

clerk at the United States Attorney's Office for the District of Kansas, 500 State Avenue, Suite 360, Kansas City, Kansas 66101; (b) the Assistant Attorney General for Administration, Justice Management Division, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; and (c) the General Counsel for the GSA, Room 4140, 1800 F Street, NW, Washington, DC 20405.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 702, 28 U.S.C. § 1331, and 28 U.S.C. §§ 2201 and 2202 in that the Unified Government is seeking judicial review of a final agency action, the claims asserted herein arise under the laws of the United States, and the Unified Government is requesting both declaratory and injunctive relief.

5. Venue is also appropriate in this District under 5 U.S.C. § 703 and 28 U.S.C. § 1391(e) as this action is brought against the GSA by its official title and a substantial part of the events or omissions giving rise to the Unified Government's claims occurred in the State of Kansas.

6. The United States has waived sovereign immunity under 5 U.S.C. § 702.

GENERAL ALLEGATIONS

7. The City is an existing central city within the Kansas City Metropolitan Area.

8. The United States Environmental Protection Agency ("EPA") presently has its Region 7 headquarters located at 901 North 5th Street in downtown Kansas City, Kansas ("EPA Building") within the City's Central Business Area.

9. The EPA Building was designed and specifically built to suit the EPA Region 7's needs in 1999.

10. The City made a substantial investment in the EPA Building and the redevelopment of its urban core by acquiring a blighted motel (a Brownfield site) and donating the property for the construction of the EPA Building.

11. The “Leadership in Energy and Environmental Design” (LEED™) Version 1.0, Green Building rating system was used as a framework to improve the EPA Building’s environmental performance, and the EPA called the structure “a quality, cost-effective and sustainable ‘Off the Shelf’ building.”

12. The Federal Government saw the EPA Building as “a commitment to the revitalization of Kansas City, Kansas’ urban core” and an opportunity to “create a ‘jewel’ to be seen by the ‘neighbor across the river’ making a statement and becoming the gateway to a new beginning.”

13. In furtherance of that commitment to the urban core, the EPA also later located its Science and Technology Center, housing its Region 7 Laboratory, just several blocks away from the EPA Building at 300 Minnesota Avenue.

14. At the time, the GSA and EPA explained that the benefits of such a location for the Science and Technology Center would “include a continuation of development activity [in the urban core] and operating savings to EPA.”

15. Roughly 550 Federal Government employees and 122 private employees work at the EPA Building.

16. The initial term of the lease for the EPA Building was ten years, but the GSA subsequently obtained an extension to June 14, 2012, when the lease is now set to terminate.

17. In August 2010, the GSA posted Solicitation No. 9KS2054 (“Solicitation”) for space for the EPA’s Region 7 headquarters following the lease termination, asking for “expressions of interest from owners and authorized agents of existing office space for [the] expiring lease.” A true and correct copy of the Solicitation is attached hereto as Exhibit A and incorporated herein by reference.

18. The Solicitation indicated that the GSA “will consider relocation only if a move is economically advantageous and will consider agency mission requirements, relocation costs . . . and other duplications of costs to the Government, cost of alterations and tenant improvements, availability of on-site reserved and secured parking, proximity to public transportation and other amenities such as retail stores, banks and restaurants when deciding whether it should relocate.”

19. No mention was made in the Solicitation of giving first consideration to a centralized community business area or adjacent areas of similar character.

20. Likewise, no mention was made in the Solicitation of emphasizing existing central cities, building in sustainable locations, or giving consideration to sites that are pedestrian friendly or near existing employment centers.

21. In fact, the Solicitation broadly sought space in the “Kansas City, Kansas Metropolitan Area,” which it defined as “within the state of Kansas and a maximum of 20 miles driving distance from the EPA Science and Technology Center.”

22. The Solicitation stated that a “maximum of 203,475 rentable square feet of office and related space that yields a minimum of 180,000 ANSI/BOMA Office Area square feet” was required.

23. Interested parties were requested to write and express their interest to the GSA not later than August 27, 2010, and include a variety of information in their submissions, including, but not limited to, a “description of the space” and the “date that the space will be available.”

24. Prior to the Solicitation, the GSA had advised the Unified Government that it would consider a proposal for a new, built-to-suit headquarters for EPA Region 7.

25. Thus, on August 26, 2010, with help from the Unified Government, Zimmer Companies, Inc. wrote to the GSA proposing space directly across from the EPA Building at 400 Minnesota Avenue on a site owned by the Unified Government.

26. The present owner of the EPA Building, UrbanAmerica, LP, also responded to the Solicitation and submitted a proposal for an extension of the existing lease.

27. On or about April 5, 2011, the GSA announced that the EPA’s Region 7 headquarters would be relocating and that Contract No. GS-06P-90059 (“Contract”) had been awarded to Lexington LAC Lenexa, L.P. for the lease of the Former Applebee’s Headquarters Building located at 11201 Renner Boulevard in suburban Lenexa, Kansas (“Suburban Tract”). A true and correct copy of the Lease Award Fact Sheet is attached hereto as Exhibit B and incorporated herein by reference.

28. The GSA, despite its prior statement and invitation, advised the Unified Government that it did not pursue the proposed location at 400 Minnesota Avenue—refusing to even look at or analyze it—because new construction had been “excluded” from consideration in the procurement.

29. The GSA also advised the Unified Government that even if the “build-to-suit proposal [had] been allowed by the prospectus, the construction schedule provided . . . indicates that the UG could not have met the Government’s [unpublished and unconfirmed] deadline for occupancy, but would have exceeded it by approximately one year.”

30. Contrary to the GSA’s “explanation” to the Unified Government, the square footage requirements set out in its Solicitation cannot be met at the Suburban Tract, advertised as having only 178,000 rentable square feet, without the construction of an addition.

31. On April 15, 2011, through its counsel, the Unified Government made a request to the GSA pursuant to the Freedom of Information Act, 5 U.S.C. § 552, for certain documents pertaining to the Solicitation and Contract (“FOIA Request”).

32. The Unified Government followed up on its FOIA Request on May 25, 2011, and again on June 8, 2011.

33. The GSA has not responded to the FOIA Request or any of the Unified Government’s subsequent communications relating thereto.

COUNT I – Violation of Executive Order No. 12,072

34. The Unified Government re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 33 above as if fully set forth herein.

35. This claim is brought pursuant to and in accordance with 28 U.S.C. §§ 2201 and 2202, seeking a declaration of the rights and other legal relations of the parties, and pursuant to the Administrative Procedure Act of 1946, Pub. L. No. 79-404,

60 Stat. 237 (1946) (codified at 5 U.S.C. §§ 551-559, 701-706 (2006)), seeking judicial review of a final agency action for which there is no other adequate remedy in a court.

36. Executive Order No. 12,072, 43 FR 36869 (Aug. 16, 1978) (“E.O. 12,072”), states that “Federal facilities and Federal use of space in urban areas shall serve to strengthen the Nation’s cities and to make them attractive places to live and work” and mandates that such Federal space “shall conserve existing urban resources and encourage the development and redevelopment of cities.”

37. Accordingly, E.O. 12,072 provides that except where such selection is otherwise prohibited, “the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials.”

38. E.O. 12,072 further provides that the process for meeting Federal space needs in urban areas “shall be consistent” with the policies of the Order and “shall include consideration” of various criteria, including, without limitation, the impact “on economic development and employment opportunities in the urban area.”

39. The GSA’s site selection process for the EPA’s Region 7 headquarters following the end of the existing lease was in violation of E.O. 12,072 and the Federal regulations implementing the Order (“Regulations”) and, therefore, without observance of procedure required by law.

40. Specifically, the GSA did not give first and due consideration to the City’s Central Business Area—refusing to even consider a site recommended by local

officials—or the devastating impact that abandoning the area would have on economic development and employment opportunities.

41. As such, the GSA lacked the necessary and appropriate authority to make and award the Contract, and its actions in doing so were arbitrary, capricious, and otherwise not in accordance with law.

42. The GSA's complete disregard of the Unified Government's FOIA Request, notwithstanding its failure to respond within twenty working days as mandated by statute, underscores that the GSA's decision to move the EPA's Region 7 headquarters was the result of a closed process and made without due respect for E.O. 12,072 and its requirements.

43. The GSA's actions in relocating the EPA's Region 7 headquarters out of the City's Central Business Area will inflict upon the Unified Government the precise type of injury that E.O. 12,072 aims to prevent by weakening the City's urban core and discouraging further development and redevelopment of the Central Business Area, effectively undercutting its resurgence.

44. The GSA's abandonment of the City's Central Business Area, divesting the Unified Government of the spending power of both the EPA and its hundreds of employees and visitors, will have a damaging ripple effect throughout the urban core.

45. The EPA's move to suburban Lenexa, Kansas will keep the Unified Government from fully realizing on its considerable investment in the EPA Building, and will deprive the Unified Government of significant tax revenue, which has been estimated to be as much as \$7.4 million.

46. An actual and justiciable controversy exists between the parties over the GSA's violation of E.O. 12,072 in its site selection process for the EPA's Region 7 headquarters and its award of the Contract and over the Unified Government's right to have that process begin anew and proceed in compliance with E.O. 12,072.

47. The Unified Government will suffer irreparable harm, for which it has no adequate remedy at law, if an injunction does not issue as requested herein, preventing the GSA from relocating the EPA's Region 7 headquarters to the Suburban Tract.

WHEREFORE, pursuant to 5 U.S.C. § 706 and 28 U.S.C. §§ 2201 and 2202, the Unified Government respectfully requests that the Court:

(a) Issue a Preliminary Injunction preventing the GSA, by and through its Administrator, Martha N. Johnson, and her successors in office, from moving the EPA's Region 7 headquarters from the EPA Building and otherwise performing or making plans to perform under the Contract;

(b) Declare that the GSA's site selection process for the EPA's Region 7 headquarters was in violation of Executive Order 12,072 and the Regulations and, as a result, without observance of procedure required by law;

(c) Declare that the GSA lacked the necessary and appropriate authority to make and award the Contract, and its actions in doing so were arbitrary, capricious, and otherwise not in accordance with law;

(d) Hold unlawful and set aside the GSA's award of the Contract to Lexington LAC Lenexa, L.P.; and

(e) Enter a Permanent Injunction compelling the GSA, by and through its Administrator, Martha N. Johnson, and her successors in office, to (i) issue a

new Solicitation for Offers consistent with E.O. 12,072 and the Regulations; and
(ii) fully abide by and comply with the requirements of E.O. 12,072 and the Regulations in evaluating any new offers and awarding a lease for the EPA's Region 7 headquarters.

The Unified Government also requests any such other and further relief as the Court deems just and appropriate under the circumstances.

COUNT II – Violation of Executive Order No. 13,514

48. The Unified Government re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 47 above as if fully set forth herein.

49. This claim is brought pursuant to and in accordance with 28 U.S.C. §§ 2201 and 2202, seeking a declaration of the rights and other legal relations of the parties, and pursuant to the Administrative Procedure Act of 1946, Pub. L. No. 79-404, 60 Stat. 237 (1946) (codified at 5 U.S.C. §§ 551-559, 701-706 (2006)), seeking judicial review of a final agency action for which there is no other adequate remedy in a court.

50. Executive Order No. 13,514, 74 FR 52,117 (Oct. 5, 2009) (“E.O. 13,514”), provides that it is the policy of the United States that Federal agencies shall “reduce their greenhouse gas emissions from direct and indirect activities,” “eliminate waste, recycle, and prevent pollution,” “design, construct, maintain, and operate high performance buildings in sustainable locations” and “strengthen the vitality and livability of the communities in which Federal facilities are located.”

51. E.O. 13,514 further provides that Federal agencies “shall prioritize actions based on a full accounting of both economic and social benefits and costs.”

52. Moreover, E.O. 13,514 specifically requires the head of each Federal agency to “advance regional and local integrated planning by . . . (iii) ensuring that planning for new Federal facilities or new leases includes consideration of sites that are pedestrian friendly, near existing employment centers, and accessible to public transit, and emphasizes existing central cities. . . .”

53. The GSA’s site selection process for the EPA’s Region 7 headquarters following the end of the existing lease was in violation of E.O. 13,514 and, therefore, without observance of procedure required by law.

54. In particular, the GSA did not fully account for or weigh the social or economic costs associated with leaving the City’s Central Business Area, place any emphasis on the City as an existing central city, or act in any way to “strengthen the vitality and livability of the communities in which Federal facilities are located.”

55. A comparison of satellite images showing the locations of the EPA Building and the Suburban Tract demonstrates that the GSA’s decision is not consistent with smart growth and sustainability standards, with the abandonment of a central city for what one commentator has called “one of the worst examples of suburban sprawl it could have possibly found.”

56. E.O. 13,514 requires Federal agencies to implement strategies that actively support lower-carbon commuting and travel by agency staff.

57. However, if the relocation proceeds, the distance between the EPA’s Region 7 headquarters and its Science and Technology Center will increase from just a few blocks to forty miles roundtrip.

58. Given its violation of E.O. 13,514, the GSA lacked the necessary and appropriate authority to make and award the Contract, and its actions in doing so were arbitrary, capricious, and otherwise not in accordance with law.

59. The GSA's actions in relocating the EPA's Region 7 headquarters will directly undermine and damage, as opposed to strengthen, the City's "vitality and livability" and will come with considerable social and economic costs to its urban core.

60. An actual and justiciable controversy exists between the parties over the GSA's violation of E.O. 13,514 in its site selection process for the EPA's Region 7 headquarters and its award of the Contract and over the Unified Government's right to have that process begin anew and proceed in compliance with E.O. 13,514.

61. The Unified Government will suffer irreparable harm, for which it has no adequate remedy at law, if an injunction does not issue as requested herein, preventing the GSA from relocating the EPA's Region 7 headquarters to the Suburban Tract.

WHEREFORE, pursuant to 5 U.S.C. § 706 and 28 U.S.C. §§ 2201 and 2202, the Unified Government respectfully requests that the Court:

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(b) Declare that the GSA's site selection process for the EPA's Region 7 headquarters was in violation of Executive Order 13,514 and, as a result, without observance of procedure required by law;

(c) Declare that the GSA lacked the necessary and appropriate authority to make and award the Contract, and its actions in doing so were arbitrary, capricious, and otherwise not in accordance with law;

(d) Hold unlawful and set aside the GSA's award of the Contract to Lexington LAC Lenexa, L.P.; and

(e) Enter a Permanent Injunction compelling the GSA, by and through its Administrator, Martha N. Johnson, and her successors in office, to (i) issue a new Solicitation for Offers consistent with E.O. 13,514; and (ii) fully abide by and comply with the requirements of E.O. 13,514 in evaluating any new offers and awarding a lease for the EPA's Region 7 headquarters.

The Unified Government also requests any such other and further relief as the Court deems just and appropriate under the circumstances.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Unified Government hereby demands a trial by jury on all issues so triable in this action.

DESIGNATION OF PLACE OF TRIAL

Pursuant to Rule 40.2 of the Rules of Practice of the United States District Court for the District of Kansas, the Unified Government designates Kansas City, Kansas as the place for the trial of this action.

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ATTORNEYS FOR PLAINTIFF



Lease Space in Kansas City, KS

Solicitation Number: 9KS2054

Agency: General Services Administration

Office: Public Buildings Service (PBS)

Location: Realty Services Division (6PRW)

Notice Type:

Award

Original Posted Date:

August 9, 2010

Posted Date:

April 5, 2011

Response Date:

- Eastern

Original Response Date:

Aug 27, 2010 11:59 pm Eastern

Archiving Policy:

Automatic, 15 days after award date

Original Archive Date:

September 11, 2010

Archive Date:

-

Original Set Aside:

N/A

Set Aside:

N/A

Classification Code:

X -- Lease or rental of facilities

NAICS Code:

531 -- Real Estate/531120 -- Lessors of Nonresidential Buildings (except Miniwarehouses)

Contract Award Date:

April 4, 2011

Contract Award Number:

GS-06P-90059

Contract Award Dollar Amount:

\$1,268,822.50

Contractor Awarded Name:

Lexington LAC Lenexa, L.P. by Lexington LAC Lenexa, GP, LLC an affiliate of Lexington Realty Trust

Contractor Awarded Address:

One Penn Plaza, Suite 4015

New York, New York 10119

United States

Synopsis:

Added: Aug 09, 2010 11:13 am

**U. S. GOVERNMENT SEEKS EXPRESSION
OF INTEREST TO LEASE OFFICE SPACE IN THE
KANSAS CITY, KANSAS METROPOLITAN AREA (9KS2054)**

The General Services Administration (GSA) is seeking expressions of interest from owners and authorized agents of existing office space for an expiring lease. The Government presently occupies 203,475 rentable square feet that yields 182,554 ANSI/BOMA Office Area square feet of office and related space along with 450 on-site secured parking for employees and visitors in Kansas City, Kansas.

The Government will consider relocation only if a move is economically advantageous and will consider agency mission requirements, relocation costs (including but not limited to the relocation of agency personnel, tele/data equipment and infrastructure, furniture, fixtures and furnishings) and other duplications of costs to the Government, cost of alterations and tenant improvements, availability of on-site reserved and secured parking, proximity to public transportation and other amenities such as retail stores, banks and restaurants when deciding whether it should relocate.

This advertisement is not a basis for negotiation. The Government reserves the right to reject any or all expressions of interest and give consideration to properties other than those offered in response to this advertisement.

AMOUNT: A maximum of 203,475 rentable square feet of office and related space that yields a minimum of 180,000 ANSI/BOMA Office Area square feet for use by the agency for personnel, furnishings, and equipment along with approximately 450 reserved and secured on-site parking spaces shall be available for personnel and visitors.

LOCATION: Offered space must be located in the Kansas City, Kansas Metropolitan Area, defined for the purpose of this procurement as within the state of Kansas and a maximum of 20 miles driving distance from the EPA Science and Technology Center, 300 Minnesota Avenue, Kansas City, Kansas.

REQUIRED: To be considered the location must be an existing first class office space and be located in a new or modern office building that projects a professional and aesthetically pleasing appearance. Build-to-suit offers will not be considered. Retail or flex space is unacceptable. Location must have 2 docks with levelers as required for semi-tractor trailers. Tenant alterations must be provided as part of the rental consideration. The space must be made conformable to GSA requirements for fire and life safety, handicap accessibility, sustainability, etc. Amenities such as retail shops, banks, and restaurants shall be available within 5 miles of the location. The location shall be served by regularly scheduled public transportation service within ¼ mile walking distance and on-site reserved and secured parking is required for 450 employees and visitors.

TERM: The lease shall be for 10 years firm plus (2) 5-year renewal options or, alternatively, 20 years, 10 years firm.

OWNERS & AGENTS: This is an expression of interest for available space, NOT an invitation to bid. Interested parties should write, **NOT LATER THAN August 27, 2010 to:**

S. Dennis Clemons
General Services Administration
1500 E Bannister Road (6PRW)
Kansas City, MO 64131
(816) 823-1212
dennis.clemons@gsa.gov

The following must be included in expressions of interest:

- The name and address of the owner;
- The name of the owner's representative;
- The building name and address;
- The available square footage and parking;
- A description of the space and services for which the quotation is provided;
- The location within the building of the available space;
- The date that the space will be available; and
- The proposed fully-service rental rate including a Tenant Improvement Allowance of \$45.59 per ANSI/BOMA Office Area square foot fully amortized over the firm term of the lease.

Responses submitted by agents must be accompanied by documentary evidence of the agent's authority to submit an expression of interest on behalf of the building owner.

Contracting Office Address:

1500 East Bannister Road
Kansas City, Missouri 64131

Primary Point of Contact.:

S.Dennis Clemons,
Contracting Officer
dennis.clemons@GSA.GOV
Phone: 816.823.1212
Fax: 816.926.3571

Secondary Point of Contact:

Sharon C. Reeder,
Realty Technician
sharon.reeder@gsa.gov
Phone: 8168235793
Fax: 8169267351

Opportunity History

- Original Synopsis
Presolicitation
Aug 09, 2010
11:13 am
- Award
Apr 05, 2011
11:18 am

Lease Award Fact Sheet
Environmental Protection Agency
Award Date: April 4, 2011
Lease No. GS-06P-90059

New Location: Former Applebee's Headquarters Building
11201 Renner Boulevard
Lenexa, Kansas 66219

Former Location: 901 North 5th Street
Kansas City, Kansas 66201

Agency: Environmental Protection Agency (EPA)

Number of Employees: between 600 and 750 including contractors and seasonal

Square Feet: 193,830 RSF / 183,069 ABOA SF

Annual Rent: Year 1 – \$1,268,822.50 (\$6.55/RSF)
Years 2-5 – \$5,378,782.50 (\$27.75/RSF)
Year 6 – \$5,784,838.94 (\$29.84/RSF)
Years 7-10 – \$6,331,437.44 (\$32.66/RSF)
Years 11-15 – \$6,614,829.01 (\$34.13/RSF) (1st Renewal Option)
Years 16-20 – \$6,895,482.51 (\$35.57/RSF) (2nd Renewal Option)
The total contract value is \$121,446,098.80 excluding escalations.

Term/Cancellation Rights: . 10 years firm with (2) 5-year renewal options

Delineated Area: The Kansas City, Kansas Metropolitan Area, defined as within the state of Kansas and a maximum of 20 miles driving distance from the EPA Science and Technology Center, 300 Minnesota Avenue, Kansas City, Kansas.

Solicitations Issued: 3

Owner/Lessor: Lexington LAC Lenexa, LP
One Penn Plaza, Suite 4015
New York, New York 10119

Est. Occupancy Date: April 1, 2012

Description of Building: Facility is a 2-story LEED®-NC Silver building constructed as the Applebee's Restaurant Headquarters and occupied in 2007, prior to their acquisition by the IHOP/DineEquity group. The facility has significant sustainable features; the exterior has a façade of glass, metal and wood; the interior has large open bays with open ceilings; finishes are aesthetically pleasing and bright; daylighting and views are abundant; the site is designed to filter 100% of its own stormwater runoff as well as that of Renner Boulevard. Additional amenities include ample free employee parking, walking trails, a lake, outdoor meeting and eating areas, fitness facility, etc.