

May 10, 2017

MEMORANDUM FOR: REGIONAL COMMISSIONERS, PBS
REGIONAL LEASING DIRECTORS
REGIONAL LEASE ACQUISITION OFFICERS

5/11/2017

X James C. Wisner

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Signed by: JAMES WISNER

FROM: JAMES C. WISNER
ASSISTANT COMMISSIONER FOR OFFICE OF LEASING
- PR

SUBJECT: LEASING ALERT (LA-FY17-08) Revisions to Novation
Agreement Policy

1. Purpose. This Leasing Alert issues lease policy implementing changes to the novation process in order to provide consistency across PBS in the processing of novation requests.

2. Background. Under federal law, the transfer of a Government contract/lease is generally prohibited. Specifically, 41 U.S.C. §6305 states “no contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred.” However, pursuant to the Federal Acquisition Regulation (FAR), the Government may recognize a successor party’s interest, through a novation agreement, when it is determined to be in the best interests of the Government.

The Anti-Assignment Act (Act), 41 U.S.C. §6305, was first enacted during the Civil War in 1862. The Act allowed the Government to void any contract that was assigned/transferred without the Government’s consent, thus providing the Government with protection from “bait and switch” schemes regarding ultimate contract performance. Today, for leasing, a request to assign a lease to another entity can have significant impacts on expected contract performance. In addition, such requests made shortly after lease award can have impacts on the bases and integrity of the Government’s award decision.

A request that the Government approve a novation related to a lease generally arises out of the transfer of (1) all the lessor's assets, or (2) the entire portion of assets involved in performing the contract. For example, the lessor may sell the entire property that includes a Government leased building, or the lessor may only sell the building but retain ownership of the land. When a lessor wishes to have a third-party successor in interest recognized as the "assignee" to a Government lease, the lessor must submit a written novation request to the Lease Contracting Officer (LCO). A lessor that sells his property without prior Government approval does so at its own risk as Government approval of a requested novation agreement is not guaranteed, and the Government will only approve a requested leave novation when it is in the Government's interests to do so.

Novations have become a necessary part of the administration of GSA's lease portfolio. The changes addressed in this LAC seek to standardize the novation process across all regions and to provide consistent responses to novation requests.

3. Effective Date. This Leasing Alert is effective as of the date of issuance unless modified, canceled, or reissued.

4. Cancellation. LDG Chapter 17, Lease Administration, issued via LAC 2011-10.

5. Applicability. This Leasing Alert and its attachments apply to all General Services Administration (GSA) real property leasing activities and to activities delegated by GSA to other Federal agencies.

6. Instructions and Procedures. All LCOs shall use the revised process issued through this LAC. We have revised the Leasing Desk Guide to incorporate the new novation requirements.

When notice is provided to PBS that a lessor has sold or intends to sell a property in which GSA leases space, the LCO must follow the steps outlined in the Leasing Desk Guide. Specifically, the LCO should begin by sending the lessor a letter and the novation Checklist that outlines the procedures to follow when requesting a novation. The LCO is responsible for gathering all documents required to be reviewed for a novation and completing an initial review of those documents. In addition, the LCO must complete a responsibility determination on the Transferee. It is the responsibility of the LCO to gather the required documents, complete an initial review and perform a responsibility determination on the proposed assignee. Regional Counsel is required to approve all novation requests.

A novation agreement is the **only** proper way to recognize a third-party successor in interest. LCOs should be aware that unintended recognition of a third party successor may occur when a contract modification is issued in the assignee's name, payments are

made to an assignee, or the government allows performance by the assignee, all prior to the submission, consideration and approval of a novation request. LCOs and other leasing professionals must ensure that such unauthorized actions do not take place as this could expose the government to unintended liability such as recognition by a court of law that a *de facto* novation has occurred when it may not be in the government's best interests to recognize a successor-in-interest.

Attachment 1: Leasing Alert LA FY17-08 Summary and Filing Instructions

Attachment 2: LDG Chapter 17, Lease Administration

Attachment 3: Notice of Procedures for Assignment and Assumption of Lease

Attachment 4: Novation Agreement

Attachment 5: Novation Checklist

Attachment 6: Responsibility Determination Results Memorandum to Lease File

Attachment 7: Request for Review of Novation Agreement

LA-FY17-08 Summary and Filing Instructions

Leasing Alert FY17-08 issues the policy listed below:

Leasing Desk Guide Chapter 17 (Revised), Lease Administration

This Leasing Alert issues a revised Leasing Desk Guide Chapter 17 which reflects updated policy and practices for the change of ownership novation process.

This Leasing Alert also issues new and revised templates to be used as part of the novation process, as described in the revised Chapter 17.

- Notice of Procedures for Assignment and Assumption of Lease
- Novation Agreement
- Novation Checklist
- Responsibility Determination Results Memorandum to Lease File
- Request for Review of Novation Agreement

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