



DEPARTMENT OF VETERANS AFFAIRS
Office of Construction & Facilities Management
Washington DC 20420

APR - 1 2014

**RE: Cancellation Language for Inclusion in U.S. Department of Veterans Affairs
(VA) Lease Procurement**

Dear Offeror,

The purpose of this letter is to inform you of new cancellation language that is accompanying the Solicitation for Offers (SFO) for this project. The Administration is conducting a technical review of VA's leasing program, including the potential inclusion of cancellation clauses into VA's leases.

The language contemplates four (4) scenarios and requests pricing in a number of different formats, to include buy-out schedules in event of a cancellation, as well as fixed and variable rental rates based on cancellation after a given timeframe of occupancy. One of these four scenarios may be incorporated into the final lease contract. Please see Attachment #1 to the SFO for more details.

VA will use the pre-bid conference, currently anticipated in April 2014, to solicit feedback on the concept and the clauses. We invite you to bring a representative from your lender or financial institution to that meeting. More details on the pre-bid to follow. Should you have any questions regarding this language in advance of the pre-bid, please submit those questions in writing to the points of contact listed in the SFO.

Sincerely,


Jessica L. Kaplan
Director, Real Property Service

Enclosure

Attachment #1
Lease Cancellation Language

In addition to providing pricing on a 20-year firm term and a 15-year firm term with a 5-year option, both with and without Schedule B costs included, offerors shall provide price proposals for each of the following scenarios, as if one of the following provisions will be included in a final, awarded 20-year lease:

Scenario 1

1. **Full Cancellation Right.** Notwithstanding anything to the contrary contained in this Lease, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason, or no reason whatsoever. The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable only for rent payments due and owing to the Lessor prior to, but not including, the effective date of cancellation, and any unpaid tenant improvement costs identified in the Lease.
2. **Cancellation Right after 5 Years.** Notwithstanding anything to the contrary contained in this Lease, after completion of Year 5 of the lease term, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason or no reason whatsoever. The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable only for rent payments due and owing to the Lessor prior to, but not including, the effective date of cancellation, and any unpaid tenant improvement costs identified in the Lease.
3. **Cancellation Right after 10 Years.** Notwithstanding anything to the contrary contained in this Lease, after completion of Year 10 of the lease term, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason or no reason whatsoever. The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable only for rent payments due and owing to the Lessor prior to, but not including, the effective date of cancellation, and any unpaid tenant improvement costs identified in the Lease.

Offerors shall submit this pricing information in the following formats:

Scenario #1	Price per NUSF Including Schedule B	Price per NUSF Excluding Schedule B
20-year Firm Term without Cancellation Right		
15-year Firm Term and 5-year Option without Right		
Full Cancellation Right during 20-year Firm Term		
Cancellation Right after 5 Years during 20-year Firm Term		
Cancellation Right After 10 Years during 20-year Firm Term		

Scenario 2

Scenario 2 assumes standard pricing on a 20-year firm term and a 15-year firm term with a 5-year option, both with and without Schedule B costs included and requires offerors to complete the cancellation cost schedule below, as if one of the following provisions will be included in a final, awarded 20-year lease:

- 1. Full Cancellation Right.** Notwithstanding anything to the contrary contained in this Lease, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason, or no reason whatsoever. The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable for the amount listed for the corresponding timeframe, and any unpaid tenant improvement costs identified in the Lease.
- 2. Cancellation Right after 5 Years.** Notwithstanding anything to the contrary contained in this Lease, after completion of Year 5 of the lease term, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason, or no reason whatsoever. The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable for the amount listed for the corresponding timeframe, and any unpaid tenant improvement costs identified in the Lease.

3. **Cancellation Right after 10 Years.** Notwithstanding anything to the contrary contained in this Lease, after completion of Year 10 of the lease term, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason, or no reason whatsoever. The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable for the amount listed for the corresponding timeframe, and any unpaid tenant improvement costs identified in the Lease.

Scenario #2 – Rental Rate	Price per NUSF Including Schedule B	Price per NUSF Excluding Schedule B
20-year Firm Term		
15-year Firm Term and 5-year Option		

Scenario #2 – Cancellation costs	Lump sum Cancellation payment schedule with no change in price per NUSF.	Lump sum Cancellation payment schedule with no change in price per NUSF after 5 Year Firm Term	Lump sum Cancellation payment schedule with no change in price per NUSF after 10 Year Firm Term
Cancellation in Year 1		XX	XX
Cancellation in Year 2		XX	XX
Cancellation in Year 3		XX	XX
Cancellation in Year 4		XX	XX
Cancellation in Year 5		XX	XX
Cancellation in Year 6			XX
Cancellation in Year 7			XX
Cancellation in Year 8			XX

Cancellation in Year 9			XX
Cancellation in Year 10			XX
Cancellation in Year 11			
Cancellation in Year 12			
Cancellation in Year 13			
Cancellation in Year 14			
Cancellation in Year 15			
Cancellation in Year 16			
Cancellation in Year 17			
Cancellation in Year 18			
Cancellation in Year 19			
Cancellation in Year 20			

Any Cancellation costs under Scenario 1 or 2 above shall be prorated based on the effective day and month of the underlying Cancellation period.

Scenario 3

Scenario 3 assumes VA having the right to cancel the Lease for the Government's convenience, per Federal Acquisition Regulation (FAR) Part 49. Offerors shall provide price proposals for each of the following options, as if one of the following provisions will be included in a final, awarded 20-year lease:

- 1. Full Cancellation Right.** Notwithstanding anything to the contrary contained in this Lease, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason or no reason whatsoever. The effective date of such Cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled for the Government's convenience, the Offeror shall have a duty to mitigate its cancellation for convenience costs (including by seeking a replacement tenant to lease the space to be vacated by the Government). Subject thereto, in connection with the Government's decision to cancel the Lease for its convenience, the Government shall, subject to applicable Federal law, be liable to the Offeror for:

(1) The contract price for any unpaid tenant improvement costs identified in the Lease;

(2) Reasonable costs incurred in the performance of the work cancelled (i.e., the costs the Lessor has incurred per FAR Part 31, relating to the time (e.g., years) that would have been remaining on the Lease, but for the Government's cancellation of the Lease for its convenience). Such reasonable costs shall include a fair and reasonable profit (unless the Offeror would have sustained a loss on the Lease contract if the entire contract had been completed); and

(3) Reasonable cost of settling the work cancelled in connection with the Government's Cancellation for convenience.

- 2. Cancellation Right after 5 Years.** Notwithstanding anything to the contrary contained in this Lease, after completion of Year 5 of the lease term, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason or no reason whatsoever. The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled for the Government's convenience, the Offeror shall have a duty to mitigate its cancellation for convenience costs (including by seeking a replacement tenant to lease the space to be vacated by the Government). Subject thereto, in connection with the Government's decision to cancel the Lease for its convenience, the Government shall, subject to applicable Federal law, be liable to the Offeror for:

(1) The contract price for any unpaid tenant improvement costs identified in the Lease;

(2) Reasonable costs incurred in the performance of the work cancelled (i.e., the costs the Lessor has incurred per FAR Part 31, relating to the time (e.g., years) that would have been remaining on the Lease, but for the Government's cancellation of the Lease for its convenience). Such reasonable costs shall include a fair and reasonable profit (unless the Offeror would have sustained a loss on the Lease contract if the entire contract had been completed); and

(3) Reasonable cost of settling the work cancelled in connection with the Government's cancellation for convenience.

- 3. Cancellation Right after 10 Years.** Notwithstanding anything to the contrary contained in this Lease, after completion of Year 10 of the lease term, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, for any reason or no reason whatsoever. The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled for the

Government's convenience, the Offeror shall have a duty to mitigate its cancellation for convenience costs (including by seeking a replacement tenant to lease the space to be vacated by the Government). Subject thereto, in connection with the Government's decision to cancel the Lease for its convenience, the Government shall, subject to applicable Federal law, be liable to the Offeror for:

(1) The contract price for any unpaid tenant improvement costs identified in the Lease;

(2) Reasonable costs incurred in the performance of the work cancelled (i.e., the costs the Lessor has incurred per FAR Part 31, relating to the time (e.g., years) that would have been remaining on the Lease, but for the Government's Cancellation of the Lease for its convenience). Such reasonable costs shall include a fair and reasonable profit (unless the Offeror would have sustained a loss on the Lease contract if the entire contract had been completed); and

(3) Reasonable cost of settling the work cancelled in connection with the Government's Cancellation for convenience.

Scenario #3 – Rental Rate	Price per NUSF Including Schedule B	Price per NUSF Excluding Schedule B
20-year Firm Term		
15-year Firm Term and 5-year Option		

Scenario #3	Maximum Lump-Sum Amount
Full Cancellation Right during 20-year Firm Term	
Cancellation Right after 5 Years during 20-year Firm Term	
Cancellation Right After 10 Years during 20-year Firm Term	

Scenario 4

Scenario 4 involves the notion of VA having the right to cancel the Lease upon a reduction of enrolled Veteran patients, should good faith renegotiation of the lease be unsuccessful. Offerors shall provide price proposals for each of the following options, provisions, as if one of the following provisions will be included in a final, awarded 20-year lease:

Curtailment of VAMC Operations

If prior to the Expiration Date, the number of enrollees served by the VAMC (serving the impacted outpatient facility) decreases by **10%** or more for each of two consecutive fiscal years, then VA and Lessor will use their best good faith efforts to renegotiate all cost and space elements in the lease to take account of the reduced operations. Should such negotiations fail to result in an agreed upon resolution, VA reserves the right to cancel the lease.

1. **Full Cancellation Right.** Notwithstanding anything to the contrary contained in this Lease, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, should negotiations fail in light of decreases by **10%** or more for each of two consecutive fiscal years in the number of enrollees served by the VAMC (serving the impacted outpatient facility). The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable for the amount listed for the corresponding timeframe, and any unpaid tenant improvement costs identified in the Lease.
2. **Cancellation Right after 5 Years.** Notwithstanding anything to the contrary contained in this Lease, after completion of Year 5 of the lease term, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, should negotiations fail in light of decreases by **10%** or more for each of two consecutive fiscal years in the number of enrollees served by the VAMC (serving the impacted outpatient facility). The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable for the amount listed for the corresponding timeframe, and any unpaid tenant improvement costs identified in the Lease.
3. **Cancellation Right after 10 Years.** Notwithstanding anything to the contrary contained in this Lease, after completion of Year 10 of the lease term, the Government may cancel this Lease, in whole or in part, at any time by giving at least ninety (90) days' written notice to the lessor, should negotiations fail in light of decreases by **10%** or more for each of two consecutive fiscal years in the number of enrollees served by the VAMC (serving the impacted outpatient facility). The effective date of such cancellation shall be the first calendar day occurring after such ninety (90) days. If this contract is cancelled, the Government shall be liable for the amount listed for the corresponding timeframe, and any unpaid tenant improvement costs identified in the Lease.

Scenario #4 – Rental Rate	Price per NUSF Including Schedule B	Price per NUSF Excluding Schedule B
20-year Firm Term		
15-year Firm Term and 5-year Option		

Scenario #4 – Limited Cancellation costs	Lump sum Cancellation payment schedule with no change in price per NUSF.	Lump sum Cancellation payment schedule with no change in price per NUSF after 5 Year Firm Term	Lump sum Cancellation payment schedule with no change in price per NUSF after 10 Year Firm Term
Cancellation in Year 1	XX	XX	XX
Cancellation in Year 2	XX	XX	XX
Cancellation in Year 3		XX	XX
Cancellation in Year 4		XX	XX
Cancellation in Year 5		XX	XX
Cancellation in Year 6			XX
Cancellation in Year 7			XX
Cancellation in Year 8			XX
Cancellation in Year 9			XX
Cancellation in Year 10			XX
Cancellation in Year 11			
Cancellation in Year 12			
Cancellation in Year 13			
Cancellation in Year 14			

Cancellation in Year 15			
Cancellation in Year 16			
Cancellation in Year 17			
Cancellation in Year 18			
Cancellation in Year 19			
Cancellation in Year 20			

The Government reserves the right to review and question costs claimed per the FAR. Should the Government elect to include one or more of the above cancellation clauses in the Lease, Offerors in the competitive range will be notified during discussions, and the selected clause will be included via amendment with the written request for proposal revisions.