

**U.S. General Services Administration
Federal Bureau of Investigation
Suburban Headquarters
Post-Consultation Process
Criteria #5, Cost**

Purpose

As instructed by Congress in the Fiscal Year 2023 Consolidated Appropriations Act (the “FY23 Act”), representatives from the General Services Administration (GSA) and the Federal Bureau of Investigation (FBI) met with the “individuals representing the sites from the State of Maryland and Commonwealth of Virginia” to discuss the plan for selecting a new Federal Bureau of Investigation Headquarters Suburban Facility. In accordance with the Post-Consultation Process Plan (“PCPP), the Public Buildings Service (PBS) developed a list of key topics stemming from those prior discussions with Virginia and Maryland. As further set forth in the PCPP, the current document represents the internal deliberations of the internal team with regards to whether changes should be made to Criteria #5, Cost.

For the reasons set forth below, it is recommended that the Site Selection Plan be updated in accordance with Options 1, 4, and 6.

SECTION I: SUMMARY OF OPTIONS

- **Option 1:** Under Criteria #5, Cost, the current Site Selection Plan includes the cost to acquire a site and the cost to prepare a site. For the Springfield site, in particular, the cost to prepare a site includes the cost to relocate the unclassified tenants (e.g., move costs); however, the cost to prepare does not include the cost to relocate the classified tenant. Recommending this option keeps this cost as part of the current Site Selection Plan.
- **Option 2:** Recommending this option would add the classified tenant relocation costs to total development cost calculation.
- **Option 3:** Recommending this option would add an “opportunity cost” to the total development cost. For purposes of this option, an “opportunity cost” component would only be added to the Springfield location and would represent the lost opportunity of not being able to sell the Springfield site if it is selected. In other words, if one of the Maryland sites is selected and the existing tenants move from the Springfield site, the Government could dispose (i.e., sell) the Springfield site for \$Y. This \$Y would be deposited into the Federal Buildings Fund (an account in the U.S. Treasury) and could, in concept and dependent on further Congressional action through a future authorization and

appropriation, be used to partially offset the costs of the FBI HQ project. The \$Y represents the “opportunity cost,” which would be added to the total development cost for the Springfield site only.

- **Option 4:** Recommending this option would add a cost to the total development cost calculation for the two sites upon which construction activities would begin the latest, if any. In the Maryland delegation’s view, since the two sites in Maryland are unencumbered by existing tenants, GSA should be able to acquire those sites much faster, begin construction activities on those sites much sooner than the Virginia site, and save the Government money on the project. Accordingly, it is that delta of time to which the Maryland delegation is asking GSA to apply a delay cost. Under the approach advocated by Maryland, one site would serve as the baseline: it is the earliest site upon which construction activities could commence. The later start time allocated to the other two sites, from a time perspective (in days), would be calculated from the baseline. The number of days would then be multiplied by a cost figure.
- **Option 5:** During the discussions with the two jurisdictions, Prince George’s County offered to provide a \$50,000,000 flexible cash stipend to the Government that could be applied to any site acquisition costs. If adopted, this stipend would decrease the total costs under Criteria #5 by \$50,000,000 for both of the Maryland sites.
- **Option 6:** Under Criteria #5, Cost, the current Site Selection Plan “*also considers the difference, if any, between the anticipated offsite infrastructure improvements to be paid for by third parties and the cost, if any, of any such improvements that will need to be paid by the Government. That is to say, the total costs for the off-site improvements is \$X, and the third parties will be assuming responsibility for \$Y. This criterion will take into the account the delta, if any, between \$X (-) \$Y.*” This option keeps the off-site infrastructure estimates and jurisdictional off-site commitments as part of the total development cost calculation under Criteria #5.

SECTION II: MAIN POINTS OF DISCUSSION

In reviewing the various options, the team members discussed various merits and disadvantages regarding each one. Several main themes and discussions occurred. First, as a general matter, PBS will typically only consider its own costs attributable to a project when evaluating the cost component of acquiring a site for a development project. So, for instance, if another federal agency (other than the future tenant agency) will fund a cost associated with the overall project, PBS will not count any such costs as part of the evaluation. Here, the internal team focused a large part of its discussion debating the importance of adhering to the regular practice versus any advantage with including the costs to move the classified tenant.

The internal team did take into consideration the resolution adopted by the House Committee on Transportation and Infrastructure approving prospectus PNCR–FBI–NCR17 on December 7, 2016, which instructed the Administrator to “consider[] the total cost to the government for relocations, site preparation, and site acquisition.” This point was raised by the Maryland delegation during our discussions with them. In reviewing the pertinent documentation, the team noted that Congress did not adopt or approve the 2016 House T&I Resolution. In fact, Congress provided specific instructions to the Administrator on the site selection process in the Fiscal Year 2023 Consolidated Appropriations Act (the “FY23 Act”). The FY23 Act instructed the Administrator to determine Congressional intent by reviewing two documents: (1) the Senate EPW resolution; and (2) the 2017 Prospectus. Congress specifically removed any reference to the 2016 House T&I Resolution in determining Congressional intent. Further, even if the team had considered the 2016 House T&I Resolution as part of Congressional intent, the team would still interpret the language to “consider total cost to government for relocations, site preparation, and site acquisition” to only include the relocation costs of the unclassified tenant.

The internal team also discussed changing the title of Criteria #5 from “Cost” to something much more specific. The original title, “Cost,” gave the misimpression that it accounted for all costs associated with the site development. However, it only included the cost to acquire the site, the cost to prepare the site, and the offsite improvement costs. The internal team discussed how the broadly worded title seemed to imply a greater scope of costs would be included rather than those originally listed in the Site Selection Plan. The internal team discussed how this may have caused confusion because certain parties did not understand why certain potential costs were not being considered, especially costs attributable to a later construction start date. The internal team discussed how providing a clearer and more specific title to this criteria might help to avoid any future confusion. However, given the number of components included in the cost element, it was ultimately determined to not make a change to the title of the Criteria.

SECTION III: SUMMARY OF DELIBERATIONS

Option 1 is recommended primarily because the internal team noted that it is the typical way in which GSA handles the site selection process. The internal team also discussed how the classified tenant has made it clear that its relocation is happening regardless of the FBI headquarters program’s decisions. To the internal team, the classified tenant’s costs are not, and should not be, part of the FBI headquarter’s program. The internal team recognized and discussed how Option 1 is potentially inconsistent with the resolution adopted by the House Committee on Transportation and Infrastructure approving prospectus PNCR–FBI–NCR17 on December 7, 2016, which instructed the Administrator to “consider[] the total cost to the government for relocations, site preparation, and site acquisition.” However, the internal team noted that Congress did not adopt or approve the 2016 House T&I Resolution. Rather, Congress

provided specific instructions to the Administrator on the site selection process in the Fiscal Year 2023 Consolidated Appropriations Act (the “FY23 Act”). The FY23 Act instructed the Administrator to determine Congressional intent by reviewing two documents: (1) the 2011 Senate EPW resolution; and (2) the 2017 Prospectus. Congress specifically removed any reference to the 2016 House T&I Resolution in determining Congressional intent. The internal team also discussed how even if GSA were to consider the 2016 House T&I Resolution as part of Congressional intent, GSA would still interpret the language to “consider total cost to government for relocations, site preparation, and site acquisition” to only include the relocation costs of the unclassified tenant.

Option 2 is not recommended, please refer to the prior discussion about why the internal team selected Option 1.

Option 3 is not recommended, the internal team was concerned that adding an opportunity cost to choosing the Springfield site might undercut the regulatory requirement to maximize the use of government owned sites and could effectively penalize the use of government owned property. To the internal team, not including an opportunity cost helps to ensure that there is not a disincentive to maximizing the utilization of existing government-owned land or facilities.¹ The internal team further discussed how adding an “opportunity cost” would not automatically allow those funds to be used for the FBI HQ project. Any funds derived from the disposal/sale of the Springfield site would be deposited into the Federal Buildings Fund, but would not be available absent further appropriations from Congress. Lastly, the internal team discussed how GSA does not historically add an “opportunity cost” as part of its site selection process, making it inconsistent with the agency’s best practices, which was one of the key principles established for this process. For the foregoing reasons, this option was not recommended.

Option 4 is recommended. If one site would allow for significantly greater cost savings due to an earlier construction start date, the internal team discussed the merits of allowing the selection panel to take such potential cost savings into consideration. The internal team discussed how applying such a cost would be premised on the initial availability of a site to begin construction; a later start date arguably means the completion of the overall project would be later than a site that can begin construction earlier. The internal team viewed this cost analysis as potentially serving two purposes: (1) allocating for the the up-front cost in not being able to start construction in the form of inflation/time value of money; and (2) allocating for the back-end cost of having to operate, maintain, and sustain the Hoover Building for a longer duration.

With a project as long as the FBI HQ, the internal team recognized problems surrounding the veracity of using future cost figures because any such figures would need to be based on a series

¹ 41 C.F.R. 102-73.255(a) states that “executive agencies must consider...maximum utilization of Government-owned land (including excess land) whenever it is adequate, economically adaptable to requirements and properly located, where such use is consistent with the provisions of part 102-75, subpart B, of this chapter.”

Confidential, Precisional & Deliberative

of assumptions and long-term financial modeling (e.g., inflation factor). Despite having some reservations about the underlying accuracy of developing such numbers, the internal team believed that taking potential costs attributable to differing construction start dates into account would be beneficial in selecting the most advantageous site to the Government.

With the above in mind, it is recommended that the Site Selection Plan be updated to allow the selection panel to consider the following cost elements: (1) Site Acquisition; (2) Site Preparation; (3) Off-Site Improvements; and (4) Costs of Differing Construction Start Dates. Instead of breaking each one of these cost elements into a separate subcriteria, the recommendation is to combine them into a single subcriteria. The internal team discussed how including separate sub-criteria, as reflected in the current Site Selection Plan, could yield unintended results. For instance, assume the following hypothetical costs:

Sub-Criteria	Site #1	Site #2	Site #3
Site Acquisition	\$100M	\$0	\$50M
Site Preparation	\$0	\$100M	\$50M
Off-Site Improvements	\$500M	\$100M	\$250M
Differing Start Dates	\$0	\$30M	\$15M
Total	\$600M	\$230M	\$365M

If the cost elements are separated into sub-criteria, it might be reasonable for the site selection panel to allocate the following colors to each sub-criteria (blue is lowest cost and yellow is highest cost):

Sub-Criteria	Site #1	Site #2	Site #3
Site Acquisition	Yellow	Blue	Green
Site Preparation	Blue	Yellow	Green
Off-Site Improvements	Yellow	Blue	Green
Differing Start Dates	Blue	Yellow	Green

It is reasonable to assume that Site #1 and Site #2 would each have two Blues and two Yellows. But, the total costs of Site #2 is \$485 million less than Site #1 and Site #3 is \$335 million less

than Site #1. Given that no site seems to rise to the top, the site selection panel might decide to award all three sites a Green. But, doing so would, arguably, undervalue the true costs of Site #2 and overvalue the true costs of Site #1. By lumping all of the cost elements together, the site selection panel will be able to evaluate the total cost to the Government for each site. In the hypothetical example above, it is reasonable to assume that the site selection panel would allocate a Blue to Site #2 (lowest overall cost); a Green to Site #3 (second lowest overall cost); and a Yellow to Site #1 (highest overall cost).

Option 5 is not recommended. The internal team discussed the notion of how accepting \$50 million to offset the costs of a federal project would certainly have advantages. First, the internal team noted that it would potentially provide additional sources of funds for the project and decrease the Federal Government's costs. Second, the internal team noted how accepting such a concession would be consistent with the way states, cities, and local governments provide incentives to corporate relocations, and GSA often models its own practices on the private sector. However, the internal team discussed its serious reservations about establishing a precedent of accepting a large cash contribution from a local government to potentially influence a significant site selection decision. To the internal team, this could negatively impact less affluent counties and jurisdictions with being able to have federal facilities located in their area. Further, the internal team noted how accepting such a contribution would be contrary to GSA's historical practice of accepting land for sites, but not cash, as part of site selection. The internal team also discussed how accepting such funds arguably upsets the traditional role of the budget and oversight process with Congress providing appropriated funds to GSA (instead of GSA going outside of the typical budget process to use funds provided by a state/county).

Option 6 is recommended because if the offsite infrastructure commitments are not fulfilled, the Federal Government may need to fund any such costs. While GSA will still need to procure the services of a general contractor to build the facility (which is estimated to be in the billions of dollars), the offsite development costs represent a potentially significant cost risk to the Federal Government if the state and local governments are unable to deliver on those offsite improvements. To the internal team, these offsite improvements are significant, and could easily cost several hundred million dollars.

**U.S. General Services Administration
Federal Bureau of Investigation
Suburban Headquarters
Post-Consultation Process
Criteria #4, Promoting Sustainable Siting and Advancing Equity**

Purpose

As instructed by Congress in the Fiscal Year 2023 Consolidated Appropriations Act (the “FY23 Act”), representatives from the General Services Administration (GSA) and the Federal Bureau of Investigation (FBI) met with the “individuals representing the sites from the State of Maryland and Commonwealth of Virginia” to discuss the plan for selecting a new Federal Bureau of Investigation Headquarters Suburban Facility. In accordance with the Post-Consultation Process Plan (“PCPP), the Public Buildings Service (PBS) developed a list of key topics stemming from those prior discussions with Virginia and Maryland. As further set forth in the PCPP, the current document represents the internal deliberations of the internal team with regards to whether to make changes to Criteria #4, Promoting Sustainable Siting and Advancing Equity.

For the reasons set forth below, the recommendation is that the Site Selection Plan be updated, if at all, in accordance with Options 2, 4, and 6.

SECTION I: SUMMARY OF OPTIONS CONSIDERED

- **Option 1:** This recommendation does not make any changes to Criteria #4, as it is currently reflected in the Site Selection Plan.
- **Option 2:** This recommendation would add Executive Order 14091, *Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government* (Feb. 16, 2023), as part of Criteria #4, Promoting Sustainable Siting and Advancing Equity.¹
- **Option 3:** Under this option, Criteria #4, Promoting Sustainable Siting and Advancing Equity, would be revised to clearly distinguish between diversity and equity.
- **Option 4:** The current Site Selection Plan contains five evaluation factors. For Criteria 1-3 and 5, the evaluators are instructed to evaluate each site against one another and then rank each site 1, 2, and 3. In contrast, for Criteria #4, Promoting Sustainable Siting and Advancing Equity, the evaluators are instructed to compare each site to Executive Order

¹ Note: This option does not address whether to change the weighting for Criteria #4, which is currently 15%.

13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (Jan. 20, 2021). This recommendation would alter the scoring methodology to instruct the evaluators to compare each site against one another (as opposed to the Executive Order) and rank them 1, 2, or 3. In other words, this change would make Criteria #4 consistent with the other evaluation criteria, as currently expressed in the Site Selection Plan.

- **Option 5:** Under the current Site Selection Plan, Criteria #4 is evaluated against a predefined standard: Executive Order 13985. Choosing this recommendation would change the evaluation method for ALL of the other criteria (1-3 and 5) to effectively match Criteria #4. Thus, Criteria 1-3, and 5 would no longer be compared against one another and ranked accordingly, but would instead be compared against a predefined standard and ranked according to its ability to meet the standard. Here, the standard would be changed to evaluate each factor relative to which one is most advantageous to the Government in terms of meeting the factor's stated objectives.
- **Option 6:** This recommendation is the same as Option 4, but would also change the scoring methodology for ALL criteria to allow the evaluators to assign any color combination to the sites for any given criteria. Currently, the Site Selection Plan states that, *"The panel must select at least one site as being most advantageous; meaning that at least one site must have an overall rating of Blue for Criteria 1, 2, 3 & 5. If two sites are assigned a rating of Blue (whether individually or by consensus), the third site must be assigned a rating of Yellow (rather than Green)."* Choosing this recommendation would allow, for instance, the panel to assign three blues; two blues and one green; or two greens and one yellow. (This removes the so-called Olympic scoring system.)

SECTION II: SUMMARY OF DECISIONS

First, the recommendation is that **GSA will use the same methodology for all of the evaluation criteria instead of having a separate scoring methodology for Criteria #4**, Promoting Sustainable Siting and Advancing Equity. This brings alignment to all of the evaluation criteria and provides additional clarity to the evaluation panel and interested parties. As part of its deliberations, the internal team discussed the intent behind the original scoring methodology. Namely, GSA initially believed that, unlike the other criteria, Criteria #4 provided a standard upon which each site could be evaluated. Meaning, instead of evaluating each site against one another, the panelists would be instructed to evaluate each site against the Executive Order. Thus, the Executive Order set the standard and each site would be evaluated on how it measured up to the standard (rather than one another). In doing so, picking any one the sites could, theoretically, equally position the Government to achieve the policy aims behind the Executive Order. However, in discussing whether to change the methodology and considering the input from the

Confidential, Precisional & Deliberative

respective jurisdictions, the internal team understood the confusion caused by having a different scoring methodology for only one of the five factors. Accordingly, the recommendation is that GSA will revise the scoring methodology in an effort to make it simpler and easier to understand.

Second, the recommendation is that **GSA will eliminate the scoring method where if two sites are allocated a Blue rating (first place), then the third site must be allocated a Yellow (third place)**. The internal team discussed how making this change recognizes that multiple sites might be equally advantageous to the Government and will afford the site selection panel members with greater flexibility so that small differences do not get magnified but that significant differences do not get muted. Additionally, the internal team recognized, based on input from PBS's site selection experts, that eliminating this mandatory third place allocation would be more in keeping with the way in which GSA typically handles its site selection process, which was an important principle in determining whether or not to make changes to the previous plan. As part of its deliberations, the internal team discussed the intent behind the original scoring methodology, which was based on the "Olympic" scoring model. If two athletes tie for first place and are awarded a gold medal, the next closest athlete is awarded a bronze medal and not a silver medal. The rationale being that the third person did not place second; rather, that person placed third. The internal team discussed the benefits of keeping the "Olympic" scoring system versus allowing the selection panel to make the decision as to the ultimate score/color for each criteria.

Third, recommendation is that **GSA will add Executive Order 14091**, *Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government* (Feb. 16, 2023), as part of Criteria #4, Promoting Sustainable Siting and Advancing Equity. To the internal team, the main reason for adding Executive Order 14091 is that the President issued this Order after GSA finalized and released the Site Selection Plan. The internal team discussed how adding Executive Order 14091 brings the Site Selection Plan into better alignment with the directions and instructions provided by the President. The internal team did not deliberate too much on this point and afforded considerable weight to the instructions issued by the President.

Fourth, the recommendation is that **GSA will not revise Criteria #4, Promoting Sustainable Siting and Advancing Equity, to clearly distinguish between diversity and equity**. Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (Jan. 20, 2021), already contains definitions for key terms, including "equity" and "underserved communities." As part of its deliberations, the internal team reviewed and discussed the language in the Executive Order. The team noted that the executive order itself does not make any distinction between the terms equity and diversity. The team was concerned about adding definitions or distinctions that did not already exist in the Executive Order itself. The team ultimately agreed that it should not attempt to add language or definitions to the executive order. Further, the internal team placed weight on the fact that the evaluation panel

Confidential, Precisional & Deliberative

(and selection official) will have the services of an internal technical team, including subject matter experts and attorneys to assist with any questions about the executive orders and how to evaluate this factor. The internal team was comfortable with the general premise that the best source of what the executive order means is the executive order itself.

**U.S. General Services Administration
Federal Bureau of Investigation
Suburban Headquarters
Criteria #1, FBI Mission**

Purpose

As instructed by Congress in the Fiscal Year 2023 Consolidated Appropriations Act (the “FY23 Act”), representatives from the General Services Administration (GSA) and the Federal Bureau of Investigation (FBI) met with the “individuals representing the sites from the State of Maryland and Commonwealth of Virginia” to discuss the plan for selecting a new Federal Bureau of Investigation Headquarters Suburban Facility. In accordance with the Post-Consultation Process Plan (“PCPP”), the Public Buildings Service (PBS) developed a list of key topics stemming from those prior discussions with Virginia and Maryland. As further set forth in the PCPP, the current document represents the internal deliberations of the internal team with regards to whether to make changes to Criteria #1, FBI Mission Requirement.

For the reasons set forth below, the recommendation is that the Site Selection Plan will be updated, if at all, in accordance with Options 1 and 10.

SECTION I: SUMMARY OF OPTIONS CONSIDERED

- **Option 1:** Keep the existing factors for Criteria #1 (FBI Mission Requirement).
- **Option 2:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to consider the impact on, and proximity to, the current and future FBI workforce, including: (i) proximity to trained workforce of cybersecurity and law enforcement personnel and (ii) the strength of cybersecurity talent and training in the area (universities, etc.).
- **Option 3:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to consider the benefits of the surrounding community, including amenities.
- **Option 4:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to consider the benefits of proximity to other national security entities, Intelligence Community (IC) components, and the collection of data centers nearby.
- **Option 5:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to eliminate the proximity to Quantico (and other non-consolidating assets).

- **Option 6:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to eliminate specific mileage and instead rely on historical reference to “reasonable distance.”
- **Option 7:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to include proximity to other assets that FBI employees would interact with on a frequent basis (e.g., courthouses, federal buildings, etc.).
- **Option 8:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to consider how other agencies address training facilities in making location decisions (examples of agencies that have training facilities that are quite remote, i.e., CIA and TSA).
- **Option 9:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to account for whether or how proximity was already addressed as part of the original Request for Expressions of Interest.
- **Option 10:** Change the existing factors for Criteria #1 (FBI Mission Requirement) to add proximity to the White House and the U.S. Capitol.

SECTION II: SUMMARY OF DECISION

Before addressing each of the options, the internal team discussed how the title of Criteria #1, FBI Mission Requirement, has caused some unnecessary confusion. Upon further reflection, the internal team believes that updating the title of Criteria #1 to “FBI Proximity to Mission-Related Locations” better matches the original intent behind the criteria, which is focused on how the lack of certain organizational adjacencies may negatively impact the FBI’s mission. As a corollary, the internal team also discussed changing the title in the Site Selection Plan from “Proximity of the Site to the **FBI Academy** Quantico” to “Proximity of the Site to **FBI Programs** at Quantico” also better reflects the original intent of Criteria #1. As discussed in more detail in Option 5, below, the internal team discussed how the FBI campus in Quantico is home to more than just the FBI Academy; it is also home to the Laboratory Division and key assets of the Operational Technology Division and the Critical Incident Response Group, to name a few.

Option 1: Keep the Existing Factors for Criteria #1 (FBI Mission Requirement).

This option is recommended with limited changes as noted in Option 10. The internal team discussed the idea that “Proximity to Quantico” was added to the new criteria without sufficient justification. As part of its deliberations, the internal team reviewed and discussed a memorandum prepared by the FBI, which sets forth a number of reasons in support of adopting this option. In particular, as noted in the FBI’s supporting documentation, the 2011 GSA “Report of Building Project Survey, Federal Bureau of Investigation Headquarters Consolidation” highlighted the value of proximity, stating, “The preferred location will be within a reasonable distance of the White House, the U.S. Capitol, and Quantico with proximity to both a Metrorail station and the Beltway.” The internal team primarily focused its deliberations on whether Quantico was, indeed, a new factor or whether it was a long-standing important element for the FBI. Further, the internal team discussed whether the FBI had articulated an operational nexus between the new FBI HQ site and the many mission critical and important programs housed on the Quantico campus. While the internal team ultimately agreed that such a nexus is rational, the internal team did have concerns with the weight allocated to this particular criteria relative to other criteria; however, weighting is a separate key topic. Because of the importance of proximity to Quantico as expressed by the FBI, and given that proximity to Quantico has been identified as a key component of this project for many years, the recommendation is that this criteria not be changed except for the titles as set forth above and in accordance with Option 10, below.

Option 2: Change the existing factors for Criteria #1 (FBI Mission Requirement) to consider the impact on, and proximity to, the current FBI workforce, including: (i) proximity to trained workforce of cybersecurity and law enforcement personnel and (ii) the strength of cybersecurity talent and training in the area (universities, etc.).

While attracting top talent is a critical priority to the FBI, **this option is not recommended.** The internal team recognized and discussed how the FBI’s people are its greatest asset as it fulfills critical national security and law enforcement functions. Based on information reviewed and discussions with the FBI, the internal team understands the FBI takes a nationwide approach (as opposed to a regional approach) in its hiring strategy, seeking a diverse candidate pool of applicants. Based on numbers provided by the FBI, and reviewed by the internal team, each year, the FBI establishes clear hiring goals. For Fiscal Year 2023, the goal is to hire approximately 3,000 new employees while: (1) increasing applicant diversity, (2) increasing the talent pipeline for cyber and technology positions, and (3) increasing the number of competitive special agent applicants. To meet these hiring goals, the FBI relies on field recruiters located in its 56 field offices around the country to engage with potential applicants across the many diverse communities where the FBI serves. The FBI uses online recruiting tools and sets up strategic engagement events to tell the FBI story and encourages potential applicants to apply for various special agent, intelligence analyst, and professional staff positions.

Regarding geographic location, the FBI serves in hundreds of communities across the country, and FBI employees in the field have the opportunity to serve in multiple locations during their career. In short, the FBI recruits from a national pool of applicants, and not just limited to people living in the District of Columbia, Maryland, and Virginia (the “DMV”) or from universities and colleges only located in the DMV.

Moreover, after reviewing past site selection processes, the internal team did not find any indication GSA has used “access to talent” as an evaluation criteria in prior site selections. The internal team discussed the likelihood of whether such a factor would have much, if any, relevance to the FBI HQ site selection process given the highly qualified nature of the workforce in the DMV, as well as the FBI’s nationwide hiring focus. The internal team discussed how this may be a different analysis if the sites were located in vastly different areas of the country. The internal team struggled with how GSA would develop and rate the quality of the higher education systems in Virginia and Maryland and recognized both as having excellent systems.

Option 3: Change the existing factors for Criteria #1 (FBI Mission Requirement) to consider the benefits of the surrounding community, including amenities.

This option will not be recommended. While the internal team discussed the benefits of a site with proximity to wide-ranging amenities, the team did not believe that the evaluation of such amenities should take priority over, or dilute the importance of, the other criteria and subcriteria already addressed in the Site Selection Plan. The internal team discussed the general expectation that the suburban campus will be designed to include many of the necessary amenities for FBI personnel at any of the selected sites, such as an on-site cafeteria and suitable fitness areas. Furthermore, the internal team viewed all three of the proposed sites as being located in urban areas with many existing amenities. Much like with Option 2, the internal team noted that the choice here is not between vastly different sites, such as one that is in a rural, undeveloped area and one that is in an urban setting. Lastly, even if off-site amenities do not currently exist, the internal team discussed how it is reasonable to assume that the private or public sectors will build such amenities to accommodate the new FBI HQ facility and its employees.

Option 4: Change the existing factors for Criteria #1 (FBI Mission Requirement) to consider the benefits of proximity to other national security entities, Intelligence Community (IC) components, and the collection of data centers nearby.

This option will not be recommended. The internal team understood from the FBI that their partners are wide-ranging in both mission focus and geographic location. FBI indicated that their programs have different sets of critical partners and that FBI HQ personnel currently travel to many locations across the NCR for mission critical

collaboration with partners. The internal team discussed how it would be difficult to meaningfully assess site proximity to all (or even a select subset) of FBI HQ partners, and the FBI indicated that many of their IC partners are spread throughout the DMV. Therefore, the internal team noted that the proximity of each proposed site to the headquarters of the DOJ was included as an FBI mission sub-criterion to emphasize DOJ's outsized role as a major FBI collaborator.

Option 5: Change the existing factors for Criteria #1 (FBI Mission Requirement) to eliminate the proximity to Quantico (and other non-consolidating assets).

This option will not be recommended for many of the reasons already discussed in Option 1. During its deliberations, the internal team once again reviewed the document submitted by the FBI as background information to support the FBI's need for maintaining proximity to Quantico and the mission critical programs housed at that location. Primarily, the internal team discussed how the FBI has advocated that its new HQ facility be in close proximity to Quantico since at least 2011. For these reasons, this option is not being adopted.

Option 6: Change the existing factors for Criteria #1 (FBI Mission Requirement) to eliminate specific mileage and instead rely on historical reference to "reasonable distance."

This option will not be recommended. As discussed further herein, all three of the originally selected sites meet the broader requirements set out in the 2013 Request for Expressions of Interest and, as instructed by Congress, the goal now is to select the site that is most advantageous to the Government from those three. The internal team discussed how the current process needs to require further evaluation and differentiation between the sites, which can be accomplished by including more specific mileage comparisons. The internal team considered the possibility of using a different measurement methodology (time to travel on public transit, for instance), but ultimately determined that mileage would be a more consistent, fair, and transparent measure, consistent with the principles laid out for the process.

Option 7: Change the existing factors for Criteria #1 (FBI Mission Requirement) to include proximity to other assets that FBI employees would interact with on a frequent basis (e.g., courthouses, federal buildings, etc.).

This option will not be recommended for many of the reasons discussed in Option 4 above. Additionally, while worth considering other components that might be appropriate to incorporate to evaluate sites, the internal team believed that the 2011 Building Project Survey Report provided an appropriate grounding for the specific named partners and assets that should be included in the process.

Option 8: Change the existing factors for Criteria #1 (FBI Mission Requirement) to consider how other agencies address training facilities in making location decisions (examples of agencies that have training facilities that are quite remote, i.e., CIA and TSA).

This option will not be recommended mainly because the internal team believes that what other agencies might consider to be important to their particular mission requirements is somewhat irrelevant when determining the FBI's mission-related requirements for its own headquarters facility. Furthermore, the internal team understood from the FBI that the functions at Quantico included more than just training facilities. The internal team discussed that the main issue here (which is addressed in Option 4 above) is whether proximity to Quantico is an appropriate component in helping to determine which of the three sites is the most advantageous to the Government. Given the long history of proximity to Quantico being a factor in this project, the internal team believed it was an appropriate element to include in determining which of the three sites is most advantageous to the government.

Option 9: Change the existing factors for Criteria #1 (FBI Mission Requirement) to account for whether or how proximity was already addressed as part of the original Request for Expressions of Interest.

Except for changing some of the wording to more accurately convey the intent of Criteria #1 (see above), this option will not be recommended. As to how proximity was already addressed in the original Request for Expressions of Interest (REOI), the internal team reviewed the prior REOI and discussed how all three of the originally selected sites meet the broader requirements set out in that document. The internal team also discussed how the purpose of the REOI was not to select a preferred site, but rather several sites that would be part of the developer selection process. The internal team noted that the proximity criteria contained within the original REOI did not have enough depth nor detail to create a meaningful differentiation between these three sites, while acknowledging that it was very helpful in developing the current short list. The internal team discussed how the goal now is to select the one site that is most advantageous to the Government, and this requires further evaluation and more specific differentiation than what was considered as part of the REOI. As discussed elsewhere, the internal team took note that collaboration and proximity have been a long-standing key element of the FBI HQ project and the current mission criteria reflect this priority. In addition, the internal team discussed how other factors included in the current Site Selection Plan "drill down" on areas of consideration taken into account with developing the initial "short list" of sites. For instance, the REOI took access to transportation into account and transportation access is also one of the main criteria in the Site Selection Plan. The internal team discussed how simply taking a certain factor into consideration as part of the REOI does

not preclude the Government from now taking a “deeper dive” into that factor as part of the final selection decision, although it is important to consider any factors that may have already been adequately addressed. The internal team also acknowledged that the presence of certain requirements in the REOI could be a useful factor to consider when deciding on the weighting of the current criteria.

Option 10: Change the existing factors for Criteria #1 (FBI Mission Requirement) to add proximity to the White House and the U.S. Capitol.

As previously noted, the internal team discussed how the importance of proximity has remained a key element of the new FBI HQ project since its inception, as reflected in the longstanding plan to co-locate many separate FBI facilities and leases into the new facility to enhance collaboration. The internal team reviewed the 2011 GSA “Report of Building Project Survey, Federal Bureau of Investigation Headquarters Consolidation,” which highlighted the value of proximity by stating, “The preferred location will be within a reasonable distance of the White House, the U.S. Capitol, and Quantico with proximity to both a Metrorail station and the Beltway.” In reviewing the current site selection plan, the internal team discussed that, while it includes proximity to Quantico, it does not include proximity to the White House and the U.S. Capitol. The internal team discussed how it could be viewed as inconsistent to include Quantico but not the White House and the U.S. Capitol in the proximity analysis. Accordingly, **the recommendation is that the Site Selection Plan be updated to add proximity to the White House and the U.S. Capitol as part of Criteria #1.**

**U.S. General Services Administration
Federal Bureau of Investigation
Suburban Headquarters
Post-Consultation Process
Criteria #3, Site Development and Flexibility**

Purpose

As instructed by Congress in the Fiscal Year 2023 Consolidated Appropriations Act (the “FY23 Act”), representatives from the General Services Administration (GSA) and the Federal Bureau of Investigation (FBI) met with the “individuals representing the sites from the State of Maryland and Commonwealth of Virginia” to discuss the plan for selecting a new Federal Bureau of Investigation Headquarters Suburban Facility. In accordance with the Post-Consultation Process Plan (“PCPP), the Public Buildings Service (PBS) developed a list of key topics stemming from those prior discussions with Virginia and Maryland. As further set forth in the PCPP, the current document represents the internal deliberations of the internal team with regards to whether changes should be made to Criteria #3, Site Development and Flexibility.

A. The recommendation is that the Site Selection Plan not be changed to consider the ability and past experience of the community in delivering major infrastructure projects.

The internal team discussed how the data required to consider such factors is highly speculative, at best, and, in the internal team’s opinion, both jurisdictions have presented high-quality materials and funding packages to support the project, regardless of any previous project outcomes. Additionally, the internal team recognizes that both jurisdictions have demonstrated unwavering support from the highest levels of local, state, and Federal Governments. The internal team has a high-degree of confidence in either Maryland or Virginia to deliver on their end of the project, such as improving roads, utility infrastructure, or pedestrian access. The internal team discussed how this could be a different analysis in a situation where GSA is dealing with a site in a county, city, or state with a history of fiscal limitations or related concerns. However, to the internal team, it is public knowledge that both Virginia and Maryland have exemplary track records of developing projects for public and private entities and attracting private investment or securing public investment for large-scale projects.

Further, to the internal team, adopting this approach could cause considerable delays to the site selection process in order to obtain additional information from each jurisdiction about their respective ability and past performance with delivering major infrastructure projects. In addition, the internal team discussed how there would be additional back-end delays by burdening the

evaluation panel with additional information to consider and evaluate. The internal team does not believe that obtaining and evaluating such information will be particularly useful with helping to determine which site is the most advantageous to the Government.

B. Subcriteria 3.b: Earliest Time the Government could Commence Construction Activities

As part of its discussions, the internal team discussed whether to make any changes to Subcriteria 3.b or simply leave it as worded in the original Site Selection Plan. As discussed in a different Key Topic, the internal recommends adding a “Costs of Differing Construction Start Dates” to Criteria #5, Cost. In particular, the internal team discussed whether the existing language in the current Site Selection Plan would allow the selection panel to take “risk” into consideration. Some of the internal team members believed that it already did so; however, others felt that, in the interests of transparency, the plan should be updated to specifically call out “risk.” For the reasons discussed herein, the internal team was of the opinion to keep Subcriteria 3.b and revise the language to make it clear that the selection panel would be evaluating “risk.”

The internal team discussed whether the information provided to the panelists should include relevant data and other materials necessary to evaluate the schedule risks of selecting a particular site, including information submitted by each respective jurisdiction as well as critical path scheduling analysis. The particular schedule risk here would solely focus on known risks associated with a site that *could* potentially cause a delay in the estimated construction start date. The internal team spent a great deal of time discussing the merits of whether to allow the panel to decide whether any one site poses more of a risk, from the perspective of a delayed construction start, than another site. The internal team believed that the panelists should analyze the risks associated with each site and then compare, contrast, and weigh those risks against one another to decide which site represents the lowest degree of risk of a delayed construction start date to the Government.

The internal team discussed how, at this stage of of the FBI HQ program, the following schedule activities have the same duration for all three sites and any variation in duration would be the same for each site:

- Completing the process required by the National Environmental Policy Act;
- Procuring the services of an architectural firm to design the facility;
- The time required for the selected architectural firm to complete the design;
- Procuring the services of a general contractor to build the facility;
- The actual construction of the facility; or
- Moving the FBI from the Hoover Building to the new facility;

Confidential, Precisional & Deliberative

With the above in mind, the recommendation is that the language in the Site Selection Plan be modified to make it clear that the selection panel would analyze the degree of schedule risk of each site from the perspective of which site represents the lowest degree of risk of a delayed construction start date to the Government.

**U.S. General Services Administration
Federal Bureau of Investigation
Suburban Headquarters
Post-Consultation Process
Changes to the Existing Weighting Structure**

Purpose

As instructed by Congress in the Fiscal Year 2023 Consolidated Appropriations Act (the “FY23 Act”), representatives from the General Services Administration (GSA) and the Federal Bureau of Investigation (FBI) met with the “individuals representing the sites from the State of Maryland and Commonwealth of Virginia” to discuss the plan for selecting a new Federal Bureau of Investigation Headquarters Suburban Facility. In accordance with the Post-Consultation Process Plan (“PCPP), the Public Buildings Service (PBS) developed a list of key topics stemming from those prior discussions with Virginia and Maryland. As further set forth in the PCPP, the current document represents the internal deliberations of the internal team with regards to whether to change the existing weighting for the criteria.

It is recommended that the weighting allocation applied in the current Site Selection Plan be changed, as further discussed below, including the recommended change to Option A, a sub-element of Option 5.

SECTION I: SUMMARY OF OPTIONS CONSIDERED

- **Option 1:** Change the Existing Weights to Remove the Percentage Weights and Instead List the Criteria in Descending Order of Importance
- **Option 2:** Change the Existing Weighting to make all Criteria Equal Weight
- **Option 3:** Keep the Site Selection Plan Weighting Unchanged (i.e., keep current numerical weight distribution and weighing system)
- **Option 4:** Remove Weighting and Allow Full Discretion for the Panel and Site Selection Authority to Determine the Importance of Each Criteria
- **Option 5:** Change the Existing Weighting Distribution to account for Input from the Jurisdictions or other Additional Circumstances since Issuance of the Site Selection Plan that may Warrant Altering the Weights

SECTION II: CHANGES TO THE WEIGHTS

The internal team spent a considerable amount of time discussing that GSA does not typically provide weighted percentages to its criteria when selecting a site. Rather, the internal team recognized and discussed how GSA tends to leave the discretion to the site selection authority to select the site that is the most advantageous to the United States, all factors considered. However, the internal team also discussed how GSA consciously chose to deviate from its usual process with regards to the selection of a site for the FBI HQ to provide as fair and transparent a process as possible, and applied weights to the criteria so that our relevant stakeholders, Congress, the media, and the public would have greater visibility into their importance. In reviewing the question of whether to change the weighting allocations, the internal team discussed the importance of respecting the overarching desire to maximize the fairness and transparency of the process.

In analyzing whether to change the weights, the internal team spent considerable time, effort, and attention discussing the intent and rationale behind the original weights as well as giving thoughtful consideration to how the weights could be changed. On this latter point, the internal team developed several weighting options for consideration—at one point numbering approximately eight possibilities. The internal team also sought the views of the FBI during the process. The internal team ultimately landed on two final options to present to the FBI for feedback. The internal team noted that while the FBI is considered a valued partner in the process, it is, ultimately, up to GSA to decide whether, and how, to change the weighting allocations.

In looking at the weights, the internal team discussed its commitment to meaningfully consider the feedback from each delegation, as instructed by Congress. The internal team reaffirmed its commitment to evaluate the information and to consider any changes based on the principles of the process. That means any adjustments to the weights would only be made based on:

- 1) Changes that the internal team believes will result in selecting a site that is best for the FBI and the American people over the long term;
- 2) Changes that the internal team believes are grounded in our best practices in site selection, while incorporating new directives on sustainability and equity; and
- 3) Changes that the internal team believes support a more fair and transparent process.

Option A

Criteria	Proposed Percentage	Change from Current
FBI Proximity to Key	25%	-10%

Confidential, Precisional & Deliberative

Mission Enablers		
Transportation Access	20%	-5%
Site Development Flexibility and Schedule Risk	15%	unchanged
Promoting Sustainable Siting and Advancing Equity	20%	+5%
Cost of Site Acquisition, Preparation, Off-site Improvements, and Differing Construction Start Dates	20%	+10%

The internal team discussed how these percentages maximize the value to the taxpayer and also matches that GSA established in 2014 (as part of doing a comprehensive review of sites for the project in the DMV area) that all three sites meet the FBI’s baseline mission needs. The internal team discussed how this weighting allocation reflects the concerns it heard in the consultations; concerns the internal team regarded as legitimate. In particular, the internal team discussed how, upon further reflection, they were not convinced that relative to the other criteria, that proximity to other FBI mission sites should be the overwhelming factor in selecting the FBI HQ facility. The internal team discussed whether the proximity factor should be 30% or 25%. After considerable discussion, the internal team believed that 25% was the better weighting. It still allowed proximity to be the most highly weighted criteria, but the differences between the weighting would be significantly reduced. Prior to the changes, for instance, proximity was 3.5 times greater than cost. The internal team struggled with these “peaks” and “valleys” and whether any one criteria should be more than three times greater than any of the other criteria. After considerable discussion, the internal team decided that the answer to this question was no, but, in developing Option A, the internal team accepted the FBI’s input that proximity should remain an important, if not the most important, criteria.

Regarding the allocation to the equity and sustainability criteria, the internal team placed considerable weight that since the beginning of the current Administration, the President has issued two Executive Orders on equity, including one in February of 2023 that was issued after the September 2022 Site Selection Plan. The internal team debated the importance of increasing the weight to better reflect the Administration’s priorities and decided that, under any option, the recommendation would be that the equity weighting should be 20%.

Regarding the weight allocated to cost, as noted previously, the internal team discussed how the original criteria weighed proximity 3.5 times greater than cost and discussed its concerns with that disparity. In viewing the other weights, the internal team spent considerable time discussing

Confidential, Precisional & Deliberative

the relative weight of cost versus the other criteria. The internal team discussed their duty to always look after the best interests of the American taxpayer from a fiscal perspective. The internal team was concerned that the original Site Selection Plan weighted cost much lower when compared to the other criteria. The internal team discussed its desire to place cost on par with two other criteria, and only slightly below the number one weighted criteria.

Option B

Criteria	Proposed Percentage	Change from Current
FBI Proximity to Key Mission Enablers	25%	-10%
Transportation Access	25%	unchanged
Site Development Flexibility and Schedule Risk	10%	-5%
Promoting Sustainable Siting and Advancing Equity	20%	+5%
Cost of Site Acquisition, Preparation, Off-site Improvements, and Differing Construction Start Dates	20%	+10%

This proposal contains many of the same sorts of deliberations as described above and, therefore, will not be repeated here. For Option B, the internal team took into consideration the FBI's desire that the top two criteria (proximity and transportation access) should be at least 50% of the overall evaluation. With 50% of the evaluation devoted to the top two criteria, and, as expressed above, GSA's desire for cost to account for 20%, and GSA and FBI's desire for equity to account for 20%, that only left 10% for site flexibility and schedule risk. The internal team discussed how only allocating 10% to site flexibility and schedule risk could seem too low and dilute the overall criteria. The internal team discussed combining the notions of risk and cost together in a single criteria because they are somewhat intertwined (e.g., a schedule risk could materialize into a cost risk). The internal team also discussed how merging risk into cost also helps to further explain the increase in cost from 10% to 20%. Lastly, the internal team discussed how all three sites are viable options for the location of the FBI HQ – meaning that all three sites work from the standpoint that each has sufficient acreage to support the FBI's program and meets Level V Interagency Security Committee requirements. Thus, the internal team believed that reducing Site Development and Flexibility by 5% seemed reasonable based, in part, on that premise, which would include shifting Subcriteria 3.b to Criteria 5 and modifying it.

The internal team discussed both Option A and Option B with the FBI. The internal team expressed its preference for Option A, but that Option B would be an acceptable option as well. The FBI informed the internal team that it preferred Option A, between Option A and Option B.

SECTION II: OTHER OPTIONS DISCUSSED

Regarding Option 1, the internal team discussed how this approach actually is more in line with the usual site selection process. But, the internal team also discussed how this approach fails to provide enough visibility into the process. The internal team also debated how it would also seem to interject greater subjectivity and less transparency into the process than using a weighted approach. For instance, indicating that Criteria #1, FBI Mission, is more important than Criteria #2, Transportation Access, begs the question, “How much more important?” The internal team discussed how providing greater clarity on the front-end of the process regarding the importance of each factor would hopefully provide greater clarity and understanding about the government’s deliberative process for making a decision that will be very important for each community.

Regarding Option 2, the internal team discussed how this option would reduce the “peaks” and “valleys” in the weighting (referred to above), but also that it would not provide helpful signals to the panel about which criteria were most important. Ultimately, the internal team determined that it would be appropriate to keep the FBI’s stated priorities, as reflected in Criteria 1, as the highest weighted criteria, while rebalancing in the way described in either Option A or Option B.

Regarding Option 3, the internal team discussed how keeping the weights unchanged presents numerous advantages. Central among those being that the existing weights (1) were previously agreed upon between GSA and the FBI and represented the parties’ collective agreement as to how the weights should be allocated; and (2) were developed without any outside, external influence. However, upon further reflection, and for reasons discussed further herein, the internal team believes that the initial weights should be changed.

Regarding Option 4, the internal team discussed how it suffers from many of the same infirmities as Option 1. The internal team discussed how providing greater transparency into relative weights that the selection panel (and ultimately the selection official) will apply is an important part of this particular selection process. The internal team discussed the merits of allowing discretion and flexibility, to the internal team, removing all of the weights would simply leave too much discretion to the panel and selection official and effectively remove all transparency from the process. The internal team discussed how adopting this approach would vest the site selection plan and selection authority with sole decision-making authority to decide which elements and factors should be the most important, in their own estimation. The internal team discussed whether, for an important site selection process like this one, GSA leadership

Confidential, Precisional & Deliberative

should provide clearer up-front parameters in order to provide greater clarity and instructions to the panel and selection official as to which factors are, in fact, more important than the others.

**U.S. General Services Administration
Federal Bureau of Investigation
Suburban Headquarters
Post-Consultation Process
Consistency with Congressional Intent**

Purpose

As instructed by Congress in the Fiscal Year 2023 Consolidated Appropriations Act (the “FY23 Act”), representatives from the General Services Administration (GSA) and the Federal Bureau of Investigation (FBI) met with the “individuals representing the sites from the State of Maryland and Commonwealth of Virginia” to discuss the plan for selecting a new Federal Bureau of Investigation Headquarters Suburban Facility. In accordance with the Post-Consultation Process Plan (“PCPP), the Public Buildings Service (PBS) developed a list of key topics stemming from those prior discussions with Virginia and Maryland. As further set forth in the PCPP, the current document represents the internal deliberations of the internal team with regards to whether the Site Selection Plan is consistent with Congressional intent.

SECTION I: SUMMARY OF OPTIONS CONSIDERED

- **Option 1:** The Existing Site Selection Plan is consistent with Congressional intent, and May **not** be Changed
- **Option 2:** The Existing Site Plan is Consistent with Congressional Intent and also **may** **be** Changed in GSA’s Discretion
- **Option 3:** The Existing Site Plan is Inconsistent with Congressional Intent and Must Be Changed
- **Option 4:** The Existing Site Plan is Inconsistent with Congressional Intent but GSA has the Discretion whether to Change the Plan or Not

SECTION II: SUMMARY OF OPTIONS

The instruction to consider Congressional intent is in the context of the FY23 Act.¹ As set forth below, in determining Congressional intent, the FY23 Act specifically instructed GSA to consider two documents:

¹ See Pub. L. No. 117-328 (Dec. 29, 2022).

Confidential, Precisional & Deliberative

1. The resolution of the Committee on Environment and Public Works of the Senate (112th Congress), adopted December 8, 2011 (the “2011 EPW Resolution”); and
2. The Fiscal Year 2017 PNCR–FBI–NCR17 Prospectus.

The 2011 EPW Resolution attached an August 26, 2011, report submitted by the FBI and expressly incorporated into the document as “part of this Resolution.” Therefore, as instructed by Congress in the FY23 Act, the 2011 FBI Report is instructive in analyzing Congressional intent.

The following table summarizes whether each of the four criteria (and sub-criteria) contained in the GSA’s Site Selection Criteria for the FBI Headquarters are discussed, referenced, suggested, or otherwise alluded to in one of three documents: (1) the 2011 EPW Resolution; (2) the 2011 FBI Report; or (3) the 2017 Prospectus submission. As noted in the table below, the only criteria/sub-criteria that are not discussed, referenced, suggested, or otherwise alluded to in one of three documents are: (1) the proximity to a commercial airport; and (2) equity.

Criteria	2011 EPW Resolution	2011 FBI Report	2017 Prospectus
Criteria #1			
1.a Proximity to Quantico		Yes	
1.b. Proximity to Operationally Significant FBI Assets		Yes	
1.c. Proximity to DOJ		Yes	
Criteria #2			
2.a. Metro Rail	Yes	Yes	
2.b. VRE/MARC	Yes	Yes	
2.c. Bus Lines		Yes	
2.d. Commercial Airport			
Criteria #3			
3.a. Site Area & Geometry	Yes	Yes	Yes

3.b. Commencement of Construction		Yes	Yes
Criteria #4			
Sustainability & Equity	Yes (for sustainability)	Yes (for sustainability)	Yes (for sustainability)
Criteria #5			
5.a. Cost to acquire	Yes	Yes	Yes
5.b. Cost to prepare		Yes	

A. Fiscal Year 2023 Consolidated Appropriations Act

The applicable language relating to the FBI site selection process states, in full, as follows:

In considering the September 2022 and amended November 2022 GSA Site Selection Plan for the FBI Suburban Headquarters, not later than 90 days after enactment of this Act, prior to any action by the GSA site selection panel for the new Federal FBI headquarters, the GSA Administrator shall conduct separate and detailed consultations with individuals representing the sites from the State of Maryland and Commonwealth of Virginia to further consider perspectives related to mission requirements, sustainable siting and equity, and evaluate the viability of the GSA's Site Selection Criteria for the FBI Headquarters to ensure it is consistent with Congressional intent as expressed in the resolution of the Committee on Environment and Public Works of the Senate (112th Congress), adopted December 8, 2011 and further described in the General Services Administration Fiscal Year 2017 PNCR-FBI-NCRI7 prospectus. Following those consultations, the Administrator shall proceed with the site selection process.²

B. Documents Specifically Referenced in the FY23 Act

Document #1: The 2011 EPW Resolution

The main elements contained in the 2011 EPW Resolution are noted as follows:

- Administrator authorized to proceed consistent with recommended strategy submitted by FBI on August 26, 2011 and incorporated as part of the resolution
- Approved a private sector lease on Federal land
- To maximum extent feasible, facility located
 - within 2 miles from metro rail

² See https://transportation.house.gov/imo/media/doc/resolution_18_dc_-_fbi_hq_consolidation_fy17.pdf.

Confidential, Precisional & Deliberative

- 2.5 miles from National Capital Region Beltway
- Site not to exceed 55 acres
- Site provide for ISC Level V security
- Not to exceed 2.1M RSF
- Not to include greater than 4,300 parking spaces

Document #1a: The FBI 2011 Report

The 2011 EPW Resolution expressly adopted the FBI 2011 Report. Thus, in understanding Congressional intent, it is also instructive to review the FBI 2011 Report. Like the 2011 EPW Resolution, the 2011 FBI Report recommended proceeding with a private sector lease on federal land. The main contents related to site selection contained in the 2011 FBI Report are as follows:

- Consolidation should be accomplished using private sector lease construction on federal land (p.1)
- Reduces space required by 815,463 RSF, from current 3,029,709 RSF to 2,214,246 RSF (p.2)
- Fully consolidates FBI HQ operations (p.2)
- Provides Level V Interagency Security Committee security standards (p.2)
- Achieves Leadership in Energy and Environmental Design (LEED) GOLD Standard (p.2)
- 4,300 spaces for privately owned vehicles (POV) (p.2)
- Site will be located near a Washington Metropolitan Area Transit Authority Metro station and that large majority of employees will be able to utilize public transportation to access the site (p.2)
- FBI proposes to select a new Headquarters within the National Capital Region (p.3)
- Generally the site must be served by mass transit, have adequate surrounding highway infrastructure, and must be in substantial conformance with local land use plans (p.3)
- The assumed size for this design solution is 45-55 total acres (p.3)
- This size site includes acreage for zoning requirements, security clear zone for a Level V facility, building-to building setback adjacencies as well as the raw acreage requirement for the office building (p.3)
- Recommended strategy is Strategy 4, a public/private partnership that involves private sector lease construction on Federally owned land resulting in eventual Federal ownership (p.6)
- Consolidating dispersed operations into one consolidated facility will benefit FBI through
 - Maintaining proximate location to the White House, U.S. Capitol, Quantico, other government locations, and other FBI locations (p.33)
- No cost land is the preferred approach (p.41); could include land donated to government (p.41); however more analysis would be required to determine whether no cost land would provide greatest value to government (p.41)

Document #2: The Fiscal Year 2017 PNCR–FBI–NCR17 Prospectus

The Fiscal Year 2017 PNCR–FBI–NCR17 Prospectus sought approval for an exchange project, rather than federal construction. There is very little in the Fiscal Year 2017 PNCR–FBI–NCR17 Prospectus regarding the site selection process. The main content of the Fiscal Year 2017 PNCR–FBI–NCR17 Prospectus is as follows:

- Fully consolidated headquarters for the FBI.
- Contemplated conveying title to J. Edgar Hoover Building in exchange for a newly constructed FBI headquarters facility.
- Listed three potential sites for the FBI HQ in Greenbelt, Maryland; Landover, Maryland; and Springfield, Virginia.
- 2.1M RSF
- Facility tailored to fully support FBI’s national security, intelligence and law enforcement missions
- \$759M appropriation request (does not include exchange value of Hoover Building)
- 11,000 personnel
- Open-plan workspace
- Include state-of-the-art IT infrastructure as required by FBI national security mission
- Facility built to ISC Level V
- Parking spaces (6,697 for Greenbelt; 8,155 for Landover; 7,039 for Springfield)
- Facility must be resilient
- Facility must provide FBI ability to adapt to changing conditions
- Designed to achieve LEED Gold
- Minimize impact on environment and utilization of energy

C. Committee Resolutions Approving 2017 Prospectus Submission

The House Committee on Transportation and Infrastructure (“House T&I”) adopted a resolution approving the 2017 prospectus on December 7, 2016, and the Senate Committee on Environment and Public Works (“Senate EPW”) adopted a resolution approving the 2017 prospectus on May 18, 2016.³ The relevant portions of the resolutions adopted by the Committees are summarized below:

<u>Issue</u>	<u>House Resolution</u>	<u>Senate Resolution</u>
Funding	\$834M	\$759M
Square Footage	Maximum 2.1M RSF	Same
2017 Prospectus	Attached and included as part of resolution	Same

³ See *id.*

Full Consolidation	Project results in fully consolidated FBI HQ facility	Same
Transportation	Consider transportation impacts, including NCPC recommendations on parking and proximity to metro rail	Number of parking spaces for privately owned vehicles determined in accordance with ratios developed in coordination with NCPC
Cost	Consider total cost to government for relocations, site preparation, and site acquisition	Omitted

Regarding resolutions adopted pursuant to 40 U.S.C. § 3307, in general, the Attorney General of the United States has affirmatively stated that, “Section 3307(a) does not purport to make those committee resolutions binding upon the actions of the Executive Branch.”⁴ The Attorney General has further expressed constitutional concerns by “giv[ing] binding force to committee resolutions that were never adopted by both Houses of Congress and presented to the President.” The “mere [e]xpressions of committees during the legislative process cannot be equated with statutes enacted by Congress.”⁵ Congress did not adopt or approve the 2017 Prospectus as part of any legislation, and neither did Congress adopt or approve the 2016 House T&I Resolution. Rather, Congress provided specific instructions to the Administrator on the site selection process in the FY23 Act, and the FY23 Act instructed the Administrator to determine Congressional intent by reviewing two documents: (1) the 2011 EPW resolution; and (2) the 2017 Prospectus.⁶ In short, Congress specifically removed any reference to the 2016 House T&I Resolution in determining Congressional intent.

D. Discussions of the Internal Team

Based, in part, on the advice of counsel, the internal team discussed how the intent expressed by Congress is broad, open to reasonable interpretation, and can be satisfied whether or not GSA decides to make changes to the existing Site Selection Plan. The internal team discussed how the original project approved by Congress differs significantly from the current project. The internal team noted that the original project contemplated swapping federally owned land to offset the costs of building a new headquarters. It also contemplated an agreement for a developer to build a facility on government land and lease the facility to the government for a period of years. None of these considerations are part of the current project and, to a certain extent, the current project itself is not consistent with the original Congressional intent (*i.e.*, a public/private partnership that involves the private sector lease construction on Federally owned land resulting in eventual

⁴ *Committee Resolutions Under 40 U.S.C. § 3307(a) and the Availability of Enacted Appropriations* (Jan. 26, 2018).

⁵ *Id.* (internal quotations omitted) (citations omitted).

⁶ *See* Pub. L. No. 117-328 (Dec. 29, 2022).

Federal ownership and conveying title to the J. Edgar Hoover Building in exchange for a newly constructed FBI headquarters facility). In short, in the internal team's view, Congress provided broad indications of its general intent in several non-binding committee resolutions, but otherwise left the site selection decision up to the discretion of the Administrator. The internal team discussed how the only criteria/sub-criteria in the Site Selection Plan that are not discussed, referenced, suggested, or otherwise alluded to in one of three most relevant documents regarding Congressional intent are: (1) the proximity to a commercial airport; and (2) equity. The internal team further discussed how simply because proximity to a commercial airport and equity are not referenced in those three documents, the Administrator may still exercise her discretion to develop the relevant factors to enable the Government to select the most advantageous site.⁷ The internal team believed that Congressional intent was not uniform when it came to the consultation provision, and that therefore it was appropriate to establish a process by which GSA would consider any changes based on whether the agency believed they would be beneficial to the process.

⁷ *See, e.g.*, 40 U.S.C. § 3304(d)(1).