

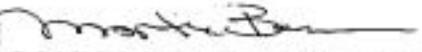


MAR 19 2007

RSL-2007-04

MEMORANDUM FOR ASSISTANT REGIONAL ADMINISTRATORS, PBS
REGIONAL REALTY SERVICES OFFICERS

THRU: ANTHONY E. COSTA 
DEPUTY COMMISSIONER - PD

FROM: MARTHA J. BENSON 
ACTING ASSISTANT COMMISSIONER FOR OFFICE OF
NATIONAL CUSTOMER SERVICES MANAGEMENT - PQ

SUBJECT: Price Reasonableness Determinations and
Notices to Proceed for Tenant Improvements
Supplemental Lease Agreement for Excess TIs

1. Purpose. This Realty Services Letter (RSL) issues mandatory operating procedures for price reasonableness determinations (PNMs) and notices to proceed (NTPs) for use by GSA associates and support contractors.
2. Background.
 - a. In 2005, GSA's Office of Inspector General (IG) conducted an audit of leases to assess whether PBS effectively manages the tenant improvement (TI) buildout process in leased space. Their findings are reported in the Review of PBS's Tenant Improvement Process Audit A050063.
 - b. PBS agreed with the findings and committed to a multi-step corrective action plan to better manage the TI process in leases. This RSL implements the following action items:
 - i. Recommendation 001, Step 1A2
Create a task and letter template for eLease that addresses a formal decision and/or documentation process, similar to that required by the FAR, regarding pre-and post-negotiation documentation.
 - ii. Recommendation 001, Step 1A3
Create a task and develop a letter template to capture the notice to proceed in eLease. Need to make NTP subject to notification and approval by the contracting officer.

- c. In addition to the IG audit findings, in 2006 the Solutions Development Division conducted peer reviews of 120 leases across all regions. Of those leases reviewed, 73 percent did not contain evidence of a competitive bid process or cost and pricing data.
- d. A related area of concern raised by the audit concerned our ability to accurately reflect and account for overall TI costs. Since this is an issue related to the TI cost proposal and NTP, we have addressed the issue by providing a sample supplemental lease agreement (SLA) that orders TIs that exceed the TI allowance in the lease. Instructions and guidance on tracking project reimbursable work authorization (RWA) costs will be addressed in a separate RSL.
- e. Many of the items in the audit are interrelated; however, certain templates represent discrete steps in the TI process. So that users can more easily identify which RSL addresses a particular subject and contains a particular template, the RSLs are being issued concurrently, and they address the following topics:

RSL 2007-03	Tenant Improvements Schedule and Submittals Revisions in the Solicitation for Offers
RSL 2007-04	Tenant Improvements Price Negotiation Memorandum, Notice to Proceed, and Supplemental Lease Agreement to Order Excess TIs
RSL 2007-05	Tenant Improvements Costs/Reimbursable Work Authorization Tracker and Agency Concurrence for RWA Expenditure
RSL 2007-06	Tenant Improvements Project Management Support

- 3. Effective Date/Expiration Date. This RSL and instructions are effective March 31, 2007, and will expire 12 months from the date of issuance unless modified, cancelled, or reissued earlier.
- 4. Cancellation. None
- 5. Applicability. This RSL applies to all real property leasing activities.
- 6. Instructions/Procedures. The guidelines in this RSL should be considered in all new and current lease projects with SFOs using tenant improvements allowances for which a lease award has not yet been made by the contracting officer. See Attachment 1 for further guidance.

Attachments

- 1 Mandatory Operating Procedures for RSL 2007-04
- 2 Tenant Improvement Price Negotiation Memorandum Template
- 3 Notice to Proceed Template
- 4 Supplemental Lease Agreement for Excess TIs Template

**MANDATORY OPERATING PROCESURES
FOR REALTY SERVICES LETTER (RSL) 2007-04**

1. Price Negotiation Memorandum (PNM): Federal Acquisition Regulation (FAR) 15.406-1 states, "The contracting officer shall establish pre-negotiation objectives before the negotiation of any pricing action." FAR 15.406-3 states, "The contracting officer shall document in the contract file the principal elements of the negotiated agreement," as well as providing required elements. It also requires documentation on pricing used by the contracting officer to determine that pricing is fair and reasonable.

Attachment 2 to this RSL contains a template for a PNM to document the fair and reasonable pricing determination. It contains blue instructional text to assist those preparing the PNM for the contracting officer's signature. At the effective date of this RSL (March 31, 2007), this template will be available in eLease. An alternative document may be used, but it must conform to the FAR Part 15.4 requirements.

The realty specialist or contract support person must prepare the PNM and obtain the contracting officer's signature before issuing a Notice to Proceed for Tenant Improvements (NTP).

2. Notice to Proceed for Tenant Improvements: Most leases contain language requiring a contracting officer to issue an NTP upon determination of adequate competition (or per FAR--in the absence of competition, cost and pricing data) and acceptance of the cost proposal.

Attachment 3 to this RSL contains a template NTP letter. It contains blue instructional text to assist those preparing the NTP for the contracting officer's signature. At the effective date of this RSL (March 31, 2007), this template will be available in eLease. An alternative document may be used, but it must contain essentially the same information.

3. Supplemental Lease Agreement (SLA) for Excess Tenant Improvements (TIs): In many leases, the TI allowance amortized in the rent is less than the TI cost determined to be fair and reasonable. Before issuing the NTP, the realty specialist must ensure that the customer agency has accepted this additional cost and that it has provided sufficient Reimbursable Work Authorization (RWA) funds for the excess TIs. Under these circumstances, an SLA ordering the excess TIs must accompany the NTP. At the time the SLA is drafted, the amount ordered by the SLA must be entered into Pegasys to account for the obligation against the RWA and to get the Pegasys Document Number (PDN) number for the SLA.

Attachment 4 to this RSL contains a template SLA to order excess TIs. It contains blue instructional text to assist those preparing the SLA for the contracting officer's signature. At the effective date of this RSL (March 31, 2007), this template will be available in eLease. An alternative document may be used, but it must contain essentially the same information.

4. Attachments 2-4 are formatted with blue instructional hidden text. Please be sure "Hidden Text" is turned on in Tools, View in your application to see all instructions for use.

[Date]

Memorandum for: The File [Lease LXX-XXXXX]

From: Name, Title

Subject: Tenant Improvements Price Negotiation Memorandum

1. The prenegotiation objectives section of FAR 15.406-1 requires that we establish the Government's initial negotiation position. The lease contains a tenant improvement allowance (TIA) of \$[xx.xx] per ANSI/BOMA Office Area square foot (ABOA), and the lease contains [xx,xxx] ABOA square feet. The TIA is therefore [\$XXX,XXX]. The TIA is based on analyses prepared by Real Property Asset Management (RPAM) using historic construction costs for agencies that are then geographically adjusted to take into account other economic and market influences on construction costs. These costs are preloaded into the OA Tool calculator. The prenegotiation objective is to then negotiate a construction cost that is equal to or less than the TIA. The TIA contains Lessor's overhead and project management costs which [were] [were not] previously negotiated and analyzed for fairness and reasonableness in the initial lease procurement before lease award.
2. The purpose of this PNM is to ensure that the tenant improvement (TI) costs to prepare the space under lease to meet the needs of the tenant agency are fair and reasonable.
3. The lease requires that the lessor construct space in accordance with the SFO, Special Requirements, Design Intent Drawings (DIDs), etc., as contained in the lease. DIDs have been developed and provided to the Lessor so he could obtain TI pricing from general contractors or subcontractors or both. The lease provides that instead of submitting detailed cost or pricing data and entering into negotiations to determine a final cost for the subject work, the Government (in accordance with FAR 15.403) is willing to accept a price based on the results of a competitive proposal process if several conditions are met. The ones pertinent to pricing are as follows:
 - a. A minimum of three qualified contractors shall be invited to participate in the competitive proposal process. Each participant shall compete independently in the process.
 - b. Each proposal shall be 1) submitted in Construction Specifications Institute (CSI) format by the proposed contractors and 2) reviewed by the Government. The Government reserves the right to determine if bids meet with the scope of work, that the price is reasonable, and that the Offeror is qualified to perform the work. The Government reserves the right to reject all bids, at its sole discretion.
 - c. The Lessor shall demonstrate to the Government that best efforts have been made to obtain the most competitive prices possible, and the Lessor shall accept responsibility for all prices through direct contracts with all contractors.

4. The Government is represented by [Name, Position, and Organization]. The Lessor is represented by [Name, Position, and Organization].

5. Because the Lessor provided documentation that a minimum of 3 qualified contractors were invited to participate, detailed cost and pricing data are not required using the adequate price competition exception. When adequate price competition exists (see FAR 15.403-1(c)(1)), generally no additional information is necessary to determine the reasonableness of price.

- 6.

7. The most significant influence on the pre-negotiation objectives is the pre-set TIA as developed by RPAM. While this amount per square foot is based on a history of expenditures for the subject agency (and adjusted for geographic costs), the allowance does not necessarily contemplate all unusual features that may have been requested by the agency for a particular project. Because of this, there are additional costs in this project that affect the differences in the Lessor's TI pricing and the TIA. Some of the additional features are:
 - a.
 - b.
 - c.
 - d.
 - e.

8. Congress, other agencies, or higher PBS officials [did] [did not] provide direction that impacts the negotiations or negotiation position for this procurement.

9. The basis for profit or fee was established in the preaward file, and it was based on competitive offers.
 The basis for profit or fee was established by obtaining pricing information from other Government estimators, recent contracts, or both for like services. The estimates were: \$_____, \$_____, .

10. Based on the available information and negotiations, Tenant Improvement costs of \$_____ are determined to be fair and reasonable, and a Notice to Proceed will be issued to the Lessor for the Tenant Improvements.

 Realty Specialist Signature, if applicable Date

 Contracting Officer Signature Date

15.406-3 Documenting the negotiation.

(a) The contracting officer shall document in the contract file the principal elements of the negotiated agreement. The documentation (*e.g.*, price negotiation memorandum (PNM)) shall include the following:

- (1) The purpose of the negotiation.
- (2) A description of the acquisition, including appropriate identifying numbers (*e.g.*, RFP No.).
- (3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.
- (4) The current status of any contractor systems (*e.g.*, purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.
- (5) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.
- (6) If cost or pricing data were required, the extent to which the contracting officer—
 - (i) Relied on the cost or pricing data submitted and used them in negotiating the price;
 - (ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or
 - (iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be cost or pricing data.
- (7) A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, and the negotiated position. Where the determination of price reasonableness is based on cost analysis, the summary shall address each major cost element. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination.
- (8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.
- (9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.*, officials who would not normally exercise authority during the award and review process for the instant contract action).
- (10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.
- (11) Documentation of fair and reasonable pricing.

Date

Lessor
Address
City, State Zip

Dear Mr. XXXXX:

On [month day, year], the Government awarded a contract to lease space at [building name, address, city, state, zip] under the terms and conditions of Lease GS-[xxx-xxxxx]. The Tenant Improvements Prior to the Government's Initial Acceptance of Space paragraph in the Solicitation for Offers (SFO) attached to and forming a part of this lease required you to submit a proposal based on adequate competition for the Tenant Improvement (TI) costs associated with this lease. The lease allowed you to submit this information instead of cost and pricing data.

Based on this contract requirement, we have reviewed your TI costs and determined that they are fair and reasonable. This letter represents your Notice to Proceed (NTP) with the construction of the TIs in the amount of \$_____. The lease requires completion of the construction no later than [month day, year]. If the TI allowance in the lease is more than the above NTP amount, the rental rate will be adjusted downward in accordance with other provisions of the lease.

Based on this contract requirement, we have reviewed your TI costs and determined that they are fair and reasonable. This letter represents your Notice to Proceed (NTP) with the construction of the TIs in the amount of \$_____. The lease requires completion of the construction no later than [month day, year]. Further, the NTP for the amount above represents the tenant improvement allowance (TIA) that is stated in the lease and amortized in the contract rental rate. Since the total TI costs exceed the TIA, the TI cost balance is being ordered via the Supplemental Lease Agreement (SLA) attached to this letter. Three copies of SLA No. __ are enclosed. Please sign two copies, have your signatures witnessed and return them to me no later than_____. I will return a fully executed copy for your records.

Since you were unable to provide documentation of sufficient competition to meet the requirements of FAR 15.403-1(c)(1), the lease required you to provide cost and pricing data as well as a certificate of current cost or pricing data, in the format specified in FAR 15.406-2, certifying that to the best of your knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price. Based on this contract requirement, we have reviewed your TI costs and determined that they are fair and reasonable. This letter represents your Notice to Proceed (NTP) with the construction of the TIs in the amount of \$_____. The lease requires completion of the construction no later than [month day, year]. If the TI allowance in the lease is more than the above NTP amount, the rental rate will be adjusted downward in accordance with other provisions of the lease.

Since you were unable to provide documentation of sufficient competition to meet the requirements of FAR 15.403-1(c)(1), the lease required you to provide cost and pricing data as well as a certificate of current cost or pricing data, in the format specified in FAR 15.406-2, certifying that to the best of your knowledge and belief, the cost or pricing data

were accurate, complete, and current as of the date of agreement on price. Based on this contract requirement, we have reviewed your TI costs and determined that they are fair and reasonable. This letter represents your Notice to Proceed (NTP) with the construction of the TIs in the amount of \$_____. The lease requires completion of the construction no later than [month day, year]. Further, the NTP for the amount above represents the tenant improvement allowance (TIA) that is stated in the lease and amortized in the contract rental rate. Since the total TI costs exceed the TIA, the TI cost balance is being ordered via the Supplemental Lease Agreement (SLA) attached to this letter. Three copies of SLA No. ___ are enclosed. Please sign two copies, have your signatures witnessed and return them to me no later than_____. I will return a fully executed copy for your records.

If you have any questions, please contact me at [email address] or [phone number].

Sincerely,

Name
Contracting Officer
[Regional Org]
Public Buildings Service

Enclosure

SUPPLEMENTAL LEASE AGREEMENT

SUPPLEMENTAL LEASE AGREEMENT NO. XX	TO LEASE NO. GS-xxxxx	DATE	PAGE 1 of X
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ADDRESS OF PREMISES

Building Name, Street Address, City, ST, Zip

THIS AGREEMENT, made and entered into this date by and between LESSOR, TYPE OF ENTITY

whose address is ADDRESS
ADDRESS
CITY, ST XXXXX

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease to order tenant improvements which exceed the tenant improvement allowance.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended effective Month XX, 20XX, as follows:

- I. In separate correspondence dated [mmddyy], the Government has issued a Notice to Proceed for Tenant Improvements in the amount of \$XXX,XXX.XX. The total costs for tenant improvements are \$XXX,XXX.XX. The Government hereby orders the balance of \$XX,XXX.XX.
- II. Upon completion, inspection, and acceptance of the space, the Government shall reimburse the Lessor in a lump sum payment in the amount of \$X,XXX,XXX.XX, upon receipt of an original invoice after completion, inspection, and acceptance of the space by the Contracting Officer.

The original invoice must be submitted directly to the GSA Finance Office at the following address:

General Services Administration
FTS and PBS Payment Division (7BCP)
P.O. Box 17181
Fort Worth, TX 76102-0181

Continued on Page 2

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR

SIGNATURE	NAME OF SIGNER
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ADDRESS

IN PRESENCE OF

SIGNATURE	NAME OF SIGNER
-----------	----------------

ADDRESS

UNITED STATES OF AMERICA

SIGNATURE	NAME OF SIGNER
	OFFICIAL TITLE OF SIGNER

A copy of the invoice must be provided to the Contracting Officer at the following address:

General Services Administration
Attn: GSA CONTRACTING OFFICER
Address
Address
City, State Zip

A proper invoice must include the following:

- Invoice date
- Name of the Lessor as shown on the Lease
- Lease contract number, building address, and a description, price, and quantity of the items delivered
- GSA PDN #

If the invoice is not submitted on company letterhead, the person(s) with whom the Lease contract is made must sign it.

III. The Government-approved design intent drawings which formed the basis for the tenant improvement costs are hereby incorporated into the lease as Exhibit ____ (____ pages).

IV. The Lessor hereby waives restoration as a result of all improvements.

All other terms and conditions remain in full force and effect.

INITIALS: _____ & _____
LESSOR GOV'T

INITIALS: _____ & _____
LESSOR GOV'T

INITIALS: _____ LESSOR
_____ GOV'T

