succeeding or superseding lease does not require use of the Global documents to be considered a succeeding lease. It may use other models as well to accomplish the same function. For example, in instances where the anticipated net annual rent is below SLAT, the Leasing Specialist may instead use the Simplified Model templates (RLP (R101A), Lease (L201A), and Proposal to Lease Space (1364A and A-1). Other model templates which may be considered, depending upon project circumstances, are the On-Airport, Warehouse, and Small Lease Models.

#### **Consistency with Justification**

The RLP package and final negotiated lease should not differ considerably from the terms stated in the approved Justification (square footage, lease term, etc.). Also, if the approved Justification assumed limited TI at the current location, then the RLP package (and the resulting lease) should not provide for a full TI buildout.

## a. Seismic Requirements

Appendix G of this desk guide outlines the procedures for seismic safety in leased buildings.

If the currently leased building is in the green area of the map shown in the RLP (low and very low seismicity), the seismic requirements of Recommended Practice (RP) 8 do not apply to the succeeding or superseding lease transaction, and the Leasing Specialist should delete seismic paragraphs from the RLP package.

If the currently leased building is in the yellow area of the map (with planned federally occupied leases totaling 10,000 ABOA SF and above) or the red area (total building size 3,000 ABOA SF and above), then:

- Review the existing lease file to determine whether there is a certification from the previous procurement. If the file contains a certification under RP 6, then this certification suffices as seismic compliance for succeeding and superseding leases. Note: It is PBS's general policy that all certifications done under RP 6 (ASCE 31) are acceptable under RP 8. The RP 6 provision grandfathering RP 4 is not considered evidence of seismic compliance in any region.
- If a prior certification does not exist, the Leasing Specialist must obtain evidence of seismic compliance from the Lessor. If the incumbent cannot or will not provide evidence of compliance with RP 6 (ASCE 31) or later standards, then the acquisition strategy must be changed to full and open competition, including the current Lessor in the competition. The Lessor's building will then be evaluated in accordance with the provisions of the RLP seismic provisions.

## b. Security Requirements

The Federal Protective Service (FPS) is the security organization that is legally and statutorily responsible for the security of GSA's leased space. After GSA leases a space, the FPS performs an in-lease assessment. By policy, the FPS must complete additional in-lease security assessments according to the following schedule:

- Facility Security Level (FSL) I–II: Reviewed by FPS every 5 years
- FSL III–IV: Reviewed by FPS every 3 years.

Once established, the facility security level (FSL) determination document is The Risk Management Process for Federal Facilities: An Interagency Security Committee Standard. However, for succeeding and superseding leases that are established through other than full and open competition, the requirement to change the security countermeasures will not apply unless there is a change in tenant(s) or mission. Otherwise, for these types of leasing actions the FSL determinations and risk assessments will continue to be done in accordance with the schedule established for the facility.

Replacement actions triggered by a change in tenants or mission, or major construction to the leased premises for the Government's continued occupancy at the existing location and achieved through full and open competition must consult with FPS to determine if the past assessment or a newly completed assessment is required.

### 13. Request for Lease Proposals (RLP) Package and Offer Forms ↵

Since security items may have been installed as part of the original lease or as lease alterations, there is no need to recreate the countermeasures installed in the original lease, but they still need to be maintained. Therefore the use of the standard paragraphs for a particular FSL may need to be adjusted if there are any additional security countermeasures already installed.

With either the past assessments or a newly completed assessment in hand, the Leasing Specialist or Lease Contracting Officer consults with FPS and the tenant agency to determine whether any additional security countermeasures are required, needed, and affordable or if the current items have outlived their useful lives. This is done before completing the final requirements so that any deficiencies can be included in the negotiation of the succeeding or superseding lease or a fully completed lease transaction.

In those replacement actions triggered by a change in tenants or mission, the FPS inspector provides the recommendation for the items and the standards for them. Except for countermeasures being provided by FPS, these items must be included in the succeeding or superseding lease as part of the requested alterations and amortized as new building-specific amortized capital (BSAC). Leasing Specialists are reminded that BSAC is defined as any physical security measure that is either part of the building or attached to the building and not easily removed.

The FPS inspector reviews the installation to verify the installation and functionality of countermeasures and prepare a final acceptance report.

The lease contract must include the set of clauses for the pertinent FSL with additions or deletions as appropriate for the space.

Refer to Chapter 19 of this Leasing Desk Guide for information on lease security requirements for new and replacing leases.

#### **c. Historic Preservation Act Review Process**

The Leasing Specialist must consult the GSA Regional Historic Preservation Officer (RHPO) to determine whether the review process of Section 106 of the National Historic Preservation Act applies. For the most part, succeeding or superseding leases in non-historic buildings or in historic buildings without substantial TIs will not result in an adverse impact and therefore will not be subject to the review process. The Leasing Specialist must include documentation related to this determination in the lease file.

However, if in consultation with the RHPO the Leasing Specialist is informed that the proposed project/lease is likely to pose an adverse impact to historic properties, the Leasing Specialist must develop a Preservation Review Execution Plan in consultation with the RHPO to ensure a documented process for compliance with Section 106.

#### **d. National Environmental Policy Act (NEPA) Review**

The Leasing Specialist should consult the GSA Regional NEPA Specialist to determine NEPA review and documentation requirements. As outlined in GSA's NEPA Desk Guide, lease extensions, renewals, or succeeding leases are defined as automatic categorical exclusions (or AutoCATEX). AutoCATEXs are not major Federal actions significantly affecting the quality of the human environment and, therefore, require limited NEPA review. The NEPA review, as documented through an AutoCATEX form, must include a determination of whether the site is in a floodplain. If the site is in a floodplain, please refer to LDG Chapter 2 for additional guidance

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## 14. Negotiations and Fair and Reasonable Determination ↵

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The Leasing Specialist must include documentation related to the NEPA review in the lease file.

### e. Energy Independence and Security Act (EISA) Requirements

Succeeding and superseding leases fall within one of four allowable statutory exceptions to the Energy Star® building label requirement (“the agency will remain in a building it currently occupies”). Under this exception, the incumbent Lessor must agree to renovate the building for all energy efficiency and conservation improvements that would be cost effective over the firm term of the Lease. The Leasing Specialist should verify the completeness of these proposed improvements. Should the incumbent Lessor not commit to making all cost-effective energy efficiency and conservation improvements, then they are technically ineligible for a succeeding or superseding lease.

## 14. Negotiations and Fair and Reasonable Determination

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### a. Negotiation Objectives

The LCO must establish an initial negotiation position on behalf of the Government (i.e., negotiation objectives) before engaging the Lessor in negotiations. The LCO’s determination of a fair and reasonable price should align with these price objectives.

The Leasing Alert entitled “Bullseye Program, Negotiation Objectives, and GLS Commission Management” issued a standardized negotiation objectives template that is required to be used for all projects regardless of size or procurement type (except for AAAP leases, disaster leases, On-Airport, and Small (3626) leases) to ensure national consistency in developing negotiation objectives.

### b. Conducting Negotiations

The following points are valuable to remember in conducting negotiations with the current Lessor and making a determination of fair and reasonable pricing.

- Even in a sole-source negotiation for a succeeding or superseding lease, the Government retains significant leverage. Keep in mind that the Lessor has several incentives to negotiate productively. The Lessor will face a significant loss in cash flow if the Government relocates, in terms of lost rent and the need to spend money to attract another tenant.
- It may be useful to remind the Lessor that the Government can decide to stop sole-source negotiations and follow a full and open competition if the Lease Contracting Officer cannot reach a satisfactory agreement with the Lessor. Make this point especially if the Lessor is attempting to negotiate above-market rates or seeking other concessions from the Government in the terms of the lease.
- Do not award a “bad” lease—one that obligates the Government to pay above-market rent or accede to other detrimental contract terms—for expediency or administrative convenience. The short-term advantages are rarely worth the long-term costs.

- Remember to use the research and information tools available to you—such as REIS, Bullseye, CoStar, and other resources—to strengthen your negotiating position and formulate a confident assessment of fair and reasonable rental terms.
- If TI is shown as a separate rental component, obtain an Independent Government Estimate (IGE) to confirm that the TI component is fair and reasonable. This is especially important in a turnkey lease in sole-source procurement, since there is no competition against which to compare the TI amount or its amortization rate.
- If minimal or no improvements are required, confirm whether the Lessor’s asking rent includes a TI allowance or work letter contribution and address this in your efforts to obtain a lower rental rate.

## 15. Final Certification of Funds

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As with a new or replacing lease, the Leasing Specialist must request certification of Budget Activity 53 funds from the authorized budget official for a succeeding or superseding lease. The certification must cover the square footage, effective date, and total annual rent consistent with the lease document. When funds are certified, the Budget Office will provide the Leasing Specialist with an approved final certification of funding document, often referred to as a “BA 53 Fund Cert.”

## 16. Space Acceptance and Rent Commencement

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### a. Space Acceptance and Rent Commencement Process

While the space acceptance and rent commencement process for succeeding and superseding leases is similar to the process for new/new-replacing leases outlined under Leasing Desk Guide Chapter 2 (New or Replacing Lease), there are some nuances. As an example, under both succeeding and superseding leases, the Government is already “occupying” the premises and there may be minimal or no improvements required. In addition, there may not be a need or reason to confirm the space measurement.

The LCO must document acceptance of the space even when occupancy is uninterrupted and no alterations were performed. The method of documenting acceptance is at the discretion of the LCO and could range from a note to file to the use of a Form 1204. In instances where there are no or minimal space improvements (e.g., paint and carpet), agency and Lessor concurrence is not required. Agency and Lessor concurrence is required, however, when substantive tenant improvements are being performed as part of the succeeding or superseding lease.

Unless the lease contract has already pre-established the Lease Term Commencement Date (not recommended except where no improvements are involved), the Leasing Specialist must prepare a Lease Amendment, for signature by the Lessor and the LCO, establishing the Lease Term Commencement Date.

## b. Imminent Lease Expiration

There may be circumstances where the current lease expiration date is imminent and the work required under the succeeding lease will not be completed prior to lease expiration. In this scenario, the LCO has two options:

Option 1: Delay the start of new lease term and rent commencement until the work is completed; obtain an interim lease extension.

Under this option, the LCO obtains a lease extension to cover the time period until the Lessor completes the improvements required under the succeeding lease. The lease term and rent will commence once the LCO has confirmed inspection and acceptance of the improvements. This option provides lower risk to the Government with respect to ensuring contract performance.

Option 2: Commence the start of new lease term and rent commencement upon expiration of the current lease.

Under this option, the LCO establishes the lease term and rent commencement date as the day after current lease expiration, noting that there is outstanding work to be performed by the Lessor. While this option provides a higher level of risk to the Government with respect to contract performance, it has the benefit of avoiding the need for a lease extension, which is undesirable to the market. Note that the Government should not commence the payment of any TI rent for work which has not been completed, inspected and accepted.

In deciding between these two options, the LCO must assess the associated benefits and risks in order to determine which option is in the best interest of the Government. Some of the questions to consider are as follows:

- Rental rates: Will the succeeding lease rent be higher than the rent for the extension, and, if so, how much higher?
- Existing lease language: Does the current lease contain outdated performance specifications? Will starting the new lease relieve the situation and allow for the alterations to proceed smoothly?
- Lessor willingness to enter into an extension: Will delay of lease commencement result in a lease holdover?
- Schedule: What is the estimated construction time for the improvements?
- Extent and nature of improvements required. What is the level of complexity involved? Does work involve building systems or merely cosmetic upgrades? Does work involve correction of health or safety deficiencies (e.g., seismic or fire protection) or ABAAS upgrades?
- Allocation of costs: Are the improvements required as part of the building shell or being funded out of the agency's tenant improvements? **As stated previously, the Government should not commence the payment of TI rent for work which has not been completed, inspected and accepted.**
- Risk associated with non-compliance: Does the Lessor have a reliable history with respect to past performance and in meeting prior contract deadlines? What are the ramifications if Lessor fails to perform? What remedies are available to the Government?
- Past project history: Were there project delays? If so, to what extent did the Government contribute to the delay, adversely affecting the schedule?
- Lessor financing: Is the Lessor financing the property? How will an extension impact Lessor's ability to secure financing?

The LCO must document any decision to commence the succeeding lease prior to the completion of work and place in the lease file. The lease must provide a clear time frame for completion of work and the LCO must monitor contractor performance to confirm that all required work is completed in accordance with the schedule in the lease. In the event of Lessor non-compliance, the LCO must seek lease enforcement remedies available under the lease. If applicable, a new Lease Amendment commencing the payment of TI rental payments must be prepared and executed.

## 17. Final Tips

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Leasing Specialists and support contractors must include the most recent lease contract paragraphs in all succeeding and superseding leases, unless they are waived or determined to be not applicable according to the contract terms.

Succeeding and superseding leases must also comply with all budget scorekeeping rules and prospectus requirements for succeeding and superseding lease actions. These scoring requirements are addressed in more detail in Chapter 11, Prospectus-Level Leases, and Appendix F, Determination of Operating or Capital Lease Classification for Budget Scoring.

If the customer has requirements and plans to use a Reimbursable Work Authorization (RWA) to fund alterations, the Leasing Specialist must follow the procedures detailed in Chapter 2 and other applicable RWA policies, including the RWA National Policy Document.

Because of the sole-source nature of a succeeding/superseding procurement and the lack of competition, be certain to verify that the overall costs of continued occupancy in the space are fair and reasonable.



# Attachment 1: Sample Justification for Other Than Full and Open Competition, Succeeding Lease

U.S. General Services Administration

GSA Region [ ]

[Name of Service Center/Division]

## JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

PROJECT NUMBER: [Rexus Project Number]

Agency Name: [Agency]

### 1. NATURE AND/OR DESCRIPTION OF ACTION BEING APPROVED.

The General Services Administration currently leases [amount of space] ABOA/[amount of space] rentable square feet (RSF) of office space at [street address, city, state] under lease number GS-[ ] for the [Agency]. The current lease expires [date]. Approval is requested to negotiate a succeeding lease with the incumbent Lessor without full and open competition for continued occupancy at this leased location.

### 2. DESCRIPTION OF THE SUPPLIES OR SERVICES REQUIRED TO MEET THE AGENCY'S NEEDS (INCLUDING ESTIMATED VALUE).

[Agency] submitted a continuing need letter on [date] for [amount of space] rentable square feet of office and related space. To satisfy the [agency] mission requirements, the facility must be within a walkable distance of the [complete sentence, as appropriate].

This requirement is for [amount of space] ABOA/[amount of space] RSF of space for a [years of agency lease term requirement]-year term to commence on [date]. The estimated cost of this lease is [dollar amount based on information quotes received in response to advertisement] per rentable square feet per year for an annual cost of [dollar amount based on information quotes received in response to advertisement] and a total contract value of [dollar figure based on information quotes received in response to advertisement]. The delineated area is [identify specific delineated area].

### 3. IDENTIFICATION OF STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION.

41 U.S.C. 3304(a)(1): Only one responsible source and no other supplies or services will satisfy agency requirements.

### 4. DEMONSTRATION THAT THE PROPOSED CONTRACTOR'S UNIQUE QUALIFICATIONS OR NATURE OF THE ACQUISITION REQUIRES THE USE OF THE AUTHORITY CITED.



Attachment 1: Sample Justification for Other Than Full and Open Competition, Succeeding Lease ↵

GSAM 570.402-5 allows for negotiation with the incumbent Lessor when a cost-benefit analysis shows that the Government cannot expect to recover relocation and duplication costs through competition. PBS placed an advertisement conforming to GSAM 570.402-2 on the Federal Business Opportunities Web site (fedbizopps.gov) on [date advertisement was posted] and received [number of expressions of interest received] responses. The incumbent Lessor's expression of interest indicated that the rate would be [dollar amount] per RSF. The interested party that provided the lowest cost quoted a rate of [dollar amount] per RSF in its expression of interest.

Award to other than the current Lessor would require relocation of the entire requirement and would cause [Agency Name] to incur move and replication costs that would not be recovered through competition. [Provide a brief summary of any special use space such as a Sensitive Compartmented Information Facility (SCIF), Heating, Ventilation, and Air Conditioning (HVAC) enhanced conference rooms with video teleconferencing capabilities, special security requirements, etc., that would all have to be replicated if they were to move.]

The cost of relocating [Agency Name] using the low cost quote exceeds the cost of remaining at [current PBS leased location]. The savings to the Government is [dollar amount]. Based on this cost-benefit analysis, the Government cannot expect to recover relocation and duplication costs through competition. Therefore, the Government intends to negotiate a succeeding lease and remain at its current location.

[Attach Cost-Benefit Analysis]

[Revise text if no acceptable alternatives were identified or if the client agency has a mission-based reason for sole source procurement. A Cost-Benefit Analysis is not required under these circumstances.]

5. DESCRIPTION OF EFFORTS MADE TO ENSURE THAT OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS IS PRACTICABLE.

In [date of market survey], [national broker contractor name or PBS] conducted a market survey and identified four potentially acceptable locations (three plus the incumbent) that might meet the agency's needs within the delineated area. [Provide a brief summary of the potentially acceptable locations and their ability to meet the Government's requirements.] In addition, an advertisement was placed in FedBizOpps on [date of advertisement]. PBS received only [number of expressions of interest received] responses, which are:

[incumbent]
[other]

6. DEMONSTRATION BY THE CONTRACTING OFFICER THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.

In accordance with Federal Acquisition Regulation (FAR) 6.303-2(a) (7), the Contracting Officer determines by certifying this document that the anticipated cost to the Government of [dollar figure]/RSF for the entire requirement is fair and reasonable.



Attachment 1: Sample Justification for Other Than Full and Open Competition, Succeeding Lease ↗

Recent market surveys conducted by [national broker contractor name or PBS] in [city], [state] showed the rental rate within the delineated area ranges from [identify rental rate ranges quoted during market survey] per RSF.

7. DESCRIPTION OF MARKET RESEARCH CONDUCTED AND THE RESULTS.

In [date of market survey], [national broker contractor name or PBS] conducted a market survey that identified the following four locations including the incumbent:

Address	Asking Full Service Rental Rate

Figure 1: Market Survey Comparables

8. OTHER FACTS SUPPORTING USE OF OTHER THAN FULL AND OPEN COMPETITION.

9. LIST OF SOURCES, IF ANY, THAT EXPRESSED, IN WRITING, AN INTEREST IN THE ACQUISITION.


10. STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION BEFORE ANY SUBSEQUENT ACQUISITION.

Consistent with the Competition in Contracting Act, full and open competition will be undertaken in future requirements for [agency name and location], as future opportunities are available.

11. CONTRACTING OFFICER CERTIFICATION.

By signature on this Justification for Other than Full and Open Competition, the Lease Contracting Officer certifies that the award of a succeeding lease of [amount of space] RSF is in the Government's best interest and that this Justification is accurate and complete to the best of the Lease Contracting Officer's knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_

[Name], Lease Contracting Officer

Attachment 1: Sample Justification for Other Than Full and Open Competition,  
Succeeding Lease ↕

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12. TECHNICAL REQUIREMENTS PERSONNEL CERTIFICATION

I certify that the supporting data used to form the basis of this Justification is complete and accurate to the best of my knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_

[Name], Leasing Specialist

**See FAR 6.304 for appropriate signature threshold levels.**

## Attachment 2 Sample Cost Benefit Analysis

### Sample “Cost-Benefit Analysis” Template

Note: The [agency] will commit to a lease term of [number—e.g., 5] years. The full term of the lease to be negotiated will be [number—e.g., 5] consistent with [agency] commitment, and the associated tenant improvements will be amortized over [number—e.g., 5].

*Example: Acquisition of [...] ANSI/BOMA Office Area (ABOA) Square Feet, 5-Year (Full Term) Analysis*

Note: TI allowances are calculated only on ABOA square feet.

Cost-benefit Analysis Acquisition of 25,600 ANSI/BOMA Office Area (ABOA) Square Feet 5-Year (Full Term) Analysis:		
	Present Location	Alternate Location
5-year total rent/annual ABOA rate (shell and operating costs only)	\$3,072,000/\$24	\$ 2,398,720/\$18.74
New amortized tenant improvements This estimate is developed by GSA working with the customer agency and reflects the cost of the tenant improvements (general and customization allowance) under the new lease. In this example, the agency has fewer new tenant improvements to be constructed at the present location because it will be able to reuse many of the existing tenant improvements already in place under the current expiring lease. (These are out-of-pocket costs and not the depreciated value of existing tenant improvements.) <sup>a</sup>	\$257,280	\$1,137,920
Cost of physical move. <sup>b</sup> Include the following information in the estimate: <ul style="list-style-type: none"> <li>• Number of people moving</li> <li>• Number of cabinets or estimate 2 cabinets/person</li> <li>• Number of boxes (or number of boxes per person)</li> <li>• Number of existing workstations to disassemble, move, and reassemble</li> <li>• Move freestanding furniture (\$/ABOA SF; # of rooms)</li> <li>• Temporary contingency storage fees per workstation per month, if appropriate</li> <li>• Furniture project management fees</li> <li>• Space planning project management fees</li> </ul>	\$5,029	\$21,604
Voice and data move. <sup>c</sup> Includes both move and replacement costs, since moves sometimes trigger replacement of equipment that otherwise would have been used for a longer time. Include the following elements in the estimate:	\$10,057	\$68,974

Cost-benefit Analysis Acquisition of 25,600 ANSI/BOMA Office Area (ABOA) Square Feet 5-Year (Full Term) Analysis:		
	Present Location	Alternate Location
<ul style="list-style-type: none"> <li>• Purchase and install new ISDN phone system</li> <li>• Purchase new handsets</li> <li>• New voice/data ISDN line</li> <li>• Relocate existing voice/data ISDN line (including phones in conference rooms, lines for fax machines, etc.)</li> <li>• Purchase and install new analog phone system</li> <li>• New voice/data analog line (fax)</li> <li>• Relocate existing voice/data analog line (fax)</li> <li>• Purchase new switch</li> <li>• Purchase new phones and voicemail system</li> <li>• Purchase new LAN printer (data line)</li> <li>• Relocate existing LAN printer (data line)</li> <li>• Purchase and install new computer equipment</li> <li>• Relocate existing computer equipment</li> <li>• Relocate computer rooms (# rooms \$/ABOA SF/room)</li> <li>• Telecommunications project management fees</li> </ul>		
Administrative time. This should include the amount of time spent packing and unpacking boxes at workstations and any other nonproductive work time waiting for the setup of workstations.	\$0	\$15,000
Duplication of Reimbursable Work Authorization (RWA) alterations (above agency customization tier) This estimate is developed by GSA working with the customer agency and reflects the cost to replicate existing RWA alterations in the event of a move to a new location.	\$0	\$410,702
Temporary storage fees. Include contingency storage fees per workstation per month, if appropriate	\$0	\$0
Total 5-year cost/annual ABOA rate (no escalations included)	\$3,344,366/\$26.13	\$4,052,920/\$31.66
Remaining existing lease liability not backfilled (applies when comparing superseding against replacement lease only)		
Full term lease savings	\$708,554 (Approx. \$5.54/ABOA SF)	
[Estimate the costs of relocation by conducting market research, which involves: <ul style="list-style-type: none"> <li>• Reviewing PBS and Federal Acquisition Service client agency costs for recent relocation services.</li> <li>• Asking private companies their costs for recent relocations.</li> <li>• Searching for printed and online advertisements for relocation services with quoted rates.</li> <li>• Calling service providers for quoted rates.]</li> </ul>		

Cost-benefit Analysis Acquisition of 25,600 ANSI/BOMA Office Area (ABOA) Square Feet 5-Year (Full Term) Analysis:		
	Present Location	Alternate Location
<sup>a</sup> Costs of tenant improvements: [Identify source of supporting data here (for example OA Tool, IGE, etc.)]		
<sup>b</sup> Costs of physical move: [Identify source of supporting data here]		
<sup>c</sup> Costs of voice and data move: [Identify source of supporting data here]		



# Attachment 3: Sample Redactions in Justification

Sample redactions in Justification

U.S. General Services Administration

GSA Region [ ]

[Name of Service Center/Division]

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

PROJECT NUMBER: [Rexus Project Number]

Agency Name: [Agency]

The agency name may be redacted if the agency is a law enforcement agency and so requests - Exemption (b)(7)

1. NATURE AND/OR DESCRIPTION OF ACTION BEING APPROVED.

The General Services Administration currently leases [amount of space] ABOA/[amount of space] rentable square feet (RSF) of office space at [street address, city, state] under lease number GS-[ ] for the [Agency]. The current lease expires [date]. Approval is requested to negotiate a succeeding lease with the incumbent Lessor without full and open competition for continued occupancy at this leased location.

2. DESCRIPTION OF THE SUPPLIES OR SERVICES REQUIRED TO MEET THE AGENCY'S NEEDS (INCLUDING ESTIMATED VALUE).

[Agency] submitted a continuing need letter on [date] for [amount of space] rentable square feet of office and related space. To satisfy the [agency] mission requirements, the facility must be within a walkable distance of the [complete sentence, as appropriate].

This requirement is for [amount of space] ABOA/[amount of space] RSF of space for a [years of agency lease term requirement]-year term to commence on [date]. The estimated annual cost of this lease is [dollar amount based on information quotes received in response to advertisement] BOMA rentable square feet per year for an annual cost of [dollar amount based on information quotes received in response to advertisement] and a total contract value of [dollar figure based on information quotes received in response to advertisement]. The delineated area is [identify specific delineated area].

The estimated cost is protected - Exemption (b)(5)

3. IDENTIFICATION OF STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION.

41 U.S.C. 3304(a)(1): Only one responsible source and no other supplies or services will satisfy agency requirements.

4. DEMONSTRATION THAT THE PROPOSED CONTRACTOR'S UNIQUE QUALIFICATIONS OR NATURE OF THE ACQUISITION REQUIRES THE USE OF THE AUTHORITY CITED.

GSAM 570.402-5 allows for negotiation with the incumbent Lessor when a cost-benefit analysis shows that the Government cannot expect to recover relocation and duplication costs through competition. PBS placed an advertisement conforming to GSAM 570.402-2 on the Federal Business Opportunities Web site (fedbizopps.gov) on [date advertisement was posted] and received [number of expressions of interest received] responses. The incumbent Lessor's expression of interest indicated that the rate would be [dollar amount] RSF. The interested party that provided the lowest cost quoted a rate of [dollar amount] in its expression of interest.

The offered amount is protected - Exemption (b)(4)

The agency security requirements are protected - Exemption (b)(7)

Award to other than the current Lessor would require relocation of the entire requirement and would cause [Agency Name] to incur move and replication costs that would not be recovered through competition. [Provide a brief summary of any special use space such as a Sensitive Compartmented Information Facility (SCIF), Heating, Ventilation, and Air Conditioning (HVAC) enhanced conference

The agency security requirements are protected - Exemption (b)(7)

rooms with video teleconferencing capabilities, special security requirements, etc., that would all have to be replicated if they were to move.]

[Insert Cost-Benefit Analysis]

The agency name may be redacted if the agency is a law enforcement agency and so requests - Exemption (b)(7)

The cost of relocating [Agency Name] using the low cost quote exceeds the cost of remaining at [current PBS leased location]. The savings to the Government is [dollar amount]. Based on this cost-benefit analysis, the Government cannot expect to recover relocation and duplication costs through competition. Therefore, the Government intends to negotiate a succeeding lease and remain at its current location.

Estimated savings amount is protected - Exemption (b)(5)

5. DESCRIPTION OF EFFORTS MADE TO ENSURE THAT OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS IS PRACTICABLE.

In [date of market survey], [national broker contractor company name or PBS] conducted a market survey and identified four potentially acceptable locations (three plus the incumbent) that might meet the agency's needs within the delineated area. [Provide a brief summary of the potentially acceptable locations and their ability to meet the Government's requirements.] In addition, an advertisement was placed in FedBizOpps on [date of advertisement]. PBS received only [number of expressions of interest received] responses, which are:

[incumbent]
[other]

6. DEMONSTRATION BY THE CONTRACTING OFFICER THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.

In accordance with Federal Acquisition Regulation (FAR) 6.303-2(a) (7), the Contracting Officer determines by certifying this document that the anticipated cost to the Government of [dollar figure]/RSF for the entire requirement is fair and reasonable.

The estimated cost is protected - Exemption (b)(5)

Recent market surveys conducted by [national broker contractor name or PBS] in [city], [state] showed the rental rate within the delineated area ranges from [identify rental rate ranges quoted during market survey] per RSF.

7. DESCRIPTION OF MARKET RESEARCH CONDUCTED AND THE RESULTS.

In [date of market survey], [national broker contractor name or PBS] conducted a market survey that identified the following four locations including the incumbent:

Address	Asking Full Service Rental Rate

Asking rent rates are protected - Exemption (b)(4)

Figure 1: Market Survey Comparables



8. OTHER FACTS SUPPORTING USE OF OTHER THAN FULL AND OPEN COMPETITION.

9. LIST OF SOURCES, IF ANY, THAT EXPRESSED, IN WRITING, AN INTEREST IN THE ACQUISITION.

Empty rectangular box for listing sources.

10. STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION BEFORE ANY SUBSEQUENT ACQUISITION.

Consistent with the Competition in Contracting Act, full and open competition will be undertaken in future requirements for [agency name and location], as future opportunities are available.

The agency name and location may be redacted if the agency is a law enforcement agency and so requests - Exemption (b)(7)

11. CONTRACTING OFFICER CERTIFICATION.

By signature on this Justification for Other than Full and Open Competition, the Lease Contracting Officer certifies that the award of a succeeding lease of [amount of space] RSF is in the Government's best interest and that this Justification is accurate and complete to the best of the Lease Contracting Officer's knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_

[Name], Lease Contracting Officer

12. TECHNICAL REQUIREMENTS PERSONNEL CERTIFICATION

I certify that the supporting data used to form the basis of this Justification is complete and accurate to the best of my knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_

[Name], Leasing Specialist

**See FAR 6.304 for appropriate signature threshold levels.**

# Attachment 4: Combined Procurement Template



GSA Public Buildings Service

## U.S. GOVERNMENT

General Services Administration (GSA) seeks to lease the following space:

State:	[.....]
City:	[.....]
Delineated Area:	[.....]
Minimum Sq. Ft. (ABOA):	[.....]
Maximum Sq. Ft. (ABOA):	[.....]
Space Type:	[Office, Warehouse, Retail, Other]
Parking Spaces (Total):	[.....]
Parking Spaces (Surface):	[.....]
Parking Spaces (Structured):	[.....]
Parking Spaces (Reserved):	[.....]
Full Term:	[.....]
Firm Term:	[.....]
Option Term:	[.....]
Additional Requirements:	[.....]

**ACTION:** CHOOSE WHETHER OR NOT A FULLY SERVICED LEASE IS REQUIRED. ALSO CHOOSE 100 YEAR FLOODPLAIN UNLESS REQUIREMENT IS IDENTIFIED BY AGENCY AS A CRITICAL ACTION.

Offered space must meet Government requirements for fire safety, accessibility, seismic, and sustainability standards per the terms of the Lease. A fully serviced lease [is/is not] required. Offered space shall not be in the [100/500] year flood plain.

**ACTION:** FOR FBO POSTINGS, INSERT THE FOLLOWING LANGUAGE ONLY FOR POTENTIAL SOLE SOURCE SUCCEEDING LEASE ACTIONS. DELETE FOR PROCUREMENT SUMMARY PAGE.

DO NOT USE FOR FULL AND OPEN PROCUREMENTS.

NOTE THAT ANY FIGURES USED FOR A COST BENEFIT ANALYSIS (CBA) MUST BE SUPPORTABLE.

CONSIDERATION OF "NON-PRODUCTIVE AGENCY DOWNTIME" IN A CBA SHOULD BE RARE.

The U.S. Government currently occupies office and related space in a building under a lease in [City, State], that will be expiring. The Government is considering alternative space if economically advantageous. In making this determination, the Government will consider, among other things, the availability of alternative space that potentially can satisfy the Government's requirements, as well as costs likely to be incurred through relocating, such as physical move

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costs, replication of tenant improvements and telecommunication infrastructure, and non-productive agency downtime.

**ACTION:** FOR FBO POSTINGS, DELETE "OFFERS DUE;" FOR PROCUREMENT SUMMARY, KEEP "OFFERS DUE" AND DELETE "(ESTIMATED)" FROM DATES.

Expressions of Interest Due:	[.....]
Market Survey (Estimated):	[.....]
Offers Due:	[.....]
Occupancy (Estimated):	[.....]

**Send Expressions of Interest to:**

Name/Title:	[.....]
Address:	[.....]
Office/Fax:	[.....]
Email Address:	[.....]

**Government Contact**

Lease Contracting Officer	
Leasing Specialist	
Broker	

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