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RSL-2008-05

MEMORANDUM FOR ASSISTANT REGIONAL ADMINISTRATORS, PBS
REGIONAL REALTY SERVICES OFFICERS

FROM: SAMUEL J. MORRIS, III
ASSISTANT COMMISSIONER FOR OFFICE OF
REAL ESTATE ACQUISITION - PQC

SUBJECT: Price Preference for Historic Properties in Lease
Acquisitions

1. Purpose. This Realty Services Letter (RSL) issues procedures for giving price preference to space in historic properties.
2. Background.
 - a. Executive Order (EO) 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, of May 21, 1996, reaffirmed the commitments established in the National Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.) to provide leadership in the preservation of historic resources; in the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. § 3306) to acquire and utilize space in suitable buildings of historic, architectural, or cultural significance; and in EO 12072, Federal Space Management, of August 16, 1978, to strengthen our nation's cities by encouraging the location of Federal facilities in our central cities. EO 13006 is attached.
 - b. EO 13006 requires the Federal Government to "utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in our central business areas."
 - c. Each Federal agency is responsible for identifying its geographic service area and the delineated area for each procurement in accordance with the requirements of the Rural Development Act of 1972, as amended (42 U.S.C. § 3122) and EO 12072. When agency mission and program requirements call for location in an urban area, agencies must comply with EO 12072 and give first consideration to central business areas (CBAs). GSA location policies are found in the Federal Management Regulation (FMR) at 41 CFR 102-83, Location of Space.
 - d. Within the mission justified delineated area, EO 13006 provides for a tiered preference process. Preference for historic properties is given first to suitable historic properties within historic districts, then to suitable non-historic developed or undeveloped sites within historic districts, and, finally, to suitable historic properties outside of historic districts.

- e. 41 CFR 102-78.60, 102-73.120, and 102-73.125 of the FMR implement EO 13006 and require Federal agencies to give a price preference to space in historic properties when acquiring leased space using either the lowest price technically acceptable or the best value tradeoff source selection process.
 - f. General Services Acquisition Regulation (GSAR) clause 552.270-2, Historic Preference (SEPT 2004), revised the historic preference contract clause to reflect the tiered preference hierarchy of consideration. Before the revision, suitable historic properties were treated equally and received a 10 percent preference. The new clause is incorporated into the revised Solicitation for Offers issued under RSL-2008-04. The clause is attached.
3. Effective Date/Expiration Date. This RSL is effective 60 days after the date of issuance and will expire five (5) years after the date of issuance unless modified, canceled, or reissued.
4. Cancellation. None.
5. Applicability. This RSL applies to all real property leasing activities.
6. Instructions/Procedures. Instructions are provided in Attachment 1, Procedures for Giving Price Preference to Historic Properties in Lease Acquisitions.

Attachments:

- a. Attachment 1 - Procedures for Giving Price Preference to Historic Properties in Lease Acquisitions
- b. Attachment 2 - Locating Federal Facilities on Historic Properties in Our Nation's Central Cities
- c. Attachment 3 - GSAR 552.270-2, Historic Preference (SEPT 2004)

Procedures for Giving Price Preference to Historic Properties in Lease Acquisitions

1. General. The procedures in this RSL must be applied in lease acquisitions in urban areas when suitable historic properties are identified within the approved delineated area. The procedures do not apply to acquisitions for space in rural areas identified under the requirements of the Rural Development Act of 1972.
2. Qualifying for historic preference. Offerors must provide documentation with their offer to substantiate their property as one of the following types of historic properties. Realty specialists having questions about the documentation submitted must consult with their regional historic preservation officers.
 - a. A historic property within a historic district;
 - b. A non-historic developed or undeveloped site within a historic district; or
 - c. A historic property outside of a historic district.
3. Applying historic preference when award is based on lowest priced technically acceptable source selection process.
 - a. Realty specialists or support contractors must evaluate all technically acceptable offers in accordance with the Price Evaluation (Present Value) paragraph included in the Solicitation for Offers (SFO) to determine the lowest priced offer.
 - b. After determining the ANSI/BOMA Office Area per square foot present value cost (PVC) of each offer, realty specialists or support contractors must perform a further evaluation of the offers when there are offers that qualify for a historic price preference and the lowest priced offer is not a historic property or a property in a historic district.
 - i. If there is a suitable historic property located in a historic district, the realty specialist or support contractor must reduce the per square foot PVC of the offer for the historic property by 10 percent. This rate will be used only for price comparison purposes.
 - ii. If no suitable historic property within a historic district is offered or the 10 percent preference does not result in this property being the lowest priced technically acceptable offer, the realty specialist or support contractor must then give preference to suitable non-historic developed or undeveloped sites within historic districts by reducing the per square foot PVC of the offer for the non-historic developed or undeveloped site within a historic district by 2.5 percent. This rate will be used only for price comparison purposes.
 - iii. If no suitable non-historic developed or undeveloped site within a historic district is offered or the 2.5 percent preference does not result in this property being the lowest priced technically acceptable offer, the realty specialist or support contractor must then give preference to suitable historic properties outside of a historic district by reducing the per square foot PVC of the offer for the historic property outside of a historic district by 10 percent. This rate will be used only for price comparison purposes.
 - iv. If no suitable historic property outside of a historic district is offered, and no other historic properties or properties in historic districts are offered, then no historic price preference is applied.

4. Applying historic preference when award is based on best value tradeoff source selection process.
 - a. When price is not the basis for award, the applicable price preference is still applied. The award is made to the offeror whose offer is most advantageous to the Government, considering price and other factors.
 - b. The price preference is applied in the same manner it is applied when awards are based on the lowest priced technically acceptable source selection process. However, the language in the clause is changed to reflect the best value tradeoff process and to acknowledge that some offers for historic properties may not remain in the competition because of the evaluation of the technical evaluation factors. The price preference would be applied as prescribed in paragraph 3.b above. Price is still only a factor to be evaluated in best value trade off procurements and award will still be made on the basis stated in the SFO, with price-technical trade offs conducted as necessary.
5. Calculating the price evaluation preference. The example below demonstrates how the tiered historic preference consideration is calculated in lowest price technically acceptable procurements.

Example:

Four offers conforming to the requirements of the SFO are submitted. The PVC of the offers has been calculated and listed for comparison purposes as follows:

Offer A \$13.90 PVC - Offer A is not a historic property or a non-historic developed or undeveloped site in a historic district.

Offer B \$16.37 PVC - Offer B is a historic property in a historic district. 10 percent preference applies.

Offer C \$16.78 PVC - Offer C is a non-historic developed or undeveloped site in a historic district. 2.5 percent preference applies.

Offer D \$15.40 PVC - Offer D is a historic property outside of a historic district. 10 percent preference applies.

While Offer A is the lowest priced offer, it is not a historic property. Since suitable historic properties were offered, the historic price preference hierarchy of consideration applies.

In this example, Offer B qualifies as a historic property in a historic district. The preference is calculated as follows:

PVC per square foot of Offer B	\$16.37
Preference reduction (10 percent)	<u>- 1.64</u>
Adjusted cost for comparison	\$14.73

The adjusted cost of Offer B when compared to Offer A (the lowest priced offer following the present value price evaluation) is 83 cents higher. The historic property does not receive the award.

Since the adjusted cost for the historic property (Offer B) is more than the non-historic property (Offer A), the realty specialist or support contractor must then give preference to any offers for suitable non-historic developed or undeveloped sites in a historic district.

In this example, Offer C qualifies as a non-historic developed site in a historic district. The preference is calculated as follows:

PVC per square foot of Offer C	\$16.78
Preference reduction (2.5 percent)	<u>- .42</u>
Adjusted cost for comparison	\$16.36

The adjusted cost of Offer C when compared to Offer A (the lowest priced offer following the present value price evaluation) is \$2.46 higher. The non-historic developed site in a historic district does not receive the award.

Since the adjusted cost for the non-historic developed site in a historic district (Offer C) is more than the non-historic property (Offer A), the realty specialist or support contractor must then give preference to any offers for suitable historic properties outside of a historic district.

In this example, Offer D qualifies as a historic property outside of a historic district. The preference is calculated as follows:

PVC per square foot of Offer D	\$15.40
Preference reduction (10 percent)	<u>-1.54</u>
Adjusted cost for comparison	\$13.86

The adjusted cost of Offer D when compared to Offer A (the lowest priced offer following the present value price evaluation) is 4 cents lower. The historic property outside of a historic district becomes the lowest priced technically acceptable offer and receives the award.

Reminder: The example above demonstrates how the tiered historic preference consideration is calculated in lowest price technically acceptable procurements. If the best value tradeoff source selection process is used, Offer D may or may not receive the award based on consideration of other technical evaluation factors as specified in the SFO. The offer that represents the best value to the Government would receive the award.

Executive Order 13006 of May 21, 1996

Locating Federal Facilities on Historic Properties in Our Nation's Central Cities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 et seq.) and the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505), and in furtherance of and consistent with Executive Order No. 12072 of August 16, 1978, and Executive Order No. 11593 of May 13, 1971, it is hereby ordered as follows:

Section 1. *Statement of Policy.* Through the Administration's community empowerment initiatives, the Federal Government has undertaken various efforts to revitalize our central cities, which have historically served as the centers for growth and commerce in our metropolitan areas. Accordingly, the Administration hereby reaffirms the commitment set forth in Executive Order No. 12072 to strengthen our Nation's cities by encouraging the location of Federal facilities in our central cities. The Administration also reaffirms the commitments set forth in the National Historic Preservation Act to provide leadership in the preservation of historic resources, and in the Public Buildings Cooperative Use Act of 1976 to acquire and utilize space in suitable buildings of historic, architectural, or cultural significance.

To this end, the Federal Government shall utilize and maintain, *wherever operationally appropriate and economically prudent*, historic properties and districts, especially those located in our central business areas. When implementing these policies, the Federal Government shall *institute practices and procedures that are sensible, understandable, and compatible with current authority and that impose the least burden on, and provide the maximum benefit to, society.*

Section 2. *Encouraging the Location of Federal Facilities on Historic Properties in Our Central Cities.* When operationally appropriate and economically prudent, and *subject to the requirements of section 601 of title VI of the Rural Development Act of 1972, as amended (42 U.S.C. 3122), and Executive Order No. 12072*, when locating Federal facilities, Federal agencies shall give *first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts.* Federal agencies shall *then consider historic properties outside of historic districts, if no suitable site within a district exists.* Any rehabilitation or construction that is undertaken pursuant to this order must be architecturally compatible with the character of the surrounding historic district or properties.

Section 3. *Identifying and Removing Regulatory Barriers.* Federal agencies with responsibilities for leasing, acquiring, locating, maintaining, or managing Federal facilities or with responsibilities for the planning for, or managing of, historic resources shall take steps to reform, streamline, and otherwise minimize regulations, policies, and procedures that impede the Federal Government's ability to establish or maintain a presence in historic districts or to acquire historic properties to satisfy Federal space

needs, unless such regulations, policies, and procedures are designed to protect human health and safety or the environment. Federal agencies are encouraged to seek the assistance of the Advisory Council on Historic Preservation when taking these steps.

Section 4. *Improving Preservation Partnerships.* In carrying out the authorities of the National Historic Preservation Act, the Secretary of the Interior, the Advisory Council on Historic Preservation, and each Federal agency shall seek appropriate partnerships with States, local governments, Indian tribes, and appropriate private organizations with the goal of enhancing participation of these parties in the National Historic Preservation Program. Such partnerships should embody the principles of administrative flexibility, reduced paperwork, and increased service to the public.

Section 5. *Judicial Review.* This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(Signed) William J. Clinton

THE WHITE HOUSE,
May 21, 1996.

552.270-2 Historic Preference.

As prescribed in 570.602 , insert the following provision:

Historic Preference (Sept 2004)

(a) The Government will give preference to offers of space in historic properties following this hierarchy of consideration:

- (1) Historic properties within historic districts.
- (2) Non-historic developed and non-historic undeveloped sites within historic districts.
- (3) Historic properties outside of historic districts.

(b) *Definitions.*

(1) "Determination of eligibility" means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register (36 CFR 60.3(c)).

(2) "Historic district" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history (36 CFR 60.3(d)). The historic district must be included in or be determined eligible for inclusion in the National Register of Historic Places.

(3) "Historic property" means any pre-historic or historic district, site, building, structure, or object included in or been determined eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior (36 CFR 800.16(l)).

(4) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture that the Secretary of the Interior is authorized to expand and maintain under the National Historic Preservation Act (36 CFR 60.1).

(c) The offer of space must meet the terms and conditions of this solicitation. The Contracting Officer has discretion to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of an historic building, such as high ceilings and wooden floors, or to maintain the integrity of an historic district, such as setbacks, floor-to-ceiling heights, and location and appearance of parking.

(d) When award will be based on the lowest price technically acceptable source selection process, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

- (1) First to suitable historic properties within historic districts, a 10 percent price preference.
- (2) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.
- (3) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(e) When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within a historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(f) The Government will compute price evaluation preferences by reducing the price(s) of the offerors qualifying for a price evaluation preference by the applicable percentage provided in this provision. The price evaluation preference will be used for price evaluation purposes only. The Government will award a contract in the amount of the actual price(s) proposed by the successful offeror and accepted by the Government.

(g) To qualify for a price evaluation preference, offerors must provide satisfactory documentation in their offer that their property qualifies as one of the following:

(1) An historic property within an historic district.

(2) A non-historic developed or undeveloped site within an historic district.

(3) An historic property outside of an historic district..

(End of provision)