



**SOLICITATION NO: GS-00P-09-BQD-0018**  
**National Broker Contracts Follow On (NBC2)**  
**Lease Acquisition Services**  
**Draft Solicitation Comments and Responses**  
**11 January 2010**

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**NOTE:** Submissions have been edited for formatting purposes. Each question/comment is numbered and is immediately followed by the Government response. Potential offerors are cautioned that proposals should be based upon the requirements as set forth in the final request for proposals (RFP). Questions or comments on this document are to be provided to Ted Mahoney via email at [ted.mahoney@gsa.gov](mailto:ted.mahoney@gsa.gov).

**GS00P09BQD0018- National Broker Contracts  
Draft Solicitation Comments and Responses  
11 January 2010**

**I. List of Companies Providing Comments or Questions (Comment Period 30 November 2009 – 9 December 2009)**

1. AmeriVet Real Estate Services
2. C B Richard Ellis
3. Carmen & Muss, PLLC
4. Carpenter/Robbins Tenant Advisory Services
5. Cresa Partners
6. Cushman & Wakefield
7. The Ezra Company
8. Grubb & Ellis
9. Jones Lang LaSalle Americas
10. Meany & Oliver
11. NAI-Michael
12. Pro Ten Realty Group
13. Richard Bowers & Company
14. Smith Real Estate Services, Incorporated
15. Studley

## II. Questions, Comments and Government Responses by Section

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### GENERAL

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#### Question 1 – General

Out of curiosity, will Section M be forthcoming in draft form?

**Response: No. Sections L&M will be released in the final request for proposals (RFP).**

#### Question 2 – General

Does GSA have an intention of awarding a contract to a firm that has vast experience in the NCR office market (with some, albeit minimal, federal leasing experience) to assist with the expected heavy volume of upcoming expiring leases in the NCR? The Draft Solicitation is clearly written for the incumbents, and possibly 2 to 3 other large, nationwide dual agency firms who might be qualified to bid, per the draft requirements.

**Response: Criteria for selection are not contained in the draft solicitation for industry comment.**

#### Question 4 – General Sub Contracting Plan

We feel that the draft SFO has requirements which severely and unnecessarily limit the Prime Contractors ability to successfully implement a subcontracting plan which would provide the mandated expansion of opportunities to small businesses.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

#### Question 5 – General Sub Contracting Plan

We feel that the sub-contractor plan does not have sufficient monitoring provisions which would insure that the Prime Contractor has actually assigned task orders to their sub-contractors to put into operation the spirit of their Sub-Contracting Plan.

**Response: GSA has considered this and similar comments and has determined to amend the final RFP to add additional monitoring.**

#### Question 13 - Evaluation Factors

Mentor Protégé Incentives: The GSA could be a model facilitator of Federal sub-contractor expansion programs by providing evaluation/economic incentives to the Prime Contractor candidates who incorporate an approved Mentor-Protégé program. We feel that Service Disabled Veteran Owned Businesses should be provided priority for this program for the past performance evaluations indicate that the SDVOSB has been the lagging sector in small business opportunities;

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

#### Question 14- Small Business Plan

We feel that a monthly sub-contractor performance report should be a part of the SFO which would also incorporate the disclosure of actual task order assignments to sub-contractors.

**Response: GSA has considered this and similar comments and has determined not to require monthly reports. The final RFP will be amended to add quarterly reporting including additional specific information on subcontracting activities.**

**Question 16 - Size Standard**

The draft SFO has specified a NAICS Code of 531210 Offices of Real Estate Agents and Brokers with an SBA limitation of \$2,000,000.00. The dollar limitation for the sub-contractor is too low for quality businesses to be considered and engaged.

Post award services could be conducted by contracting firms which, by virtue of the \$2,000,000 limitation, would be ineligible for this sub-contracting opportunity.

**Response: Size Standards are not set by GSA. The appropriate NAICS for this action is 531210 and SBA has set the Size Standard at \$2 Million for this code.**

**Question 20 - General**

We have knowledge that more than one qualified SDVOSB has interest in the solicitation so the Contracting Officer could appropriately provide a partial set-aside under FAR 19.502 and under 13CFR125, and PL106-50:

**Response: The Contracting Officer has determined not to set aside this procurement.**

**Question 21 – General**

Specific geographic region carve-outs to allow Small Businesses to qualify for a Prime Contractor Award without the requirement of that small business firm to have a national footprint. A segmented region would also comply with FAR 19.502, 13CFR125, and PL106-50;

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 22 – General Sub Contracting Plans**

Insure that the Prime Contractors have a fair and open sub-contracting arrangement at the time of the Award and a structured follow-up by GSA to insure that the Prime Contractors fulfill their obligations under their awarded sub-contracting program.

It is an industry practice to incorporate a small business plan; however, many instances of the designated sub-contractor not being assigned task orders throughout the contract are common. This practice does not coincide with the spirit of the Strategic Plans implemented by Federal agencies.

**Response: GSA has considered this and similar comments and has determined to amend the final RFP to add additional monitoring.**

**Question 24- General Sub Contracting Goals**

Are there minimum subcontracting goals for Woman Owned Business concerns, Veteran Owned Business concerns and/or Service Disabled Veteran Owned Business concerns?

**Response: Yes. Sub contracting categories and goals will be provided in the final solicitation.**

**Question 138 – General Comment**

The proposed structure of the new national broker contract basically excludes small and mid sized brokerage firms from competing for the contract. In order to facilitate competition between the local and national firms, it should be possible for smaller firms to bid to provide services to one of the regional offices of the GSA. The GSA could then award the national contract to 3 national firms and designate one or two small or mid sized firms to provide services in each of the designated regions.

**Response: GSA has considered this and similar comments and has determined to keep the contract a national requirement to meet the needs of GSA.**

**Question 139 – Small Business Sub Contracting Plan**

The proposed structure of the small business subcontracting plan is basically unenforceable. In order guarantee that participation of Small Business Concerns, the GSA should set mandatory subcontracting goals for each of

the designated contractors. If the contractor is unable or unwilling to meet said goals, their contact should be terminated. There should be a quarterly review of the contractors to ensure that they meet their targeted subcontracting goals.

**Response: The minimum goals for participation will be included in the final solicitation. The solicitation contains the mandatory clauses providing remedies, including liquidated damages, if goals or a good faith effort is not provided.**

**Question 25 – General Evaluations**

Will GSA be evaluating individual experience or corporate experience in the Past Performance evaluation?

**Response: Evaluation factors will be explained in the final solicitation.**

**Question 26 – General Evaluations**

Will the GSA evaluate experience of key personnel that was acquired while that individual was with previous companies?

**Response: Evaluation criteria and standards will be explained in the final solicitation.**

**Question 27 – General Evaluations**

Conversely, will GSA be evaluating past performance of companies that was performed by individuals that are no longer with that company?

**Response: Evaluation criteria and standards will be explained in the final solicitation.**

**Question 31 - General**

The solicitation appears to contemplate a commission based contract, yet there are a number of places in the SFO that specify items that will be provided "at no cost" to the government. Are there items where the contractor will be reimbursed directly by the Government?

**Response: The draft solicitation contains no items where the contractor will be reimbursed directly by the Government.**

**Question 44- General**

Please provide Offerors an opportunity to comment on Draft Section L 'Instructions to Offerors' and Section M 'Evaluation Criteria' prior to release of the final RFP.

**Response: Sections L and M will be provided with the final solicitation. No comments were requested on these sections.**

**Question 89:** General Solicitation Sections Omitted : A, K, M, L, etc.: It would be helpful to review the other draft solicitation sections not provided on FedBizOpps, to understand how these sections will fit together with the sections provided, including but not limited to the following sections:

- a. How to offer and what is required to be included in the offer.
- b. Who is eligible to provide the services – minimum requirements and preferences?
- c. Award factors: What is the award criteria? What are the technical, past performance, and price factors and how will they be weighted for award?

Suggestion: Provide all sections of the solicitation for comment including the award criteria and weighting, before issuance of the solicitation. If releasable, provide the past performance ratings and actual percentage of commissions paid for the current contractors previous assignments.

**Response: Sections A, K, L and M will be provided with the final solicitation. No comments were requested on these sections.**

**Question 98** - Commission: Under the current contracts, during a recent period (say 2008 and 2009) for lease actions over 10,000 square feet, could you please provide approximately what percentage of the winning offerors agreed to pay the GSA's Broker Commission at the percentage requested by the GSA Broker in its commission agreement letter presented to the offerors (regardless of whether certain other terms in the letter were modified)?

**Response: GSA assumes you mean this applies to the Broker Commission set forth in the initial commission letter presented to all offerors. We do not track that information.**

**Question 99** - Commission:

The draft refers to RSL 2006-09 Commission Management. Could you please post a copy of this online?

**Response: RSL 2006-09 is on line and can be found at the following link:**

**<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=17109&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-24402>**

**Question 149** - Small Business Subcontracting

While the draft Contract issued for comment omits the Award Factors section, we assume that the new Contract, like its predecessor NBC, will consider, as part of the past performance evaluation, compliance with goals for small business subcontracting under subcontracting plans for previous contracts, including the current NBC.

**Response: That is correct. Sections L & M will be released in the official RFP.**

**Question 178** – Initial Submission

Finally, we want to make a few comments about the follow-on acquisition process itself that we believe will assist GSA in the conduct of the procurement. We are aware that the current contract expires on March 31, 2010, and that GSA is seeking to complete the follow-on procurement by that time. Despite the narrow window, the follow-on procurement should be conducted in a way that allows the offerors sufficient time to prepare and submit their initial responses. This is particularly important where, as here, the award factors have not been previously circulated to the industry. Finally, we suggest that GSA replicate the process it implemented in the previous broker procurement of furnishing to each offeror a written evaluation of the strengths and weaknesses of its initial response, so that offerors can most effectively improve their offers in their final proposal revisions. We look forward to responding the solicitation when it is officially issued.

**Response: Thank you for your comment and suggestion.**

**Question 148** –General

In order to gain a better understanding as to the nature of why certain task orders go unfulfilled, can additional NBC historical data be made available?

More specifically: The break-up of unfulfilled requirements given to set-aside businesses; % of unfulfilled requirements the unfulfilled by the current 3 NBC contractors? The SF of those transactions, etc.....

**Response: Only transactions where potential commission opportunities exist in the market place are provided to our contractors to perform. All information relative to pricing on the draft solicitation is provided in Section B and in the exhibits.**

**Question 140** - General Question

How many firms are currently under contract to the GSA now performing the services that would be covered by the RFP?

**Response: The contract was originally awarded to four firms. There are currently three (3) firms.**

**Question 141- General Question**

Does each firm have a geographic coverage area of all eleven GSA Regions like is planned for the RFP?

**Response: Yes.**

**Question 142 General Question –**

Will all the incumbents be considered in this next RFP process?

**Response:** This procurement action is being advertised as a full and open competition. All firms that submit a proposal in response to the final solicitation will be considered.

**Question 143 – General Question –**

Are all the incumbents licensed in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands?

**Response:** All the firms have personnel or subcontractors licensed in all 50 states and territories.

**Question 144 – General Question**

When are you planning on issuing the RFP? When would the response be due?

**Response: A firm date has not been determined.**

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**SECTION B**

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**Question 32 – Pricing**

Pricing information specifically references Sections L and M, but those sections are not contained in the draft SFO. These Sections are needed in order to comment on the overall pricing and Pricing Worksheet. For example, from the descriptions on pages 4 and 5, it appears that the Pricing Worksheet seeks percentages, however, the Grand Total on page 9 requests a dollar total. Without a complete explanation of pricing, this is confusing.

**Response: Further information will be provided in Sections L & M which will be released with the issuance of the final RFP.**

**Question 33 - Pricing**

The Pricing Worksheet includes percentages for the three categories of project size. Will the agency make an effort to distribute work to the various contractors in proportion to these percentages? For example, the base period indicates that Category 1 is approximately 15% of the leases, Category 2 is 40% and Category 3 is 45%. Can offerors anticipate that approximately 45% of the leases they handle will be Category 3?

**Response: Percentages on the pricing sheet reflect the commissionable expiring lease workload in that category. Percentages are not percentages of the work for distribution. The Orders will be issued as described in Section F.3 of the draft solicitation. As identified in Section B the projected workload data is for informational purposes only and does not constitute a guarantee. The Government reserves the right to delete or add to the listing.**

**Question 36 – Sections B.2.1, C.2.2 and C.5.3 (Statement of Work):**

Can you add additional color by providing examples of the types of expected contractor support, especially as relates to FOIA requests? Can we assume that GSA personnel will manage these requests based upon data in the lease files and only look to the Contractor where the requested data is not available through GSA's internal resources?

**Response: Contractors will be required to provide assistance pertaining only to the work assigned or performed. GSA will manage the FOIA requests and look to the contractors to provide any documents that are not in the GSA files.**

**Question 45- Pricing –**

Will Contractors' proposed "NTE percentages of Aggregate Rent" be made public and if so is the Government concerned that Offerors will cap commissions at those percentages for all Contractors effectively eliminating commission credits?

**Response: NTE percentages will be made public. Offerors in the lease procurement will be expected to pay a market rate commission. The portion of any commission credited to shell rent will be evaluated as part of the selection process.**

**Question 48 - Section B.1., Page 2: How many National Broker Contracts does GSA intend to award?**

**Response: As stated in Section B.1 GSA intends to make award of approximately three commission based, indefinite delivery, indefinite quantity (IDIQ) contracts, with a one year base period and four one-year option periods.**

**Question 49 - Section B.2.1., Page 4:**

Please clarify how Contractors will substantiate that they have met the requirement stated in the second paragraph, "Contractors will be required to negotiate a market rate commission with the offerors in the lease procurement."

**Response: Contractors are expected to seek and offerors will be informed in each SFO that a market rate commission is expected to be paid. Contractors will meet with the COTR to establish the market rate to be sought in the particular market for the transaction. All actual commissions will be reported on the lease documents.**

**Question 50 - Section B.2.1., Page 4:**

On occasion, an Offeror/Landlord uses an "in-house" agent that is compensated through an undisclosed percentage of rental income, a fixed amount, or salary. To fully capture commission credits due to the payment of market commissions when above the Awarded Percentage, please consider the following revision to the last sentence in the second full paragraph. "The Government will instruct Offerors in the lease procurement through SFO language that a market rate commission in an amount not less than they are paying their representative is expected and shall be paid wherever Offerors are represented in a lease transaction, regardless of the representative's status as a third-party, Offeror partner or employee, or an Affiliate." It should also be noted that typical commercial practice is for the tenant's (i.e. GSA's) broker to be compensated at a higher rate than a landlord's broker.

**Response: GSA has considered this and similar comments and will amend the final RFP language to delete the phrase "in an amount not less than they are paying their representative" and the sentence "If an offeror in the lease procurement is paying less than the Contractor's Commission to their own representative, Contractor may negotiate to obtain their Commission but must be prepared to accept less."**



**Question 51** - Section B.2.1., Page 4:

What assistance will the GSA provide to Contractors in: (i) support of Contractor's negotiation with the Offerors of a commission that is at least commercially reasonable, (ii) enforcing instruction in the SFO that a market rate commission ... must be paid whenever they are represented..." and (iii) collecting such commission after the conditions for payment have been met?

**Response: GSA has issued a Realty Services Letter titled Lease SFO Revisions for National Broker Contract which includes guidance on Commission Management (RSL 2006-09) that will be followed in providing assistance.**

**RSL 2006-09 is on line and can be found at the following link:**

**<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=17109&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-24402>**

**Question 52** - Section B.2.2., Pages 5-9:

As commission rates may vary significantly across geographic regions, has the GSA considered allowing Contractors to propose NTE commission percentages that vary by geographic region?

**Response:**

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP**

**Question 53** - Section B.2.2., Pages 5- 9:

Will Offerors be provided a Pricing Worksheet in Microsoft Excel format that indicates the calculations necessary to arrive at the "Grand Total (\$ (Base & Option Years))"?

**Response: Instructions will be provided with the final solicitation on submission of the worksheet. At this time no electronic format submission is anticipated.**

**Question 80** -B.1. Services-

Is there a definite number of IDIQ contracts to be awarded?

**Response: As stated in Section B.1 GSA intends to make award of approximately three commission based, indefinite delivery, indefinite quantity (IDIQ) contracts, with a one year base period and four one-year option periods.**

**Question 81** - B.2.1 (Page 4, Fourth Full Paragraph)

Have we been provided referenced Section L and Section M? Will those be available with the official solicitation?

**Response: Sections L and M will be provided with the final solicitation. No comments were requested on these sections.**

**Question 82** - B.2.2 Pricing Worksheet

Are Categories 1-5 intended for Contractor's to provide variable commission rates?

**Response: Instructions for completion of the pricing worksheet will be provided in the final solicitation.**

**Question 90 - Pricing Worksheet B.2.2 Additional RSF Ranges:**

Pricing is requested for a range of 50,000 RSF or over. It may well benefit the Government to create one or more additional pricing categories for larger square footage ranges, as offerors may well be willing to offer lower percentages on larger projects. For example, you could have categories say for:

1. 50,000 to 124,999 RSF
2. 125,000 to 224,999 RSF
3. 225,000 to 324,999 RSF
4. Over 325,000 RSF

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 91 Pricing Worksheet B.2.2 Fixed Price versus Percentage:**

Consider that a fixed price versus a percentage, based on the lease action size range, maybe more advantageous to the Government and would reduce complexities, negotiations, paperwork, reviews and approvals, auditing and enforcement, and could save time and money. Moreover, fixed pricing is consistent with Federal procurement law, regulations and practices. The Federal Acquisition Regulations have historically favored (if not required) fixed pricing where there is competition. Also, a payment based upon a percentage arguably provides an incentive for higher rental rates – the higher the rental rate the higher the commission. A fixed price would not have this built-in incentive.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP**

**Question 92 Pricing B.2.2:**

Are the B. 2.2 prices, the contractor committed to caps on pricing, or are these prices for evaluation purposes only?

**Response: The prices submitted will be caps on the awardees pricing and are used for evaluation purposes.**

**Question 93 - Section B Commission Credit Question:**

It appears under this draft versus the previous contract, that a Commission Credit to GSA is not expected in most cases. The lessor will just directly offer GSA its best pricing, and a commission to GSA's representative will be due. Is this correct?

**Response: No. As identified in Section B, a market commission is expected to be paid and any amount above the not to exceed percentage of aggregate lease value fee identified in the Offeror's pricing would be a commission credit to the shell rent in the lease transaction and evaluated in the lease procurement. The Government expects that a commission credit for the benefit of the Government will be received in all transactions.**

**Question 94 - Pricing B General Price to be paid to GSA's Broker:**

From an Offeror's (Lessor's) standpoint, the offerors (lessors) are not in a bargaining position to negotiate what to pay the Government's broker:

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 94A -**

The offeror (lessors) is not negotiating with different brokers and choosing one based on technical and price factors, rather this should be the Government's role with respect to its own broker.

**Response: GSA is selecting its Tenant Representative brokers for award based on price and other factors. Lessors are dealing with GSA's Tenant Representative Contractor in each transaction.**

**Question 94B -**

Offerors (lessors) fear if they don't pay what is asked for by the Government's broker, they may not win the award, or future awards. The tendency is to pay what is asked for, or close to it, even though it increases the Offeror's costs/expenses, and ultimately the rent to the Government.

**Response: Commissions are a negotiated line item in commercial real estate transactions. Business decisions on pricing are a part the competitive process in the marketplace. All offerors are expected to pay a market commission. In a full and open competition, all offerors are considered fairly and may choose to bid on future procurements regardless of previous outcomes.**

**Question 94C –**

The determining of the price to be paid to GSA's broker should not be the Offeror's (Lessor's) burden. The draft solicitation arguably increases the Offeror's (Lessor's) burden in a way that is very difficult to carry out, and arguably is inappropriate and may violate Federal regulations against unnecessarily seeking proprietary information behind fixed pricing (the rental rates).

GSA seems to say in the solicitation that the offerors (lessors) will pay the GSA representative an amount equal to or greater than what it pays its own licensed real estate broker, or its developers, property managers, other representatives, etc. This is not comparing apples to apples, and is not comparable. These entities may provide equity or other services different from GSA's broker. Even if a licensed real estate broker represents a lessor, its job is different from a GSA broker. It is a job of trying to lease a building and not getting paid unless it does so. It is not the job of knowing it is going to get paid (in most cases) but not until award/completion. The services and risks are different. In any case, it is not appropriate to ask the offerors (lessors) to disclose the above information or to try to equate it to GSA's hiring of its broker. The fact the offeror (lessor) may not use a licensed broker just further supports that the GSA broker price should be determined competitively by GSA, and should not be determined by the offeror.

**Response: The lessor is expected to pay a market commission and include that cost in the break down of the cost elements on the Form 1217.**

**GSA has considered this and similar comments and will amend the final RFP language to delete the phrase "in an amount not less than they are paying their representative" and the sentence "If an offeror in the lease procurement is paying less than the Contractor's Commission to their own representative, Contractor may negotiate to obtain their Commission but must be prepared to accept less."**

**Question 94D.**

The appearance of the Government asking its brokers, who are in effect judging a competition, to ask the competitors in the competition for money during the competition, and to be able to negotiate different amounts of money with different offerors, is inconsistent with Federal Government procurement law, regulations, and norms, and with all due respect should be changed.

**Response: This is consistent with the existing practice in the market place for private sector transactions. GSA has taken steps to mitigate and neutralize any Organizational Conflicts of Interest.**

**Question 95 –**

Pricing Suggestion: GSA should negotiate and determine the price its GSA broker will be paid and state that amount in the Solicitation for Offers (SFO) and that the winning offeror (lessor) will pay that amount to GSA, or directly to GSA's broker. This is similar to the Federal Supply Schedule (FAS) "industrial funding fee" model. There would no longer be "side letters" between GSA's representatives and the offerors, and the GSA broker will know what it is going to be paid versus the chance of no payment.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP**

**Question 96 - Award of Task Orders/Price Competition:**

Federal procurement laws, regulations, norms, and good Government require price be a significant factor.

Looking at other Federal procurement actions, FAS, DoD, GSA bidding, it is not clear why GSA would not state in the draft solicitation that each task order will be awarded to the contractor, without a conflict, with the lowest price. If a firm loses, it can bid lower on the next task order, if it determines it appropriate. The determination of which firm gets which task orders would then be determined objectively by competition. (Contractors are already technically qualified upon award of the underlying contract. As the contract is for one year, with the one year options, a non-performing contractor does not need to be renewed.)

A fixed price, not a percentage, is suggested. This will reduce or eliminate building in an incentive for higher rental rates, and will make the price predictable to the offerors (lessors), the GSA broker and the Government. Complexities, negotiations, paperwork, and the need for reviews and approvals and audit and enforcement will be reduced significantly.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP**

**Question 100 – Suggestion on Number of contracts to be awarded:**

The draft suggests approximately three contracts will be awarded. Consider expanding the number of contracts awarded to say 4 or 5. This should allow GSA to assign a particular task order to a contractor without a direct conflict on a particular task order and still allow for enough remaining contractors for price competition on the task order. (Also, if additional industry consolidation, etc. occurs enough contractors may remain.)

For the NCR, GSA may want to consider the merits of allowing one or more firms with local or regional, but not nationwide services and clients to compete. This would expand competition.

**Response: The number of awardees will be determined by analyzing factors associated with promoting the maximum competition for the potentially available work and the actual number awarded will depend on the competition. GSA's requirement is for a national broker contract.**

**Question 101 –B.1 Services, p 3, Last paragraph before B.2**

Please define "unilateral modification."

**Response" A unilateral modification is a Government directed action not requiring consent, agreement, or signature of the contractor to be incorporated into the contract.**

**Question 102 – Price Evaluation –**

How does the GSA anticipate evaluating Contractors' performance/value with respect to the pricing component of the contract? Will the market conditions that exist in a particular region as well as national market conditions and their impact on commission's structures be taken into consideration when evaluating Contractors' value?

**Response: Evaluation criteria and standards for the pricing will be provided with the final solicitation.**

**Question 103 - Pricing –**

What is the philosophy behind the commission structure proposed (i.e., national vs. regional market commissions or a per transaction basis)?

If the proposed pricing structure as presented will continue to move forward, we would suggest that pricing and other evaluation factors be evaluated on a market by market basis, because of the variables within each of the GSA regions.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 104-B.2.1.** General, p 4-5, final paragraph.

Please clarify how 50% of the GSA workload is to be distributed among the Contractors? Will it be by total square footage, by number of lease transactions, on a regional basis, or on a national basis? Could the GSA clarify its philosophy around the change in this goal?

**Response: The 50% is what GSA projects as being tasked to contractors selected. Distribution of task orders will be accomplished as described in this section as a minimum guarantee and in accordance with the Fair Opportunity procedures identified in Section F.3.**

**Question 105-**

We would recommend that 50% of the transactions in each tranche be distributed, and that the distribution be measured by total potential commission revenue.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 106 –**

Will the Government endorse a specific market commission to be stated in the “Broker Commission and Commission Credit” paragraph of the SFO?

**Response: As identified in this section, GSA expects a market commission but does not anticipate inserting a commission figure in the lease SFO.**

**Question 107 - B.2.1** General, p4, Second full para.

Contractors will propose a maximum percent of Aggregate Lease Value (ALV) that they will receive. How will this be addressed in areas outside those referenced in Exhibit 15?

**Response: For every task order, regardless of whether inside the MSA or outside the MSA, the contractor will supply data on the market rate commissions in the particular market and meet with the COTR to establish the target commission for each transaction based on that data and other data available to the COTR. The maximum percentage bid by each awardee will be used in each category in all areas where the contractor performs work.**

**Question 108 B.2.1.** General, p 4, 3rd paragraph.

In the current contract, the Contractor only receives acquisition assignments for which a commission will be paid. Under this contract, the Contractor could receive acquisition assignments for which there is no commission. Is that the intent of this section?

We recommend that the practice in the current contract be retained.

**Response: Contractors will only be assigned work where a commission opportunity exists.**

**Question 109 - B.2.1** General, p 4. Fourth full para.

Will a draft of Sections L and M be forthcoming prior to the issuance of the final solicitation?

**Response: No comments were requested for Sections L and M.**

**Question 110 - B.2.2 Pricing Worksheet, pp 5-9.**

The Competitive Actions and Non-Competitive Actions are broken out separately in the Pricing Worksheet. In the current environment, the work requirement for each is very similar from the Contractor's perspective. With the exception of Market Tour and Market Survey, all other functions are similar in nature.

We recommend not distinguishing Competitive and Non-Competitive Actions for purposes of pricing.

**Response: GSA has considered this and similar comments and will not make a change in this breakout. Offerors are free to price as they deem necessary.**

**Question 156 – General Pricing**

It appears that GSA intends to define the Contractor's Commission as a specific percentage of Aggregate Lease Value, with the Government's Commission Credit being the difference between the negotiated market commission and the Contractor's Commission. This is different from the current NBC where the Contractor's Commission and the Government's Commission Credit are defined as specific percentages of the negotiated market commission percentage. Since this is a departure from current practice it raises the possibility for increased uncertainty and unanticipated consequences. In particular, we suggest that you reconsider several aspects of this structure. GSA has indicated that NBC is an effort to harness market broker commission, and to permit the Government to recover some portion of the rent attributable to these commissions. This objective may be undermined by several aspects of the proposed contract that seem to encourage lessors to reduce the amount of commission available for the broker and the Government to share.

First, there is no "one-size-fits-all" commission percentage that applies to all markets nationwide. There can be significant variation in market commission percentages from one market to another. Accordingly, any flat, nationwide percentage is going to be too high in some markets and too low in other markets. This is particularly a problem for retaining geographically limited subcontractors that operate in particular markets in which the nationwide percentage is too low. Their efforts will not be offset by involvement in other markets in which the nationwide percentage may be too high when compared to the local market rate. We suggest that consideration be given to providing flexibility to allow deviations from the nationwide percentage rate in certain markets that depart significantly from national averages.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 157 – General Pricing**

Second, the pricing scheme appears to assume that the Contractor's Commission percentage would vary with the square footage of a task order and whether the procurement was competitive or sole source. In general, market commission percentages vary from market to market, but do not vary with square footage within a market. Nor do market commission percentages depend on the level of competition for a lease. Having done both competitive and non-competitive deals for GSA, we take issue with the unstated assumption that non-competitive or sole source deals involve less work. In our experience, if the transaction is done correctly, there is as much time and work, if not more, involved in sole source procurement or a renewal. Having different rates in the proposed contract for competitive and sole source deals and for different-sized transactions invites the market to create rate differences where none exist to the detriment of both the Government and the broker.

**Response: GSA has considered this and similar comments and will clearly define non-competitive actions under this RFP. GSA does not intend to make changes to the pricing breakouts.**

**Question 158 – Pricing General**

Third, while we agree with a continuation of the current practice of requiring the Lessor to pay a market commission whenever the Lessor is paying a representative of its own, the amount of the compensation being paid to the Lessor's representative should have no bearing on the amount of the market commission due to the tenant's representative. The commission structure for tenant representatives in the market is very different from landlord representatives who typically become the exclusive listing agent for an entire building or project and earn commission whenever space is leased in that building or project. Tenant representatives get paid only when its particular tenant enters into a lease. Tenant representative market commission percentages are greater than Landlord representative market commission percentages. Accordingly, we recommend that the phrase "in an amount not less than they are paying their representative" at the end of the second full paragraph on page 4 of the draft RFP be deleted. Likewise, we recommend deletion of the second sentence of the third full paragraph on page 4 of the draft RFP which reads "If an offeror in the lease procurement is paying less than the Contractor's Commission to their own representative, Contractor may negotiate to obtain their Commission but must be prepared to accept less."

Again, we think that the proposal will encourage lessors to seek to limit the amount of commission that they pay to the lower rates that they typically pay their representatives, and retain the difference. This is not in the best interest of the Government or the broker.

**Response: GSA has considered this and similar comments and will amend the final RFP language to delete the phrase "in an amount not less than they are paying their representative" and the sentence "If an offeror in the lease procurement is paying less than the Contractor's Commission to their own representative, Contractor may negotiate to obtain their Commission but must be prepared to accept less." The contract will now read: "Offerors in the lease procurement will be instructed in the SFO that a market rate commission is expected and must be paid wherever they are represented by a listing agent, an offering agent, or broker, property manager, developer, or any other agent or representative"**

**Question 159 – Pricing General**

Fourth, although the draft Contract states that the broker is expected to negotiate a market brokerage commission, it is not clear what happens in a case where a Lessor refuses to pay a market brokerage commission, even though it is paying its own representative. How much support can the broker expect to receive from the Government in such a situation?

**Response: Market commissions are negotiated actions and are addressed under RSL 2006-09 [Lease SFO Revisions for National Broker Contract \(Amended\)](#) attachment 1 which can be found on line at the following address:**

<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=17109&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-24402>

**Question 168 - Section B.2.3 MINIMUM AND MAXIMUM QUANTITIES**

We assume that the stated maximum is merely the maximum value of task orders that the Contractors are required to accept, rather than the maximum value of task orders that the Government is allowed to place, regardless of whether the Contractors are willing to accept more. We see no reason for a cap on the maximum amount of work that the Government is allowed to task to willing Contractors and would recommend that the maximum be clearly limited to the maximum value that the Contractors are required to accept.

**Response: The stated maximum is the value (quantity and associated estimated commission opportunity dollars) point where the contractors have no obligation to perform. Agencies are required by law to include the maximum quantity to be procured in all task order contracts. The Government may not require contractors to accept tasks over the maximum quantity but Contractors may accept offers of tasks over the maximum quantity.**

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**SECTION C**

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**Question 18- Post Award Services**

Specify the Post Award segment of the Lease Transaction to be exclusively performed by sub-contractor organizations yet maintain the centralization and control of the Prime Contractor.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 19 – Market Survey**

The carve-out of the Market Survey (this could be fixed price) and the Post Award (this should be a negotiated hourly rate) could easily be a designated sub-contractor function under the control of the Prime Contractor.

**Response; GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 34 – Section C**

In general, will a Source Selection Evaluation Board be used? If so, the scope of work that the contractor will undertake to support the SSEB's activities is unclear. This will likely affect offerors' pricing.

**Response: As identified in C.4.2.1 the procedures and regulations vary depending on the complexity of an acquisition. An acquisition may range from a simplified acquisition to one that follows Best Value Trade off Source Selection procedures and contractors will be expected to perform the procurements in accordance with the regulations. See Exhibit 10.**

**Question 37 - Section C (entire):**

Can GSA highlight those items which have been added or deleted from that scope of work in the current contract? Many of the prospective Contractors competing for this contract will benchmark their expected staffing and management plan versus that of the current Contractors. However, unlike the current Contractors, we do not know which items in this solicitation represent a change from the Scope of Work currently performed. Referencing the original National Broker solicitation does not appear to provide these answers, especially as subsequent modifications may have occurred.

**Response: All offerors are cautioned that they must base their staffing and management plans on the solicitation requirements.**

**Question 38 - Section C.4.2.11 1.c:**



What are the expectations for the Contractor to attend “on-site” (ie. local market) construction/progress monitoring meetings? Though inspection services are not required, it appears that the Contractor will be expected to attend a kick-off meeting and a Space Acceptance meeting, at minimum.

**Response: Solicitation Section C.4.2.1 states: Travel is required on most task orders.**

**Expectations will vary depending on the complexity and needs of the individual lease action. The “on-site” expectations will vary by project.**

**Question 39 - Section C.4.3 (Lease Extension):**

In our experience, Contractors have generally not received commissions for short term lease extensions required (typically because of delay in procurement process) to accommodate new replacement or succeeding leases, even though these lease extension terms may be for 2-3 years. What is GSA’s intention regarding Commission payment on these types of transactions?

**Response: GSA agrees with your comments in general and that is the reason that Task 2**

**Extensions can only be tasked in association with an existing Task 1 task order in this solicitation.**

**GSA’s intention is to place task orders for projects that offer commission opportunities.**

**Question 43 – Section C Comment:**

Section C.4.1.6 (Commissions): Commission calculations vary market-by-market and by property type (i.e. office vs. industrial). This may lead to certain unintended consequences in your commission sharing calculation. For example, a Contractor agrees that it will accept a Commission of 2% under this IDIQ contract. In the case of many industrial transactions, commissions are paid on the triple-net rental consideration. Since the GSA SFO will specify that commissions will be paid on the Fully Serviced rent, it is possible that the Contractor may not be able to negotiate a market fee percentage much higher than the 2%, since it is being calculated on a consideration that is higher than the market standard. As a result, GSA’s Commission Credit can be expected to be smaller in some instances than it would have been under the current National Broker Contract. Further, some Owners have operating companies which are paid commission fees also. Sometimes these fee structures allow for the Owner to receive a higher commission if the tenant rep’s fee is smaller. This could lead to situations where Owners structure transactions with lower commissions but higher free rent – achieving a similar price evaluation but reducing GSA’s commission credit. This latter example may not matter to GSA, depending on your internal accounting of these credits versus rental abatement.

**Response: GSA has considered this and similar comments and has determined not to amend the final RFP.**

**Question 46- Section C –**

Will the GSA consider standardizing Lease File conventions across Regional Offices, to improve efficiency? See mention of varying conventions in C.4.2.3. Paragraph 3. (e) on page 24, C.4.2.11. Paragraph 4 on page 31 and C.9.1.1.1.1. Paragraph 2 on page 37.

**Response: GSA has considered this and similar comments and has determined not to amend the final RFP.**

**Question 47 – Section B and C –**

Please reconcile the various requirements for providing market information, the means of requesting it, and the form that is required to be used for the deliverable, if any. Reference: Section B.2.1. on page 5; Section C.2. on page 10; Section C.4.2.3. on page 23; Section C.4.4 on page 33; and Exhibit 5 – Market Analysis.

**Response: Market information referenced in Section B.2.1.; Section C.2.; Section C.4.2.3.; and Exhibit 5 – Market Analysis is specific to a lease transaction in process. Section C.4.4 references Market Data not project specific and is to be used for discussions at the national level.**

**Question 54** – Section C.3., Page 12:

Please provide definitions of “Competitive Action” and “Non-Competitive Action” in C.3. ‘Definitions’ to clarify which lease actions fall into which category. Will the category be stated on the task order?

**Response: GSA has considered this and similar comments and will clearly define non-competitive actions in terms of pricing under this RFP. The pricing category will be stated on each task order. See Section F.3.**

**Question 55** - Section C.4.1.1., Page 19:

Under which Government Personnel Role does the final decision on the resolution of a conflict fall?

**Response: Resolution of an Organizational Conflict of Interest falls to the National Contracting Officer (See G.1.1.)**

**Question 56** - Section C.4.1.1., Page 19:

What is the required turn-around time for the RCO to notify the COTR and the COTR to notify the Contractor on the resolution of a conflict once a Contractor’s proper disclosure has been made? Stated another way, for what period is a Contractor bound to work on a Task Order at risk of a termination for convenience due to a conflict?

**Response: A typical turn around time for conflict resolution and issuance of a Notice to Proceed is 3 Business days. The Organizational Conflict of Interest provisions are in H.5. GSA has considered this and other similar comments and determined to amend the final RFP to include the issuance of a Notice to Proceed on each task order.**

**Question 57** - Section C.4.1.2., Page 19:

May the alternate National Project Manager fulfill the key personnel requirements of the National Project Manager at the Contractor’s discretion? For example, can the alternate National Project Manager meet the requirement of availability “to meet with NCR COTRs within a two-hour notification” from the Government?

**Response: The RFP will be adjusted to clarify these requirements.**

**Question 58** - Section C.4.1.8., Page 21:

Please clarify exactly which documents are the Contractors responsibility to produce and confirm that “draft submissions for the Government’s review shall be completed within eLease...” and that no Government individual, to include the associated OO, RCO, RPM, COTR and RS can, in lieu or in addition, require delivery of Hard Copy and/or electronic copy as a condition of approval.

**Response: GSA’s policy is that eLease is to be used for all lease procurement transactions and no Government Official may require delivery of hard copy material except as directed by the NCO. Documents identified in eLease as required for any lease procurement must be completed & approved within the eLease system. The eLease system provides for draft submissions and COTR approval or rejection. The actual lease file is not included in this reference as it must be physically provided to the COTR for review and acceptance.**

**Question 59** - Section C.4.2.1., Page 22:

If a Task 1 task order is issued as a competitive lease acquisition, but results in a Contractor preparing and the COTR approving a JOTFOC, will the task order remain categorized as a Competitive Action?

**Response: Yes, in terms of pricing under this solicitation that is the case.**

**Question 60A** - Section C.4.2.2., Page 23:

The RFP states in part, “the Contractor shall work with the tenant agency on the Requirements Development/Space Request Package.”

What effort and requirements are envisioned beyond providing real estate market recommendations (i.e., term length and delineated area)?

**Response: GSA wants to leverage the broker's market knowledge to advise our clients on market conditions, delineated area recommendations, term length recommendations, and help shape the tenant agency requirements to match market opportunities and conditions.**

**Question 60B –**

Will the Acquisition Plan be developed during the 'Requirements Development and Review' stage as well?

**Response – Yes it could be.**

**Question 60C –**

Will GSA complete and approve Acquisition Plans prior to issuing a task order to a Contractor?

**Response: Not necessarily if the task order includes requirements development**

**Question 60D –**

For projects meeting/exceeding the prospectus threshold, will Contractor be engaged to advise on terms in the proposed prospectus?

**Response: Prospectus packages or studies are generally developed and approved well in advance of any task order issuance. However, if a prospectus need arises during procurement, the Contractor may be requested to assist GSA in the prospectus package development.**

**Question 61 - Section C.4.2.4.b., Page 24:**

Please confirm that project schedules shall be prepared in eLease and no other format, and that the preliminary schedule presented at the task order orientation meeting shall not be revised by the Contractor and submitted to the Government again until after the market survey.

**Response: Confirmed. Project schedules are to be prepared in eLease and preliminary schedules should only be prepared once prior to the Market Survey.**

**Question 62 - Section C.4.2.7., Pages 27-28:**

Please clarify the reference to RSL 2006-09. The RSL states "If the Offeror is paying a commission or fee to its agent(s), broker(s), property manager, developer, employee, or any other agent or representative, as evidenced in Line 331, Column (a) of the GSA Form 1217, then any final offer that includes a '0' in Line 31, Column (b) of the GSA Form 1217 should be determined "Technically Unacceptable" because it does not comply with the requirements of the SFO." Will failure of an Offeror to submit a signed commission agreement at a market rate, say the median rate provided by all brokers in Exhibit 15, deem the offer technically unacceptable?

**Response: Offers are only technically unacceptable if they fail to provide a commission to our contractors where they are providing a commission to their own representative.**

**Question 63 - Section C.4.2.11., Page 31:**

Please clarify/reconcile the effort required of Contractors with respect to "Change Order Management" as indicated in paragraph 1.(c) viii. and the effort required to "negotiate change orders" as indicated in paragraph 3.

**Response: Thank you for pointing out the need to clarify this section of the solicitation. GSA will review and clarify this section.**

**Question 64 - Section C.6. Paragraph re: Exhibit 15, Page 35:**

Please consider extending the update period to 12 months or more as average private sector commissions across an MSA are not subject to frequent changes.

**Response: GSA has considered this and similar comments and has determined to amend the RFP to require an annual update.**

**Question 83 - C.3. Definitions**

Source Selection – When the SSA makes a cost/technical trade off are there additional legal liabilities to the Contractor and GSA?

**Response: No. Our contractors will recommend the cost technical trade off to the COTR for consideration. The COTR will determine the use and the outcome of any cost technical trade offs used for award.**

**Question 84 - C.4.1.6. Commission and Commission Credits 1-5**

Is additional detail available regarding Commission Credits and Pricing? Is it to be assumed that all selected contractors will be required to accept the same Pricing and Commission Credit schedule?

**Response: Commission credits and pricing will be determined by the offerors submitted pricing based on the aggregate rent of the lease.**

**Question 85 - C.4.1.9 Disposition of Lease File Records**

Does this include any and all correspondences, email, saved forms or documents? Is there a more detailed technology policy regarding hard drives and servers?

**Response: Not necessarily but the official record of procurement may include all the referenced documents to the extent that they are relevant and material to the file. GSA IT Policy is contained in Exhibit 2.**

**Question 86 - C.4.2.11 Post Award Services (a.)**

The post award services responsibilities of the Contractor appear to be critical to the process. Does the role of the Contractor, established in the Post Lease Award Orientation, vary from Lease to Lease? There seem to be many variables beyond the control of the Contractor. In that regard, has a separate fee schedule ever been proposed specifically for Post Award Services to equitably compensate Contractors for their time and efforts for each specific lease transaction?

**Response: Each Lease transaction may vary somewhat as to required Post Award Services based on complexity of the transaction. A separate fee schedule was considered and determined to be unnecessary in light of the requirements set forth in the RFP.**

**Question 87 - C.4.4 2.**

Many private sector Landlords and Tenants require the details of specific leases be kept confidential. Has that been a factor in obtaining Comparable lease data? Can this be provided with anonymity for the specific Landlord and Tenant?

**Response: Market Data be provided without identifying the names of parties. However, should the names be provided, GSA cannot assure confidentiality.**

**Question 111 - C. Introduction. 3, p 10.**

One of the goals of the contract is to provide consistency nationwide for PBS' lease acquisitions. Question: Will all regions be conducting procurements in accordance with national processes and procedures?

It would be helpful to Contractors to have consistent requirements, processes, deliverable formats, etc. across all regions. At a minimum, consistency within regions should be required.

**Response: Yes, all regions will be conducting procurements in accordance with Federal Procurement regulations and national processes and procedures. However, wide latitude remains within the purview of the Lease Contracting Officer due to the varying complexities among lease transactions. The RFP defines consistent processes within the contract and task order capabilities.**

**Question 112 - C.4.1.1 Contractors Response Requirement to an Issued Task Order, p19.**

We recommend extending the conflict of interest and nondisclosure response period to 5 business days, rather than 3.

The commercial real estate industry is in a period of consolidation. Companies that previously offered one or two services (e.g., tenant representation), are responding to competitive forces by acquiring (or merging with) other companies to expand and diversify service offerings. In a very real way, the commercial real estate industry has transformed itself from a group of predominantly local or regional companies, to global enterprises. Central to the success of every company in this sector is the ability to identify, disclose and resolve conflicts of interest. As companies in this industry have consolidated and grown, the number of transactions and possible conflict scenarios has increased exponentially. For example, conflicts checks often involve searching tens of thousands of records including basic brokerage activities (tenant/landlord/buyer/seller), employee ownership interests, property management services, valuation projects, investments, and more. The ability to undertake a conflicts check across six of seven service lines is challenging – even with the most up-to-date conflicts check systems. Expanding the period from three to five days to complete the Statement would provide a realistic timeframe in which to complete a conflicts check with the level of certainty required under federal contracts.

**Response: GSA has considered this and other similar comments and determined that the final RFP will be amended to 5 days.**

**Question 113 C.4.1.5 Changes to a Task Order after Issuance of Task Order.**

In addition to the reasons for changes for modification listed in section 1, the list should be expanded to include lease term and the tenant improvement allowance because of their financial impact on the transaction.

**Response: GSA has considered this and similar comments and has determined not to amend the RFP.**

**Question 114 - C.4.2.1 General, p 22, first para. Does GSA intend to issue Task Orders for undefined tenant agency requirements? Does GSA intend to issue Task Orders to broaden the scope of Task 1, #1, “assisting the tenant agency with requirements development”?**

We recommend that the GSA manage the tenant agency requirements and relationship, with the Contractor support, in providing market analysis and data.

**Response: GSA may issue task orders for undefined tenant agency requirements. GSA has considered this and similar comments and has determined the need to amend the RFP to clarify its intentions with regard to requirements development in C.4.2.2.**

**Question 115 - C.4.2.2 Requirements Development and Review, p 23, # 2.**

We would suggest the following language with respect to the Contractor working with the tenant agency on the Requirements Development/Space Request Package: the Contractor's focus will be to provide relevant market data.

**Response: GSA wants to leverage the broker's market knowledge to advise our clients on market conditions, delineated area recommendations, term length recommendations, and help shape the tenant agency requirements to match market opportunities and conditions. GSA has considered this and similar comments and has determined to amend the RFP to clarify its intentions.**

**Question 116 – C.4.2.2**

What level of participation in this requirements development exercise is GSA expecting from the Contractor? Does the Contractor automatically receive the lease assignment for the related requirements development?

**Response: Yes. The need for contractor assistance in requirements development will be stated on the task order in accordance with Section C.4. GSA has considered this and other similar comments and will amend the final RFP to clarify the requirement.**

**Question 117 – C.4.2.2**

Please define "space planning or any similar services" as suggested in the last paragraph before C.4.2.3.

**Response: The definition of space planning as found in the PBS Rent Pricing Policy is provided below:**

**"Space Planning - PBS provides Design Intent Drawings (DIDs). DIDs are architectural drawings which show partitions and doors; schematic demolition; voice, data, and electrical outlet locations; finishes; generic furniture layout, and any additional details necessary to communicate the "design intent" to the owner's (lessor or PBS) architect for the purposes of preparing construction documents. DIDs do not contain mechanical, electrical, or plumbing specifications or drawings. They do not carry furniture or computer and telecommunication specifications; nor do they contain signage, artwork, keying, or hardware schedules. An initial submission plus two on-board reviews are included. For initial occupancy in Federally-owned space, PBS does not charge the tenant for design services through design development."**

**Question 118 - C.4.2.3 Project Orientation, p23, # 2.**

We recommend that the COTR must provide reasonable notice (no less than four working days' notice) for a PO call. Without that amount of reasonable notice, the Contractor may not provide a complete Market Analysis by the time of the call.

**Response: GSA has considered this and similar comments and has determined the need to amend the RFP.**

**Question 119 - C.4.2.4 Schedules, p 24, para b.**

Please clarify what is meant by 3 day slippage. Comment: This notification should only be applicable in the event of a slippage of the EOD.

**Response: The intent of the referenced paragraph is not a three-day slippage in the schedule. The intent is that the Contractor has three days after discovering that the schedule may slip past the Required Delivery Date (RDD) to notify the COTR and the Tenant Agency. For example, if the Lessor submits a progress report that indicates the construction schedule will not be met, and the delivery date for the Lease will not be met, the contractor must notify the COTR and the Tenant Agency of what has happened and why. Consequently, if the Contractor has submitted documents for approval of the COTR and the COTR has not approved for an extended period of time, the RDD may be in peril and the Contractor must notify the COTR and the Tenant agency.**

**The Contractor shall notify the COTR and the Tenant agency (if directed by the COTR) immediately as to the time impact and reason for the slippage of major milestones within three working days of becoming aware of the slippage.**

**Question 120 –**

As a best practice, we recommend that schedules be updated at each milestone event.

**Response: The contractor is responsible for maintaining and monitoring the various schedules under the work to be performed and to coordinate with the COTR as changes occur.**

**Question 121-**

We recommend eLease enhancement to support managing the transaction process with electronic notifications to the Task Order Team of approvals, due dates, next steps, etc.

**Response: The enhancement will be forwarded to the eLease team for consideration.**

**Question 122 - C.4.2.7 Review and Evaluate Initial Offers, p 28, para 4.**

Please clarify the scope of responsibility for the small business plan evaluations.

**Response: The responsibilities are outlined in the checklist provided in GSAM 519.7.**

**Question 123 – C.4.2.8 –**

In the current contract, small business plan evaluations are managed within GSA with the support of the Small Business Administration group providing review for goal sufficiency. Is it GSA's intent to remove the Small Business Administration from the review of these procedures?

**Response: The SBA assigned representative is required to review and comment on all subcontracting plans for awards, as necessary, and has been involved in a review of this RFP.**

**Question 124 - C.4.2.9 Evaluate Final Proposal Revisions (FPR's), p 29, 2**

Please clarify the Contractor's responsibilities for the Source Selection plan development.

The current contract has the Source Selection Plan developed with the COTR and/or the SSA. Keeping the continuity of approach, knowledge and programming development will ensure the agency (end user) goals are met.

The Source Selection plan, evaluation and decision approach should be further clarified as it relates to FAR Subpart 7.5 and 15.308.

**Response: The SSA decision on any procurement is an inherently governmental function and will be made by the Government's SSA, a Government employee. Contractors will provide recommendations and the government personnel will make the award decisions and sign all official documentation. See Exhibit 10. GSA has considered this comment and determined not to amend the RFP.**

**Question 125 –**

C.4.2.11 Post Award Services, 1.c.ix. and x, p 31, should read:

- x. Lessor As-built drawings and Lessor's confirmation of accuracy
- xi. Lessor's submission of Lessor Measurement and Categorization of Space

It is the Lessor's responsibility to deliver the premises per the stated requirements. The Contractor's responsibility should be reviewing the information as submitted by the Lessor.

**Response: Please re-read the RFP section referenced. GSA has considered this and other similar comments and determined not to amend the RFP.**

**Question 126 - C.4.2.11 Post Award Services cont'd, #3, p 31.**

Where is the transition point between the Contractor and the COTR when the project has RWA? Please clarify the division of standard Post Award work and RWA work.

Any work that is over \$150,000 in hard construction costs (demising walls, relocating structural components, etc.) should be managed by the COTR (or government designee) at the onset of Post Award Services. Any RWA work whose costs are market driven (i.e., expenses relating to materials and labor costs) and do not have additional hard construction costs should be managed by the Contractor.

**Response: The final RFP has been amended to address the contractor's responsibilities to assist the Government with negotiation, documentation and oversight of landlord's build out and delivery of lease space including RWA work.**

**Question 146 - Pg 19 – Contractor Response Times –**

The request for response to other government personnel in Regional Offices on the same day as a phone call is open to abuse and should be within 24 hours.

**Response: GSA has considered this comment and determined to amend the final RFP accordingly.**

**Question 150 - Pg. 30-31 - C.4.2.11 C vi Post Award Services –**

Incorporation should be changed to coordination of Tenant Occupancy Services.

**Response: GSA has considered this and other similar comments and determined not to amend the final RFP.**

**Question 151 - Pg. 35 C.6.3 Reports –**

Please provide guidance from FTC regarding this action not constituting restraint of trade. There is long history of consent agreements and lawsuits over brokers not setting commissions in geographic areas.

**Response: GSA is asking for a report from the awardees on the existing range of commissions in the MSAs listed, not setting commissions in those MSAs. The information will be shared only within the COR/COTR community to support their approval of a market range for commissions sought in the specific market on a specific lease transaction. Further, it is not GSA's practice to tell lessors the amount of commission that must be paid to our brokers. If you are aware of a case directly on point that indicates that this fact pattern is a restraint of trade please provide it to the NCO.**



#### **Question 169 - Section C.4.2.2 REQUIREMENTS DEVELOPMENT AND REVIEW**

Certain aspects of this section need further clarification. For example, in cases where the broker is asked to submit a requirements package, certain of the component parts, such as the draft OA and the preliminary scoring determination, would seem to be inherently governmental and would still need to be the responsibility of the COTR.

In addition, while the draft RFP states that “[t]he Contractor is not required to provide space planning or any similar services provided by GSA pricing policy to complete this task”, it should be made more clear that the Contractor is not responsible for developing a Program of Requirements, which is usually prepared by architects or space planners as the first step in the design of tenant improvements.

**Response: GSA has considered this and other similar comments and determined to amend the final RFP.**

**This contract is not intended to replace other GSA contracts which provide tenant agency assistance in developing a complete Program of Requirements. It is GSA’s intention to leverage the broker’s market knowledge of market conditions to advise us and our client agencies on delineated area recommendations, term length recommendations, thereby helping to shape tenant agency requirements to match market opportunities and conditions. If the Government determines to use the Contractor in this capacity with the Tenant Agency, the task order issued for Task 1 must state clearly that the acquisition is to include Requirements Development as part of the Task 1, Full Lease Acquisition.**

#### **Question 170 - Section C.4.2.11 POST AWARD SERVICES**

Because post award services are typically not included in market brokerage commissions, additional clarification of the scope of post award services is imperative. A detailed matrix was developed for the first NBC which detailed the scope of post award services and provided that such scope would vary with the size and location of the project.

We recommend that this matrix be incorporated into the draft Contract as an additional Exhibit. We also recommend that the draft Contract make clear that the broker is only required to provide post award services in connection with work that is financed through the rental rate on which the commission is based and, therefore, that the broker is not responsible to provide post award services in connection with any work that is funded by RWA.

**Response: The Post Award Services in the RFP have changed so that the matrix from the prior contract is no longer appropriate. The final RFP has been amended to address the contractor’s responsibilities to assist the Government with negotiation, documentation and oversight of landlord’s build out and delivery of lease space including RWA work.**

#### **Question 171 - C.4.3 TASK 2 – LEASE EXTENSIONS**

The draft Contract states that “extensions may be tasked only in association with an existing Task 1 task order”. Because there may be occasions where it would be appropriate to task a broker to negotiate a lease extension of 5 years or less apart from a Task 1 task order, we recommend that this restriction be deleted.

**Response: GSA has considered this comment and determined not to amend the RFP.**

#### **Question 172 - Section C.5.1.4 and Section C.5.2.4 – PROTEST AND CLAIMS COSTS**

Draft Contract Sections C.5.1.4 and C.5.2.4 provide: “Damages suffered by the Government as a result of Contractor actions or failure to act shall be reimbursed by the Contractor and subject to set off against the commissions earned on that task.” Section C.5.1.4 applies to protests and Section C.5.2.4 applies to claims.

We believe that these sections are fundamentally at odds with the nature and character of NBC. They will result in and encourage finger-pointing and blame-shifting, rather than a cooperative effort between the brokers and the Government to get the job done, and done well. Understandably, the Government does not require its own employees, its contracting officers, and its lawyers involved in the transaction to be monetarily liable for an unfavorable protest decision. Why should the broker be responsible? Unfavorable protest decisions are a fundamental risk of the government contract business even when the agency believes that it is conducting its procurements according to law. The draft provision unfairly shifts this risk to the broker

First, a provision such as is contained in the draft will require brokers to treat the Government as an adversary, and to defensively document every decision or tactic. An important principal under NBC, one often cited to Congress, is that business decisions are made by the Contracting Officer, not the broker, and if this is to have meaning, the Government must be responsible for the resulting decisions. The broker makes suggestions, but the Government makes the decisions, and is the final decision-making authority on every matter. In fact, the Government is involved and approves every significant action, from the contents of the SFO to discussions and significant interactions with offerors. The draft provision is inconsistent with this principle. Furthermore, because the actions of the Government and its brokers are inextricably intertwined, it is often impossible to determine the proximate cause of an unfavorable protest decision. Because Government actions and inactions beyond the control of the broker can significantly increase the risk of a protest, it is unfair to penalize the broker when those risks result in a successful protest.

Second, the provision has potentially huge monetary consequences without any due process safeguards and with insufficient standards. Under this provision, the Government aggregates to itself the right to unilaterally determine that a professional firm has committed malpractice and should be held civilly liable for its actions through a setoff of its commission; an action normally reserved for a court of law with all of its attendant protections. The determination has consequences for the brokerage firm whose reputation could be unfairly damaged without recourse even beyond the dollars involved.

Third, in a typical protest such as one filed with the Government Accountability Office (GAO), the Government does not “suffer damages” in connection with a protest. GAO makes recommendations to the agency, but the agency determines for itself whether or not to follow the recommendation. The broker has no say in this decision. GAO is not a judicial forum, but part of the legislative branch and its decisions are often influenced by political concerns, without any formal evidentiary rules, inconsistent from GAO attorney to GAO attorney, and quite frankly are often arbitrary and poorly reasoned. GAO’s objective is to promote fairness in a government contract bid system and not to do justice between the parties or the Government and its broker.

Fourth, the broker has no control or say in the conduct or defense of the protest or claim whatsoever. It does not decide what arguments to make and not to make, or whether to appeal the decision. Often times the Government’s litigation decisions are understandably made in a larger political and judicial context for reasons that are extrinsic to the merits of the case or appeal. It is fundamentally unfair to make a broker financially responsible for the results of litigation over which it has no control.

Fifth, as drafted, the provision does not even require a fault determination, or an assessment of the relative responsibilities of the Government and the broker, or contain any standard for determining when a broker’s conduct falls short of what is legally required such that it should be liable.

Finally, if the Government believes that a broker’s conduct has fallen short of what is legally required of the broker, it already has all the remedies that it needs under accepted government contracts law to obtain reimbursement, provided that it can meet its evidentiary burden of demonstrating the failure to the satisfaction of a neutral party with all of the procedural protections it gives all of its government contractors.

For all these reasons, we believe that the draft provision is unnecessary and unwise and should not be retained in the contract.

**Response: GSA has considered this and similar comments and will amend the final RFP.**

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## SECTION E

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**Question 152** - Pg. 42 - E.2 Unclear processes on who and how offsets would be implemented.

**Response: Offsets would be handled by the National Contracting Officer in a case by case basis. GSA has considered this and similar comments and has determined to amend the final RFP.**

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## SECTION F

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**Question 29** – Section F.3

Under Paragraph F.3 Ordering Procedures, will contractors have to re compete among the contract holders for individual deals by amending their price and/or otherwise supplementing their offers under either paragraph F.3 (2)(a) or F.3. (3)(a)?

**Response: Contract holders will not need to re compete or to supplement their offers under the ordering procedures described under F.3 (2) (a). Contract holders will be competing under the F.3 (3) (a) and may be asked to compete under F.3 (2) (b). Information on the competition will be provided with each opportunity.**

**Question 65** - Section F.3. (2)(a), Pages 44-45: In the best interest of a truly “National” Broker Contract will the GSA consider removing regional level past performance as a parameter for Contractor selection in ordering task orders? This change may benefit the GSA and provide greater clarity to Contractors if the approach was more of a best value approach, prioritizing past performance first and price second, subject to capacity with no consideration given to “workload distribution”.

**Response: GSA has considered this and similar comments and has determined not to amend the final RFP. Orders will be placed based on the factors listed.**

**Question 66** - Section F.3. (2) (a) (3), Page 45: Please clarify the means by which “Workload capacity” will be measured and considered by the OO to ensure “all contractors will be provided a fair opportunity to be considered...” For example, is Workload capacity based on the Contractor’s then current or potential staffing resources available to perform the task order?

**Response: Workload capacity considerations can include, but are not limited to, current staffing resources available at time of task order issuance. The consideration will be based on information available such as the number of task orders previously issued, the number of personnel with security clearances and required training, and systems security clearance status.**

**Question 67** - Section F.3. (2)(a)(4), Page 45:

Please clarify the means by which “Workload distribution” will be measured and considered by the OO to ensure “all contractors will be provided a fair opportunity to be considered...” For example, is Workload distribution based on task orders, square footage or measures that more accurately reflect Contractor compensation such as square foot years or actual commission amounts earned?

**Response: Workload distribution considerations may include, but are not limited to, current number of task orders issued, square footage, square foot years, commission amounts earned/opportunities and other facts that may be present prior to task order issuance.**

**Question 68** - Section F.3.(3)(a), Page 45:

Given the data in Exhibit 3, there will be few, if any, tasks with net commissions exceeding \$5,000,000. Separate ordering procedures do not seem warranted if the fair opportunity procedures are clear in (2)(a). The

largest, high profile leases should be issued the Contractor(s) that are performing the best for GSA on a national level.

**Response: The ordering procedures for task orders over \$5M are in accordance with the FAR requirements for enhanced competitive ordering procedures at that threshold.**

**Question 69** - Section F.3.(3)(a), Page 45:

What is meant by “including price” in subparagraph (3)? Is this the “awarded percentage” or will each task require each Contractor to again price each large task as they arise?

**Response: GSA may hold contractors to the stated price in the contract or ask them to re-bid the price among other specified factors. Competition is required on all task orders over \$5 Million. Various selection factors including price must be communicated to all contractors.**

**Question 70** Section F.3., Pages 44-47:

What mechanism, if any, will cause Ordering Officials to place more profitable Task Orders (i.e., those larger in space required and in higher rent markets) with Contractors as opposed to executing them in-house with GSA staff?

**Response: No mechanism will be employed along those lines. The decision is ultimately the Governments as to whether to issue a task order to a broker or perform the work in-house.**

**Question 71** - Section F.3., Pages 44-47:

What mechanism, if any will cause Ordering Officials to allocate evenly the more profitable Task Orders (i.e., those larger in space required and in higher rent markets) among multiple Contractors when performance factors in F.3. (2)(a) among those Contractors are reasonably equivalent?

**Response: Award of the task orders will be dictated by the factor or factors determined to be important to the particular lease acquisition.**

**Question 97** – Section F Ordering Suggestion:

Task orders over a minimal size should be competed among the firms awarded contracts. The task order should be emailed to the contractors. If the contractor wishes to bid it, it should email back:

1. For that particular task order its firm agrees to represent the Government only, and not represent an offeror on that particular task (lease action).
2. Its price for performing that task order.
3. The contractor with the lowest price, without a conflict, should be awarded that task order. This method reduces or eliminates direct conflicts of interest and lets competition among the contractors determine the price.

**Response: GSA has considered this and similar comments and has determined not to amend the final RFP.**

**Question 127** F.3 Ordering Procedures, pp 44-45 F.3 (1)

For \$3,000 or less commission, how will the grouped task orders be defined in this scenario?

**Response: GSA has not predetermined any particular groups of task orders at this or any other threshold for ordering.**

**Question 128** – F.3 Ordering Procedures.

How will these small transactions impact the GSA's fair opportunity determinations between the Contractors.

**Response: Fair opportunity considerations do not apply to task orders with net value of \$3,000 or less. The ordering procedures for task orders under \$3000 are in accordance with the fair opportunity requirements for this threshold.**

**Question 129** - For F.3 (2)(a)

How is price included as part of fair opportunity consideration? Please clarify the evaluation criteria for how TOs will be awarded as part of fair opportunity.

**Response: For ordering under F.3(2)(a) the contractor's stated maximum percent of aggregate lease value for the specific category will be used for the price criteria. The COTR will select from the criteria which of the factors are important to the particular lease procurement, if any, along with price. The factors will be given to the OO to make the selection. The final RFP will be amended to indicate the requirement that price must always be considered.**

**Question 130** - F.3.(a) Ordering Procedures, p 45

Will there be parameters or specific criteria to group TOs (e.g., same agency, same city, same timeframe, etc.).

**Response: There are no predetermined parameters or specific criteria to group task orders. While GSA will use the ability to group task orders where it determines groupings to be appropriate, criteria like same agency, location, and time frame are good examples.**

**Question 131 – F.(e). Ordering Procedures.**

We recommend that the fair distribution of transactions take into account square footage, firm term and total commission dollars.

**Response: Allocation or equitable distribution is not appropriate without giving fair consideration to all awardees. Each contract holder will be provided a fair opportunity for each transaction as stated in the ordering procedures.**

**Question 153 - Pg 44. –**

This ordering procedure seems to ask contractors to re-bid for each assignment adding considerable additional administrative time and expense to the process. This approach offers inequitable distribution of workload.

**Response: Contractors would not be required to re-bid for each assignment. As part of the procurement process, GSA will obtain information from the Contractors on price and past performance necessary for GSA to make assignments under the conditions described in the ordering processes, in most cases. In some cases the contractors will be afforded the opportunity to rebid on some actions. The process is in keeping with fair opportunity procedures as defined in the Federal Acquisition Regulations.**

**Question 173- Section F.3 – FAIR OPPORTUNITY ORDERING PROCEEDURES**

We applaud the effort made by GSA in the draft contract to create greater flexibility and authorize broader discretion in task order assignments which among other things allow assignment of groups of task orders, and implement performance-based assignment from the inception of the contract. Because the vast bulk of task orders will fall under the draft contract section F.3.2.a, we devote considerable attention to that section. The overall objective is to design a system that provides flexibility and discretion to meet the needs of the tenant agencies without arbitrariness. We think that what is proposed meets that test with some revisions as set forth below.

For most task order assignments, the placement procedure contemplated by the draft contract requires the ordering official to consider one or more of four listed factors. We agree with the selection of three of the listed factor (price, past performance and workload capacity), disagree with one factor (workload distribution), and suggest two additional ones (conflict avoidance and technical capability).

Workload distribution should not be considered as a placement factor. If a broker has sufficient capacity, and is successfully performing under the contract, one broker's set of assignments as compared to another is irrelevant.

Much time and effort was invested in the prior National Broker Contract in trying to balance workload distribution.

It is administratively burdensome, and because each assignment is unique, very difficult to achieve. Balancing workload distribution for its own sake is prohibited by the fair opportunity procedures' injunction against any method of "allocation." See FAR § 16.505 (b) (1) (B). Assignments should go to the broker based upon the identified consideration (without regard to the number of other assignments it has received) as long as it has the capacity to perform the task order. We believe that when the FAR indicates that the contracting officer should consider the "potential impact on other orders placed with the contractor," it is capacity not workload distribution that is required to be considered. Capacity should be judged primarily based upon past performance, and in consultation with the broker, as other methods to determine capacity such as number of employees or offices may be misleading as they do not account for knowledge, experience, and efficiency.

Conflict avoidance and technical capability should be considered as factors in order placement. While we discuss conflict avoidance elsewhere, one way to strengthen the contract's conflicts provisions, and to respond to some critics of the current broker contract is to allow the ordering official to consider conflict avoidance as a objective in making order placement determinations. This would promote integrity and the absence of even an appearance of impropriety in government contracting, and avoid the delays attendant to reassignments due to

conflicts. The other factor worthy of consideration is technical capability. We are aware that the draft contract at section F.3.4 provides an exception to the fair ordering procedures if only one broker is capable of performing at the level or quality required or highly specialized services are needed. But even in the situation where more than one firm is technically capable, relative differences in capability are nonetheless worthy of consideration in making the ordering assignment and consideration of this is in the best interest of the United States.

Finally, we think that the ordering official should be required to document the file with a statement of the factors or factors considered in making the assignment, along the lines of FAR § 16.505 (b) (4), and that the statement should be available on request by any NBC broker firm. Obviously, neither formal evaluation schemes nor scoring is required. But the kind of transparency that results from this decision document will assure that a principled consideration of the factors was made and that a fair opportunity was provided for all of the NBC brokers to be considered. Finally, it should be clear that all submission requirements in connection with the order placement procedure should be kept to a minimum and the streamlining procedures of FAR § 16.505 (b) (ii) should be applicable.

With respect to larger task orders or groups of task orders, the order procedure for which is reflected in the draft contract at section F.3.3.a, we again urge that any ordering decision process be streamlined and any submission requirements are minimal. We believe that the broker should be bound by the price and technical information that it submitted in response to the broker procurement, and it should not be able to revise its pricing or technical information every time such a task order or group of task orders is to be assigned. Experience with the regional contracts has confirmed that multiple rounds of pricing and technical submissions is time consuming and self destructive.

Under NBC, the larger task orders are required to subsidize the smaller unprofitable transactions. But if price submissions for the larger task orders can be revised each time, a broker could end up with only the smaller unprofitable transactions, and the contract will fail. While the evaluation factors for the broker procurement were not furnished in the draft contract, we anticipate that technical factors will be considerably more important than price.

The fair opportunity procedures should reflect the same evaluation scheme as the contract itself. Assignments should be made based upon information and pricing submissions received with the final proposal revisions in response to the broker procurement itself together with performance data generated in the performance of the contract.

**Response: GSA has considered this and other similar comments and has determined to amend the RFP to address price. The ordering procedures are in accordance with fair opportunity requirements. OO's will document the file for each selection.**

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## SECTION G

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**Question 88 - G2.2 Application of Commission Credits to the Lease 2.**

Is there additional information available regarding the SF Categories?

**Response: SF categories are contained in Section B on the Pricing Worksheet.**

**Question 132 - G.2.1. Commissions, p 50.**

We recommend that the GSA consider allowing for 50% of the total commission to be paid upon award to the Contractor, with the commission credit coming out of the other 50%?

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 165 –**

Fifth, given the new pricing structure, the requirement in Section G.2.1(3) that “[T]he Contractor shall receive their portion of the commission 50% upon award and 50% upon acceptance of space” will have the perverse effect of substantially reducing the amount of commission that the Lessor must pay at lease execution without any benefit to the Government. If, for example, a Contractor’s Commission percentage were 2% and the market commission were 4%, under the current framework, the Lessor would pay only 1% at lease execution. The other 3%, representing the remaining 1% due to the broker and 2% due to the Government as Commission Credit would not be paid until space acceptance/lease commencement. This provides the lessor with free use of the commission dollars without any benefit to the Government. Further, it is not consistent with market practice in which brokers sharing commissions with clients receive the first payment. We would recommend that the current practice be retained of allowing the broker to receive a portion of the Contractor’s Commission up to 50% of the market commission at lease execution with the remaining 50% of the market commission being paid at the time of space acceptance/lease commencement in the form of the remainder of the Contractor’s Commission and the Government’s Commission Credit.

**Response: GSA has considered this and other similar comments and has determined not to amend the final RFP.**

**Question 166 -** Sixth, with respect to renewal options procured in connection with a new or succeeding lease, we see no reason not to allow the recovery of the Contractor’s Commission by the broker and the Commission Credit by the Government if and when such option is exercised. The procurement of such options is part and parcel of the lease procurement and should be compensated. Likewise, where a lease is procured with a termination right, the broker should be entitled to the Contractor’s Commission and the Government to the Commission Credit with respect to the portion of the term that is subject to such termination if and when such termination option lapses without being exercised.

In both the renewal and termination option situation, not permitting the payment of the commission when those terms become firm, is not in the best interest of either the Government or the broker.

**Response: GSA has considered this comment and other similar comments and has determined not to amend the final RFP.**

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**SECTION H**

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**Question 6 - Training Requirements**

We feel that the requisite training is overly restrictive and is an unnecessary burden for subcontractors. We agree that the Warrant level of training required in the draft SFO is appropriate for the Prime Contractor organization but if the training noted is required for all personnel we strongly protest that this is an unnecessary burden and predetermined limitation imposed for this national contract.

**Response: GSA has considered this and similar comments and has determined to amend the final RFP as follows:**

**The Contractor will not be reimbursed for any costs associated with training. Contractor personnel who perform lease acquisition functions shall meet the following training requirements prior to beginning work on this contract.**

**Contract personnel with 3 years of documented commercial real estate experience may complete the Market Analysis defined in Exhibit 5.**



**Contract personnel with 3 years of documented commercial real estate experience and Federal Real Property Leasing or Basic Lease Contracting may complete Market Surveys as identified in Section C.**

**Contract personnel preparing SFOs must have 3 years of documented commercial real estate experience and have completed the Federal Real Property Leasing or Basic Lease Contracting and Federal Real Property Lease Law.**

**To negotiate GSA's lease transactions, Contractor personnel must have 3 years of documented commercial real estate experience and have completed Federal Real Property Leasing or Basic Lease Contracting, Cost and Price Analysis of Lease Proposals, and Federal Real Property Lease Law**

**For Post Award Services, Contractor personnel must have 3 years of documented commercial real estate experience specific to build out of a facility and bringing the lease transaction to occupancy.**

**On a very limited basis, the NCO may consider experience in Federal Leasing Procurements in lieu of specified training.**

**Question 7 - Training Requirements**

We acknowledge that the draft SFO allows Prime Contractors to provide training. Perhaps the SFO should require training programs to be held by the Prime Contractor which incorporates Small Business subcontractors as an acceptable alternative to the expensive and geographically inconvenient suggested courses.

**Response: GSA has considered this and similar comments and has determined not to amend the final RFP.**

**Question 8 - Training Requirements**

We also suggest that under the GSA Schedule which the training companies have been noted as providing the courses (not all courses are available by the noted GSA schedule holders), that more affordable on-line courses be offered with GSA approved access.

**Response: Your comment will be provided to the appropriate Schedule Contracting Officer for consideration.**

**Question 9 - Training Requirements**

To insure that the vendor is on the correct road to qualifying per the SFO course schedule, we request a cross-reference of acceptable course completion. Some vendors may have the same training under a DoD, FAI, or DAU course which might not have a similar title.

**Response: No cross reference of acceptable courses is available.**

#### **Question 10 - Training Requirements**

Transactional Management (lease negotiations and award documentation) is a technical area requiring extensive federal contract experience. Transactional Management would be an appropriate area to require Prime Contractors to offer a Mentor-Protégé program for sub-contractors. The nature of the Transactional Management duties are “virtual” and “screen” oriented, this task would be suited for the recruitment of Disabled Veterans with mobility limitations. Sponsorship of a Veteran training/employment program within the SFO would compliment the Presidents Executive Order to promote the hiring of Veterans.

**Response: There is no separation of activities of the services being performed. Offerors will be evaluated on their approaches in delivering services in accordance with the evaluation factors from Section M in the final solicitation.**

#### **Question 11 - Training Requirements**

We have researched the web-sites of GSA Schedule holders noted in the draft SFO. We feel that the qualification courses noted should be more identifiable in the SFO. Some of the Course Titles within the SFO do not correlate with the course descriptions in the individual schedule holder catalog. Additionally, there should be a standard noted which would provide the vendor guidance as to the appropriate course certification (i.e. does a similar course under DAU or other training facilities qualify as comparable training for the GSA);

**Response: GSA has considered this comment and will review available information. The final RFP will reflect available information.**

#### **Question 12 - Training Requirements**

Courses required in the SFO should have an equivalency for practice (i.e. a real estate broker’s license is required to provide services within this SFO and all real estate license professional certification requisites require a real estate course in appraisal). If the GSA is requiring an appraisal basics course which is specific to the government contracting process then the SFO should be more explicit – we did not locate an Appraisal Course within the GSA Schedule holders.

**Response: GSA has considered this and other comments and has determined to amend the final RFP. The appraisal course will be removed. The potential for experience in Federal Real Property to replace certain training requirements is available on a very limited basis. See response to Question 6, Section H.**

#### **Question 15 - Training Qualifications**

As sub-contractors under CB Richard Ellis, we have been fortunate in our ability to participate in the Prime Contractor professional development training sessions (some held weekly) which we feel enhances the work product of our company. We feel that a continuing training program for Prime Contractor personnel and Sub-Contractor personnel should be mandated within the SFO. This requirement would fall within the striving for excellence commitment of the Strategic Plan Fiscal Years 2007 – 2012;

**Response: GSA has considered this and other similar comments and determined that the final RFP will not be amended.**

#### **Question 23 – Personnel Qualifications**

Will the resumes and experience of subcontractors be evaluated in the same manner as that of the prime contractor?

**Response: Resumes and experience of subcontractors be evaluated in the same manner as that of the prime contractor if proposed as Key Personnel under Section H.**

**Question 28 – Section H.5**

Under the Conflict of Interest Provision, will Contractor's Personnel be prevented from receiving fees earned prior to the start date of this contract?

**Response: Contractors may receive fees earned prior to the start of the contract and must be able to demonstrate the source and amounts of those fees upon request by GSA.**

**Question 30 – Section H**

What are the minimum experience requirements for the National Project Manager, the regional contact person, and other individuals performing work on this contract?

**Response: Standards for the key individuals will be provided in Sections L & M of the final RFP.**

**Question 35 – Section H**

It is unclear how to qualify contractor and subcontractor personnel because the solicitation does not explain what qualifies as "training equal to those required for Federal Lease Contracting Officers.

**Response: Section H.7 contains the personnel qualification training requirements. GSA has considered this and other similar comments and has determined to amend the final RFP to clarify training requirements. See response to Question 6, Section H.**

**Question 40 - Section H.3.7.3 (Leasing Personnel):** This section requires that Leasing Personnel have a thorough knowledge of the local market (implying that they regularly transact in that market area). However, the section also states that Leasing Personnel must have completed all federal leasing procurement courses outlined elsewhere in the solicitation. We know that all of the current Contractors either: 1) use local leasing personnel (who are often not formally trained in the federal leasing process) supported by service centers staffed by federal leasing experts, or; 2) have Leasing Personnel travel into various local markets to transact directly. In either case, it can be argued that the Leasing Personnel do not have both a thorough knowledge of the local market and formal federal leasing training. Since it appears that GSA is willing to accept teaming arrangements, can you clarify your intent regarding Leasing Personnel capabilities?

**Response: GSA has considered this and other similar comments and has determined to amend the final RFP for clarification.**

**Question 41 - Section H.5.d(7) (Conflicts of Interest):** As relates to this clause, can a member of a brokerage team be involved in the purchase or sale of a property where GSA is a tenant, so long as GSA is not a party to the transaction?

**Response: The prohibition in H.5 (d) 6 and 7 would apply. A member of a broker team could not be involved until 6 months after their representation of GSA has expired.**

**Question 72 - Section H.1. Page 52:**

Does the requirement that, "Contract firms must demonstrate experience with managing a minimum of 150 full lease acquisitions per year." apply to: 1) the five national clients' lease acquisition services volume combined or 2) those and other clients collectively for the firm, rather than individually by contract?

**Response: The specific information will be provided in Sections L and M of the final RFP.**

**Question 73** - Section H.5. (d), Page 57:

If a Contractor establishes a “conflict wall” that complies with all minimum requirements of the Contract and, due to representation of one or more potential Offerors, all potential Offerors are willing to complete and execute Exhibit 7C (waiving the “dual agency” as is routine in the commercial sector), under what, if any, circumstances will the RCO or NCO not permit dual agency?

**Response: GSA will restrict the same individual from representing both the Government and a building owner for a specific lease acquisition and will not permit any individual with a personal financial interest in any potential offering entity to represent the government in that transaction. GSA expects that contractors will be able to proceed in a dual agency role in the majority of transactions where contractors are in conformance with H.5 and other requirements of this contract including FISMA and the contractor's ethics program. GSA is prudently preserving the right to stop performance and terminate a task order should a need arise in a particular transaction.**

**Question 74** - Section H.7., Pages 60-61:

Will the NCO consider actual years of experience in federal real property leasing in lieu of “evidence of course completion” required in the second paragraph and associated bullets.

**Response: GSA has considered this and other similar comments and has determined that the final RFP will be amended. See response to Question 6, Section H.**

**Question 75** - Section H.8.3., Page 63:

Can the GSA clarify the statement that, “The Contractor is required to use eLease for all aspects and documentation required for a lease project.” This requirement appears to create redundant effort with both the COTR hard copy file and the hard copy requirements at C.4.2.10.2. on page 29 and C.4.2.11.4. and C.4.2.1.1.5. on page 31, which are further evaluated under C.9.1.1.1.1. on page 37.

**Response: We recognize redundancy but these are GSA’s minimum requirements.**

**Question 133** - H.4 Restrictions on Other Work, p 56.

Upon award of a task order, Contractors shall disclose that they are acting as an exclusive representative of GSA for the transaction. The Contractor, its employees, or subcontractors and their employees, performing services under any task order issued hereunder shall neither solicit other work to be performed under this GSA contract nor accept additional work under this contract from any Federal agency other than GSA.

The Contractor must represent themselves as a GSA Contractor and shall not, while representing the GSA, market their company or services of their company to GSA clients or property owners while conducting GSA business.

Comments:

Clarify in all instances that the application of this clause is to Contractor’s dedicated personnel performing work under this contract.

If not in all instances, then (a) clarify its application to soliciting or accepting additional work under the contract from any Federal agency other than GSA; and, (b) limit the application of the clause below to Contractor’s dedicated personnel performing work under this contract:

“The Contractor must represent themselves as a GSA Contractor and shall not, while representing the GSA, market their company or services of their company to GSA clients or property owners while conducting GSA business.”

**Response: The application is to all Contractors' personnel assigned to accomplish work under this contract whether they are dedicated to the contract or performing work as need on the contract.**

**Question 134** - H.5 Organizational Conflicts of Interest, p 58.

(d) Restrictions. The Contractor agrees:

4. That none of the Contractor's personnel, (including without limitation employees, consultants or subcontractors) may participate as both a GSA representative and as a representative of an offeror on a GSA lease transaction. Such ban shall be in effect for the duration of the lease transaction.

Comments:

Limit the application of the clause above to Contractor's dedicated personnel performing work under this contract.

**Response: GSA has considered this comment and has determined not to amend the final RFP.**

**Question 135** H.7 Post Award Orientation and Training, pp 60-61.

In consideration of completing ongoing or other current assignments, would the GSA consider extending the training period for Contractor personnel from three months to one year following the Notice to Proceed?

This will allow the Contractor to manage workload to continue to deliver services in a timely fashion, while training goals are met.

**Response: GSA has considered this and other similar comments and has determined that the final RFP will not be amended.**

**Question 147** Pg. 19-20 - Contractor Personnel –

The Education requirements under Section H are unreasonable due to multiple factors:

1. The classes required exceed the requirements for COTRs and are equivalent to Contracting Officers which is far beyond the scope of work.

2. No provision is made for equivalent experience by number of assignments or years of completing government leases.

3. The time allowed for completion would cause a substantial backlog among the three vendors allowed.

4. The Appraisal class required is not offered by the vendors cited. There should be recognition of the licensed real estate agents self certifying completion of the Appraisal requirement through their licensing requirements.

5. Cost of private training

6. Contractors should be allowed to provide education over a longer period.

**Response: GSA has considered this and other similar comments and has determined to amend the final RFP. See response to Questions 6, Section H.**

**Question 154** - Pg. 52. – H.1

There is no definition of "National Client". For many firms, work on a regional basis for a national client would fulfill the requirements. In the evaluation, such work should be considered to meet the definition.

**Response: More information will be provided in Sections L & M of the final RFP.**

**Question 155** - Pg. 60 – Post Award Orientation and Training

The Education requirements under Section H are unreasonable due to multiple factors:

1. The classes required exceed the requirements for COTRs and are equivalent to Contracting Officers Warrant requirements which is far beyond the scope of work.

2. No provision is made for equivalent experience by number of assignments or years of completion government leases.
3. The time allowed for completion would cause a substantial backlog among the three vendors allowed.
4. The Appraisal class required is not offered by the vendors cited. There should be recognition of the licensed real estate agents self certifying completion of the Appraisal requirement through their licensing requirements.
5. Cost and amount of time required for private training makes response by small business subcontractors very difficult.
6. Contractors should be allowed to provide education over a longer period. The schedule established is unreasonable. Completion should be allowed over 2 years.

**Response: GSA has considered this and other similar comments and determined that the final RFP will be amended. See Question 6, Section H.**

#### **Question 174 - Section H.3.7 - PERSONNEL QUALIFICATIONS**

The last sentence of the first paragraph under Section H.3.7.1 provides that “Contractor and subcontractor personnel must have commercial real estate experience and federal leasing experience or training equal to those required for Federal Lease Contracting Officers.” Because the scope of work under the draft Contract is intended to reflect services that would otherwise be performed by Realty Specialists, we recommend that the experience and training requirements be tailored to those of Realty Specialists, not Lease Contracting Officers.

**Response: GSA has considered this and other similar comments and determined that the final RFP will be amended. See Question 6, Section H.**

#### **Question 175 - H.5 ORGANIZATIONAL CONFLICTS OF INTEREST**

Given the importance to the Government of avoiding conflicts of interest, or even the appearance of conflicts, dual agency should be allowed only rarely and as a last resort. For example, we understand that the FDIC has banned dual agency in connection with its use of brokers to assist in the management and disposition of assets of failed financial institutions. As discussed in connection with the fair ordering procedures, we recommend that conflicts avoidance be identified as a criterion for task order assignment.

To the extent that dual agency is permitted, the draft Contract provisions governing its use should be clarified and refined. Once a conflict is identified, a notice to proceed should not be issued until the Government has made an affirmative decision to proceed on the basis of dual agency. This decision should be made before the Contractor performs any work which could complicate reassignment to another Contractor. In addition, executed dual agency notifications and agreements from all parties affected by the Contractor’s performance of work related to the task order should be provided before the issuance of a notice to proceed. Waiting until the lease solicitation phase, as currently contemplated by Paragraph 11 on page 59 is too late.

Finally, tenant-only brokerage firms that are conflict free should not be required to implement costly and unnecessary conflict walls and other restrictions. Paragraph H.5(e) of the current NBC specifically provides that such restrictions “shall not apply to a Contractor who, as a condition of its award of this Contract, agrees and covenants (1) that it will not, during the term of the Contract, represent any building owner, representative, lessor or other third party to the Government in connection with a Government –issued leasing action; or (2) that is and will remain, during, the term of the Contract, an exclusive provider of tenant representation services.” We recommend that the foregoing exemption be re-instated in the current draft Contract.

**Response: GSA has considered these comments and has determined not to amend the final RFP.**

#### **Question 176 - H.7 POST AWARD ORIENTATION AND TRAINING**

As mentioned above we recommend that the training requirements be tailored to those of Realty Specialists, not Lease Contracting Officers. In addition, we recommend that there be an exception to the training requirement for personnel with 3 or more years of experience under the current NBC. Personnel who have been performing

satisfactorily for years under the current NBC should not be required to participate in costly and time-consuming training as a pre-condition of working under the new Contract.

**Response: GSA has considered this and other similar comments and determined that the final FPR will be amended. See Question 6, Section H.**

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## SECTION I

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**Question 76** -Section I.51., Page 127:

Since the Changes Clause provides that the Government can make contract changes without providing any adjustment in price (unlike the standard FAR Changes clauses), will the Government agree that it will not make any change to scope of work that causes an increase in the amount of work required or cost to perform the contract?"

**Response: The means of compensation under this contract is through a commission from lessors. There are no appropriated funds being utilized and no additional compensation will be paid by the government for the full lease acquisition services provided under the scope of the contract. Changes in process and legal requirements for procurements will inevitably occur during the term of this contract and as specified elsewhere in this RFP, the contractors will continue to perform at no additional cost to the government. GSA will endeavor not to make changes outside the scope of the contract. Changes that are implemented that the contractors analyze as beyond the scope of this contract should be brought to the attention of the NCO for resolution.**

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## EXHIBITS SECTION J

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**Question 136** - Exhibit 10

The Source Selection Plan, evaluation and decision approach should be further clarified as it relates to responsibility for roles of the Contractor and the COTR in support of FAR Subpart 7.5 and 15.308.

**Response: GSA considered this and other similar comments and determined not to amend the final RFP.**

**Question 77** – Exhibit 11 Paragraph 1.d., Page 1:

The RFP states “In the event that any one of the following conditions are met, the Broker shall receive the entire commission amount and is not required to forego any portion as a credit to the shell rental payment as set forth in paragraph a. above: The total USF of the lease is 4,000 or less; the firm term of the lease is 3 years or less; occupancy occurs on or before \_\_\_\_ [120 days from date of task order issuance].” Are Contractors permitted to negotiate and earn a market commission above the Awarded Percentage for task orders in Category 1 where the total USF of the lease is 4,000 or less; or any Category for an Expedited Lease action?

**Response: GSA has considered this comment and determined to amend the Final RFP. The inclusion of the quoted language was in error. Offerors must bid on all categories of the price matrix regardless of square footage or term.**

**Question 167** - Finally, although not stated in the draft RFP, Exhibit 11 states in paragraph d that “the Broker shall receive the entire commission amount and is not required to forego any portion as a credit to the shell rental payment” in cases where the total USF of the lease is 4,000 or less or the firm term of the lease is 3 years or less. We suggest that this be stated in the RFP as well.

**Response: GSA has considered this comment and determined to amend the Final RFP. The inclusion of the quoted language was in error. Offerors must bid on all categories of the price matrix regardless of square footage or term.**

**Question 78 Exhibit 13 – Model Small Business Subcontracting Plan**

Can GSA confirm what the overall small business subcontracting goal will be? Will this exhibit be updated to reflect actual goals rather than the FY 2009 overall goal for 27 percent of subcontracting dollars?

**Response: The goals will be provided with the final solicitation.**

**Question 79 Exhibit 13 – Model Small Business Subcontracting Plan**

Can GSA clarify the distinction between qualified 8(a) SDB firms and other qualified SDB firms? Specifically, can SDB firms self-certify or are they required to obtain certification from the Small Business Administration, as required for the 8(a) certification?

**Response: This is not a GSA distinction. According to SBA website both programs exist to assist businesses owned and controlled by participants who qualify as socially and economically disadvantaged. However, each provides a different set of benefits. The 8(a) Program provides access to contracts and business development assistance, while the SDB Program focuses only on providing access to contracts. Furthermore the mechanisms for awarding contracts under the 8(a) Program are different from those applied under the SDB Program. Finally, 8(a) Program participants automatically belong to the SDB program, but SDB Program participants are not necessarily members of the 8(a) Program. Prime contractor's instructions on verification of a sub contractor's status are provided in sub contracting plan clause 52.219-9 contained in Section I.**

**Question 42 - Exhibit 13 (Subcontracting Goals):**

The goal listed on the sample Subcontracting Plan is 18% but there is a note suggesting that the goal should be changed to 27%. Which can we expect?

**Response: The exhibit is a sample. The final solicitation will contain the expectations on submission of goals for evaluation.**

**Question 3 – Exhibit 14**

Why was Smith Real Estate Services not listed on attachment 14 as a Small Business Contractor? As you know, we have been working as a small business subcontractor on the NBC for almost 3 years.

**Response: The Exhibit provides information from our GSA acquisition database concerning prime small business contractors under North American Classification Industrial Standard (NAICS) 531210. The NAICS is the standard used in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data. From the information we have we cannot locate any information showing your company as a Prime contractor under NAICS 531210.**

**Question 17 –**

AmeriVet Real Estate Services, Inc. as a current sub-contractor to the national GSA schedule and as a coordinating entity for a network of SDVOSB organizations should be included in Exhibit 14 when it is published or, as an alternative, no recommended sub-contracting firms should be noted in the SFO. This Exhibit is not in the best interest of open competition unless all qualified subcontractors of the current national schedule are documented.

**Response: The exhibit provides possible small business sources to assist large business concerns with developing the Small Business Subcontracting Plan. This list is not an all inclusive list and is provided for information only. This list does not constitute a recommendation by GSA. This is a list of previous small business concerns that have or have had GSA real estate contracts, not schedule contract holders.**



**Question 145 - Exhibit 14 – Small Business Contractors**

Under A. Previous Small Business Contractors, it notes the vendors must meet NAICS Code 531210. It is our understanding based on counsel research, that Prime Contractors can meet their subcontracting commitments by using sub-contractors with multiple NAICS Codes. For instance fulfilling portions of the scope of work might include subcontracting companies with NAICS codes 26220 Construction of Facilities, 541310 Architectural Services for Post Award Services. It might even include such services as 561439 Copying etc. No restriction on subcontractor NAICS codes should be dictated by the contract.

**Response: There is no restriction on subcontractors with multiple NAICS codes. Exhibit 14 provides a list of contractors that have or had a GSA contract providing services to GSA under NAICS 531210. The list is for information purposes only.**

**Question 137 - Exhibit 15. MSA Range of Market Commissions.**

How does GSA envision assignment “market commissions” for the excluded MSAs?

**Response: The contractor will supply data on the market rate commissions in the particular market and meet with the COTR to establish the target commission for each transaction based on that data and other data available to the COTR.**

**Question 160 –**

Exhibit 15 requires brokers to report minimum and maximum market commission ranges for 62 Metropolitan Statistical Areas (MSAs) which appears to establish a market range that will be recognized by the Government. This poses several concerns. How will submarkets not included in the MSAs be treated?

**Response: The contractor will supply data on the market rate commissions in the particular market and meet with the COTR to establish the target commission for each transaction based on that data and other data available to the COTR.**

**Question 161 –**

How will differences in the market ranges reported by the various brokers be reconciled?

**Response - No reconciliation will be required. The awardee submissions will be shared with all COR/COTRS for use in establishing a market range in a particular market.**

**Question 162 –**

How will the government determine which market range to use?

**Response: The contractor will supply data on the market rate commissions in the particular market and meet with the COTR to establish the target commission for each transaction based on that data and other data available to the COTR.**

**Question 163 –**

If an offeror refused to offer a market commission within the range identified in Exhibit 15, would the Government consider the offer to be non-responsive? If not, what is the purpose of Exhibit 15?

**Response: In negotiated procurements the correct terminology is technical acceptability rather than responsiveness. GSA’s RSL 2006-09 Lease SFO Revisions for National Broker Contract (amended) addresses Commission Management policy and guidance concerning acceptability of the market commission. The link to this RSL has been provided in response to a previous question. The purpose of Exhibit 15 is to provide the COR/COTR with information to assist in establishing a target commission for a particular market.**

**Question 164 –**

We would recommend inclusion of language that would allow any offer be held non responsive in the event the landlord refused to pay a market based commission. We also suggest that a definition of market commission be included in the definitions section of the Contract.

**Response: In negotiated procurements the correct terminology is technical acceptability rather than responsiveness. GSA's RSL on Commission Management provides policy and guidance concerning acceptability of the market commission. The purpose of Exhibit 15 is to provide the COR/COTR with information to assist in establishing a target commission for a particular market. GSA has considered this and other similar comments and determined not to amend the final RFP.**