UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER
Real Property Management Division

REAL PROPERTY MANAGEMENT DIVISION POLICY BULLETIN NUMBER 17

October 29, 2007
Deleted April 25, 2013

Subject: Standstill Agreements or Short-term Extensions

Category: Lease Acquisition

A Standstill Agreement is not an appropriate method of extending the term of a real property agreement. Circumstances promoting the use of a Standstill Agreement are not reflected in this Bulletin, for this and other valuable reasons, this Bulletin is hereby deleted in its entirety.

~~Effective immediately, when the procurement for an expiring lease cannot be completed prior to the end of its term or holdover provision with a new or succeeding lease, a standstill agreement should be pursued with the lessor in order to maintain Government tenancy and rent payments until a new or succeeding lease can be put into place. The competitive acquisition process will still need to run its course unless a sole source is justified. This agreement is not intended to imply that the current lessor will be successful through the procurement. The required lease procurement procedures for ensuring compliance with GSAR/GSAM 570, including the Competition and Contracting Act of 1984 (CICA), determining delineated area, validating requirements, determining move costs, RFI/advertisement/current listings, market survey, SFO, and evaluating offers still need to be followed. The standstill agreement only provides the time needed to do so.~~

~~A sample standstill agreement is attached. The Office of General Counsel's Real Property Team has reviewed and approved the use of this form. This form is based on GSA standstill agreement.~~

~~Like holdover clause for a lease, a standstill agreement is only temporary (not to exceed one year) action to maintain tenancy in an expiring lease premises. They only are to be used to provide sufficient time to execute new or succeeding lease procurement. Contracting Officers and Regional Chiefs are responsible for maintaining a listing of these actions for management purposes and to reduce the risk of its expiration before a succeeding lease can be executed.~~

~~When the procurement process for an expiring lease (not expired and in holdover) cannot be completed and, as a result of competition, a new offer prevails or if the current space is no longer suitable and relocation is being pursued in procurement underway or the delivery of the new space has been delayed, then a short-term extension is allowed under GSAR/GSAM 570. An SLA can be used to modify the terms and rent amount. Any rent increase will need to be evaluated and a LOW analysis will be needed to determine the SLA's scoring impact.~~

STANDSTILL AGREEMENT

Between

U.S. Department of Commerce, National Oceanic and Atmospheric Administration and

_____

THIS AGREEMENT (hereinafter, "Agreement") is made by and between the _____, (hereinafter, "Lessor"), whose address is _____ and the United States of America (hereinafter, "Government").

The Lessor owns the storage facility at _____ in _____ The Lease expires on _____. The Lessor and Government (hereinafter, "the Parties") did not consummate a succeeding lease prior to the expiration of the Lease # _____

1. The Government does not want its operations, services or tenant interrupted or disturbed. Neither Party wants a Lease holdover and the Parties prefer their negotiations to end with a succeeding lease agreement at a monthly rental rate to be retroactively effective from _____

2. By this Agreement, the Parties seek to preserve the status quo, pending the completion of a leasehold acquisition procedure, by the terms of which the Government could continue to lease the Premises from the Lessor.

3. The Parties desire to continue negotiations for the terms and conditions for a succeeding lease agreement for the Premises, during the period of this Agreement. The Parties do not want the interim period between the expiration of the Lease and potential execution of a new Lease to be considered a holdover.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth herein, the adequacy of consideration of which is hereby acknowledged, the Parties agree as follows:

During the term of this Agreement:

The terms and provisions of the Lease# _____ remain in affect during the standstill period of _____ months from the date of this agreement except as amended by the following;

1. The Parties agree to negotiate, actively and in good faith, a succeeding lease for the Premises.

2. The Lessor will not, as a result of the expiration of the original term of the Lease, provided that the Government complies with its obligations hereunder;

A. Undeliake to evict the Government from the Premises; or

B. Interfere with the use or occupancy of the Premises by the Government or by the Government's tenant agencies; or

C. Interrupt the operations, building services or utilities of the Government (from what they were while the Lease has been in effect), or

D. Threaten to do any of the acts or omissions mentioned in A, B, or C above.

At all times after this Agreement becomes effective:

1. The Government shall receive full credit for money paid to the Lessor during the course of this Agreement

2. Termination of Agreement. This Agreement shall terminate on the earlier of 365 calendar days from the execution of this Agreement or on the date a new lease agreement is signed by the Parties.

3. Successors in interest: All of the terms, covenants, agreement, and provisions herein contained shall bind and insure to benefit the Lessor and Government, their heirs, executors, administrators, personal representatives, successors, trustees, receivers, and assigns, as applicable, except as otherwise provided herein.

4. Merger Clause: All prior understandings and agreements, written or oral, are merged into this Agreement. This Agreement represents the final agreement between the Parties, and may not be superseded, except by a separate written agreement signed and agreed to by the Patiies.

5. Amendments: Neither this Agreement, nor any terms hereof, may be changed waived, discharged, or terminated orally, but only by an instrument in writing signed by the Party against which enforcement of a change, waiver, discharge or termination is sought.

6. Construction: Any provision contained in this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. A waiver by a Party of any right, covenant, condition or remedy in any instance hereunder shall not operate as a waiver of such right, covenant, condition or remedy in any other instance, and waiver by Party of any breach of the terms hereof shall not be a waiver of any additional or subsequent breach. This Agreement shall be independent of any additional subsequent breach. This agreement shall be governed by, and construed in accordance with, the laws of the United States of America.

7. Counterparts: This Agreement may be executed in photocopied counterparts which, when taken together, shall constitute a single agreement.

8. Effective Date: This Agreement is effective and enforceable only after having first been signed by the Lessor, and second, accepted and signed by the Government.

9. Disclaimer: Notwithstanding the foregoing, Lessor and the Government agree that neither party is obligated to enter into a lease agreement for the Premises.

IN WITNESS WHEREOF, the Parties have executed this agreement as of the _____ day of _____ 20

LESSOR:

By: _____

GOVERNMENT: United States of America

_____
Real Property Contracting Officer
U.S. Department of Commerce, NOAA