

June 28, 2019

Seamus Curley
Direct Dial: 202.739.2889
Fax: 202.739.2895
scurley@stroock.com

***GAO NOTIFICATION OF AGENCY REQUESTED
SUSPENSION OF CONTRACT PERFORMANCE REQUIRED***

By EPDS System

Tom Armstrong
General Counsel
United States Government Accountability Office (“GAO”)
441 G Street, N.W.
Washington, D.C. 20548

Attention: Procurement Law Control Group (GAO counsel to be assigned)

Re: Protest of NBL Associates, LP Under Request For Lease Proposals No. 19-REG06

Dear Sir/Madam:

NBL Associates, LP (“NBL”) through the undersigned counsel, hereby protests the solicitation requirements under Request For Lease Proposals No. 19-REG06 (“Solicitation” or “RLP”) issued by the General Services Administration (“GSA” or “Agency”) on behalf of the United States Department of Agriculture (“USDA” and, together with GSA, “the Government”). GSA issued the RLP on June 18, 2019 to solicit lease proposals for a new headquarters facility to house USDA’s National Institute of Food and Agriculture (“NIFA”) and Economic Research Service (“ERS”)—both of which are currently housed in GSA-leased facilities in Washington DC. NIFA’s current headquarters is located at 800 9th St. S.W., which is owned by NBL.

The current GSA procurement follows an improper initial procurement process conducted by USDA, ostensibly under its independent leasing authority, in August of 2018. At that time, USDA issued a press release expressing its intent to relocate both NIFA and ERS outside of the National Capital Region (“NCR”), where they have been housed since their inception. Additionally, USDA posted a Request for Expressions of Interest (“RFEI”) in the Federal Register seeking alternative locations to the Washington, D.C. area. Between the information issued by USDA in its press release (effectively precluding property owners in the D.C. area from applying), the RFEI’s specification that up to 160,000 total ANSI/BOMA Office Area (“ABOA”) square feet would be required to house both NIFA and ERS (which is approximately [REDACTED] square feet greater than that of NBL’s incumbent property), NBL believed that it did not meet the requirements for the USDA procurement, and thus did not submit an Expression of Interest (“EOI”).

USDA received 136 submissions from organizations and municipalities across the country, and proceeded over the next several months to narrow the field, eventually announcing on June 13, 2019 its determination to relocate NIFA and ERS to the Kansas City area. However, after the initiation of an internal agency investigation and multiple congressional inquiries concerning the propriety of its procurement process, USDA delegated the procurement process to GSA. When GSA issued the current RLP on June 18th, the RLP called for 113,000 square feet—a materially smaller size requirement than that specified in USDA’s RFEI and, importantly, a size that incumbent NBL can accommodate. However, despite NBL’s qualification for every other requirement of the RLP, it remains unable to submit a bid because the terms of the solicitation include a “delineated area” of three counties in the Kansas City

[REDACTED]

Metropolitan Area. That delineated area was improperly selected by USDA via its RFEI process, and should have been expanded by GSA for the RLP in accordance with procurement law.

In short, USDA abused its independent leasing authority to issue a procurement independent of GSA and without appropriate supporting market research, which unreasonably excluded the NCR and resulted in the selection of the Kansas City Metropolitan Area. When GSA took over the procurement, it was obligated to ensure the RLP's delineated area was properly selected in accordance with federal law, and it failed to do so. As a result, the RLP is defective, and the delineated area must be modified in accordance with federal law to, among other things, achieve full and open competition for the procurement. NBL, the incumbent landlord for NIFA, meets all other qualifications specified in the RLP, offers an opportunity to avoid a major relocation of approximately 500 federal employees, and should have the right to participate in this procurement. As such, this protest should be sustained.

I. PRELIMINARY MATTERS

A. Request For Agency Notification and Stay of Award.

NBL requests that GAO immediately notify GSA that this protest has been filed. This protest is filed before the closing date and time for proposals. As such, this protest is necessarily filed before the later of 10 days from award or within five days of a required debrief. Thus, pursuant to the Competition in Contracting Act ("CICA"), 31 U.S.C. § 3553(d)(3)(A), as implemented in Federal Acquisition Regulation ("FAR") 33.104(c)(1), GSA is required to stay award under the RLP.

The Lease Contracting Officer (“CO”) for this procurement is Mr. Michael Elson. Mr. Elson’s telephone number is (816) 823-2899 and his e-mail address is michael.elson@gsa.gov. Pursuant to 4 C.F.R. § 21.1(e), a copy of this protest is being served on the Agency CO today via e-mail.

B. Standing, Prejudice, And Timeliness.

NBL is an interested party for purposes of filing this protest under 4 C.F.R. § 21.0(a)(1) because NBL is the incumbent property owner whose direct economic interest will be affected by award of a new lease. But for the procurement errors discussed herein, NBL would not have been excluded from the procurement and would have had a substantial chance of receiving the award. *See McDonald-Bradley*, B-270126, 96-1 CPD ¶ 54 (February 8, 1996) at 3. Additionally, this protest is timely filed pursuant to 4 C.F.R. § 21.2(a)(1) because it is filed before the closing date and time for proposals, July 7, 2019.

C. Request For Protective Order & Reservation Of Right To Request A Hearing.

Resolution of this protest will necessarily involve information that may be source selection sensitive or proprietary and confidential. Consequently, NBL requests that the GAO issue a protective order in this protest pursuant to 4 C.F.R. § 21.4. In the interim, NBL requests that the GAO and GSA treat this protest as protected material. Pursuant to 4 C.F.R. § 21.7, NBL reserves the right to request a hearing based upon the development of the record.

II. FACTS

A. NBL's Property.

NBL is the incumbent landlord to USDA for NIFA's current headquarters, located at 800 9th Street S.W., Washington, DC 20024. NIFA has been headquartered at NBL's facility for the past 19 years. NBL's building contains approximately [REDACTED] square feet of rentable space and could satisfy all other technical requirement of the RLP.

B. The USDA Quasi-Competition Through The RFEI Process.

The current GSA RLP follows an RFEI issued by USDA on August 15, 2018. The RFEI sought EOIs from "State and Local governments, industry, academia, interested parties and organizations for potential locations that would accommodate the construction and/or lease and operation of a NIFA and/or ERS headquarters facility." RFEI at 1; Protest Appendix at 002.¹ The RFEI specified that "[t]he need for a proposed NIFA facility would be approximately 90,000 square feet," and "[t]he need for a proposed ERS facility would be approximately 70,000 square feet. . ." *Id.* The corresponding press releases made clear that USDA intended to reorganize so that these two agency components would be operationally merged.

The RFEI was preceded by a press release issued by USDA stating that "most employees of ERS and [NIFA] will be relocated outside of the National Capital Region . . . by the end of 2019." Protest Appendix 001. In addition, the RFEI itself stated that "[t]hough the Washington DC area has many positive attributes, it routinely ranks as having some of the longest commute times and one of the highest costs of living in the nation," and that "USDA wants to locate the

¹ This protest letter is accompanied by a series of merged exhibits collectively referred to herein as "Protest Appendix". The documents in the Protest Appendix are serially numbered for ease of reference. Pinpoints citations throughout this protest letter refer to those serial numbers.

[REDACTED]

NIFA and ERS headquarters in a community where our employees will enjoy living, recreational opportunities, educational opportunities, and an overall high quality of life.” RFEI at 2; Protest Appendix 003.

Based on the information in both USDA’s press release and its RFEI, NBL determined that its property at 800 9th Street S.W. did not qualify for the procurement—both because its property is located in the D.C. area, which the materials make clear USDA intends to relocate NIFA and ERS away from, and because the total required square footage of 160,000 square feet exceeded the approximately [REDACTED] square feet NBL’s property offers. As a result, NBL did not submit an EOI.

Rather than conduct the procurement through GSA, as is typical for a government agency seeking a new lease, USDA conducted the RFEI under its own independent leasing authority. As described by USDA in one of its press releases:

USDA is following a rigorous site selection process, with leadership from USDA, ERS, and NIFA involved. USDA has retained Ernst & Young (EY), a leading provider of professional services with a dedicated Construction and Real Estate Advisory Services practice, to assist in the relocation efforts. EY provides real estate advice to organizations across industries, including the federal government. USDA will leverage EY inputs to support and facilitate USDA’s site selection process.

Protest Appendix at 020.

The deadline to submit EOIs was extended from an initial date of September 14, 2018 to October 15, 2018. On October 22nd, USDA reported that 136 submissions had been received. Protest Appendix at 006. On December 21, 2018, USDA released more specific site selection criteria, which was used to narrow the field, first to 68 candidates (list published on March 12, 2019), then to 3 final candidates with 2 alternates (published on May 3, 2019). Protest Appendix

[REDACTED]

at 020-030. Then, on June 13, 2019, USDA issued a press release announcing its decision to “relocate [ERS and NIFA] to the Kansas City Region.” Protest Appendix at 031.

C. Congressional Concerns and USDA Inspector General Investigation.

On September 26, 2018, while the USDA was still in the process of accepting submissions under its RFEI, members of Congress submitted a letter to the Office of the Inspector General (“OIG”) of USDA, requesting an investigation and determination of whether (1) USDA has legal and budgetary authority to relocate NIFA and ERS without congressional approval, and (2) USDA had conducted a “robust cost-benefit analysis” sufficient “to justify relocation of two vital federal agencies,” particularly in light of the possibility “that many ERS and NIFA officials will choose not to relocate and that this potential relocation could deprive the agencies of many of their top economists and scientists with specialized knowledge.” Protest Appendix at 055-057. In response to this request, the OIG initiated an investigation which remains ongoing at this time.

Notably, the House Appropriations Committee, through an explanatory statement accompanying the enacted FY 2019 appropriations bill, directed the USDA to provide cost estimates and a detailed analysis of any research benefits of the proposed relocation of ERS and NIFA, but House Appropriations staff indicated that this information was not submitted when it was due and still has not been received as of June 2019. Protest Appendix at 060; 067. Other requests for information submitted by individual members of Congress appear to have gone unanswered as well. In any event, it appears that both the OIG investigation and one or more congressional inquiries are ongoing. Protest Appendix at 067.

D. The RLP.

Following complaints from members of Congress and questions as to USDA's leasing authority, as discussed above, USDA announced to the House Appropriations Subcommittee on Agriculture at a May 6, 2018 meeting that it would be transferring the procurement to GSA (Protest Appendix at 060), which is the federal government's primary real estate expert with specialized knowledge and experience in federal leases. <https://www.gsa.gov/about-us>.

Following USDA's June 13th announcement that it had selected the Kansas City Region for the new NIFA and ERS headquarters, GSA posted an RLP on June 18th. The RLP, issued using the Automated Advanced Acquisition Program ("AAAP"), is a lowest price technically acceptable ("LPTA") solicitation, and seeks to lease office space in the "Kansas City Metropolitan Area," for a 15-year firm term with a possible 17-year term in full. Protest Appendix at 041. The specific delineated area is defined as "Wyandotte County KS, Johnson County KS, Jackson County MO." Thus, in drafting the RLP, GSA simply accepted the determination made by USDA during its ill-conceived and ultimately abandoned acquisition.

The RLP specifies a minimum 113,000 ABOA square feet and a maximum 115,425 ABOA square feet, and specifies additional requirements, such as a location in "a prime commercial office district with attractive, prestigious, and professional surroundings with a prevalence of modern design and/or tasteful rehabilitation in modern use," "at least 50 parking spaces," a variety of affordable restaurants, retail shops, cleaners, banks and fitness centers within a walkable 2,640 feet (if space is located inside a city center) or a drivable 5 miles (if space is located outside a city center, access to public transportation, etc.

Except for an ability to offer space within the delineated area, NBL is positioned to satisfy all of the requirements of the RLP, [REDACTED]
[REDACTED]. Because the USDA's determination of the delineated area was arbitrary and capricious, unreasonable, and in violation of procurement law—and because GSA simply accepted and incorporated USDA's determination into GSA's RLP, the RLP is unsound and violates procurement law. NBL hereby protests this aspect of the RLP and its unlawful exclusion from the competition.

III. PROTEST GROUNDS

A. The Process Used To Determine The RLP's "Delineated Area" Violated Federal Law.


As noted, USDA has certain independent leasing authority, delegated to the Secretary by GSA. Specifically, under 41 C.F.R. 102-72.30, GSA has issued a standing delegation of authority to the heads of all federal agencies to independently lease up to 19,999 rentable square feet of general purpose space for terms of up to 20 years, regardless of geographic location. For leases that do not fall within those parameters, USDA may request a specific delegation of leasing authority. Additionally, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103-354, as amended, provides authority to the Secretary of Agriculture to streamline and reorganize USDA to achieve greater efficiency, effectiveness and economies in the organization and management of the programs and activities carried out by the Department. The statute directs the Secretary, where practicable and to the extent consistent with efficient, effective, and improved service, to combine field offices of agencies within USDA to reduce personnel and duplicative overhead expenses by the joint use of

[REDACTED]

resources and offices. The statute is implemented in Departmental Regulation No. 1620-002 (“USDA Space Management Policy”). USDA potentially has one or additional delegations of leasing authority.

It is unclear—and not publicly announced—under which delegated leasing authority USDA was operating when it held the quasi-competition to identify a delineated area. However, neither of the authorities cited above (nor any other leasing authority that we are aware of) permits USDA to hold the type of quasi-competition that it did as what essentially was step one of a two-step competition. Regarding the first authority cited above, USDA’s standing authority does not permit it to independently lease a property of the size contemplated by its RFEI at all. Regarding both authorities cited above, neither contemplates nor permits USDA to hold a competition, administered through the Federal Register, to determine the delineated area for a lease procurement. Rather, USDA’s specific leasing authority contemplates and permits USDA, to hold a lease competition for property (within the size and term parameters specified above, as applicable) and award an actual lease to an offering landlord. Additionally, the delegation of GSA’s leasing authority includes several required notifications to and communications with GSA throughout USDA’s leasing process.

USDA’s mini-competition for the delineated area was unprecedented, ill-conceived, and unauthorized by statute and regulation. The result of that unlawful process—the selection of the Kansas City Metropolitan Area as the delineated area—is tainted and unsupportable. As such, GSA’s incorporation of USDA’s unlawfully selected delineated area taints the GSA RLP with illegality, unreasonableness, arbitrariness, and capriciousness.



Such illegality is further illustrated by USDA's Agriculture Property Management Regulations (Chapter 110-73 Real Estate Acquisition) supplementation of the Federal Management Regulation ("FMR"), Subchapter C (Real Property), Part 102-73 (Real Estate Acquisition), which is located at Title 41 of the Code of Federal Regulations. The FMR Part 102-73.80 asks "[w]ho is authorized to contact lessor, offerors, or potential offerors concerning space leased or to be leased?" The FMR answers by stating: "No one, except the Contracting Officer or his designee, may contact lessors, offerors, or potential offerors concerning space leased or to be leased for the purpose of making oral or written representation or commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services."

USDA's agency-specific supplementation of this regulation adds that for "[a]cquisitions by GSA[, (*i.e.*, those not administered by USDA under its independent leasing authority)] . . . [a]gency personnel will not contact lessors, offeror or potential offerors when GSA is acquiring space unless authorized to do so by the Director of Real Estate Division in the responsible GSA regional office." (emphasis added).

Thus, when GSA is running an acquisition for leased space, USDA, by its own supplemental acquisition regulations, is prohibited from contacting potential offerors. That is precisely what USDA did here before turning over the procurement to GSA. Presumably the mandatory non-contact of potential landlords by USDA personnel is to avoid anomalies in the process, to ensure GSA's time-tested standards and protocols are followed, and to prevent communications or submissions that are superfluous or that might otherwise cloud the process. Ultimately, this became a GSA acquisition. However, before turning the acquisition over the

GSA, USDA engaged in the prohibited conduct. The direct result of this is that GSA has inherited a flawed procurement that should be re-commenced under standard GSA operating procedures.

In sum, GSA's RLP is inherently defective. The RLP should be suspended, the delineated area should be reconsidered and established through the normal course, with USDA shepherded by GSA and its real estate expertise. *See* 41 C.F.R. § 102-83.45. The RLP should then be amended and re-issued with a newly and lawfully-selected delineated area. For these reasons, the protest should be sustained.

B. USDA's Decision To Move NIFA And ERS Outside Of The NCR Is Fundamentally Flawed And Violates CICA.

The location of space for federal agencies is covered by the FMR, 41 C.F.R. § 102-83. The FMR provision on identifying a delineated area expressly incorporates CICA, which requires that an agency "specify its needs and solicit bid or proposals in a manner designated to achieve full and open competition for the procurement." 41 U.S.C. § 253a(a)(1)(A). CICA also requires that solicitations "include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law." 41 U.S.C. § 253a(a)(2)(B). The FMR provides a non-exhaustive list of items that must be included in a delineated area determination, including: mission, program requirements, real estate, labor, and other operational costs and applicable incentives. FMR 102-83.30.

Here, USDA irrationally began with the proposition that the NCR was no longer suitable for the needs of the affected agency components. Necessarily, USDA must have determined that the incumbent space is unsuitable. It held a mini-competition to locate a new situs that

[REDACTED]

unjustifiably omitted the NCR. As such, offerors such as NBL were excluded from the process, and that unlawful exclusion is now manifested in the GSA's RLP.

The FMR required USDA to consider all relevant factors, including operational and real estate-related costs. There is absolutely no indication in the public record that USDA did so. Further, it is impossible for USDA to have satisfied this requirement given its irrational exclusion of the NCR. In other words, any analysis performed by USDA occurred after excluding the NCR. Therefore, any such analysis, is inherently unreliable and unreasonable.

Notably, USDA has provided notices to employee seeking their intentions with respect to staying or relocating to the Kansas City Metropolitan Area. Pursuant to applicable laws and regulations, there effectively is a buy-out of those employees who opt not to move and leave the agency. NBL has learned that response are due by July 15, 2019. USDA's determination with respect to the size of its requirement without this information in hand is further evidence that the determination is not grounded in facts, data, and appropriate real estate and operational-related considerations.

Indeed, as indicated by public articles, congressional press releases, the pending congressional inquiries, and the pending OIG investigation, it appears that improper political considerations—not operational and real estate-based considerations—were the driving force behind relocating these USDA components outside of Washington, D.C. *See e.g.*, Protest Appendix at 049, 052, 055, 058, 063-066, and 067. This too renders the delineated area determination—and, therefore, the GSA RLP—fundamentally flawed and violative of CICA. For these reasons too, this protest should be sustained.

C. **The Delineated Area In The RLP Is Unduly Restrictive Of Competition In Violation Of CICA.**

It is well established that, “[i]n preparing a solicitation, a procuring agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy its legitimate needs.” *Global SuperTanker Services, LLC*, B-414987 (November 6, 2017) (sustaining protest where agency failed to establish that solicitation term limiting firefighting aircraft tank size was reasonably necessary to achieve the agency’s stated needs and thus the limitation was unduly restrictive in violation of CICA).

As such, “solicitations should be written in as non-restrictive a manner as possible in order to enhance competition.” *Id.* “To the extent a protester challenges a specification as unduly restrictive, that is, challenges both the restrictive nature of the requirement as well as the agency’s need for the restriction, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. The adequacy of the agency’s justification is ascertained through examining whether the agency’s explanation is reasonable, that is, whether the explanation can withstand logical scrutiny.” *Smith & Nephew, Inc.*, B-410453 (January 2, 2015) (sustaining protest and finding a solicitation requirement to be unduly restrictive where, among other factors, the agency failed to establish its actual need for the requirement and “based its specification on an analysis of industry responses to inquiries about what products might be available, rather than first determining the agency’s actual needs.”); *see also Prisoner Transportation Servs., LLC; V1 Aviation, LLC; Aar Aircraft Servs.*, B-292179 (June 27, 2003) (“When a protester challenges a solicitation provision as unduly restrictive of

competition, we will review the requirements to ensure that they are reasonably related to the agency's needs.”)

The U.S. Court of Federal Claims also recognizes these principles. As specified by the court, agencies are required to “create specifications that solicit proposals ‘in a manner designed to achieve full and open competition,’” in accordance with CICA. *CW Gov’t Travel, Inc. v. United States*, 99 Fed. Cl. 666 (2011) (citing 41 U.S.C. § 3306(a)(1)(A)–(C) (2011)). “In furtherance of this policy of full and open competition, agencies are allowed to include restrictive requirements in a solicitation only to the extent they are necessary to satisfy the agency’s legitimate needs.” *Am. Safety Council, Inc. v. United States*, 122 Fed. Cl. 426, 435 (2015) (citing 41 U.S.C. § 3306(a)(2)(B)). “If a solicitation requirement violates the prohibition against restrictive terms that are not required to meet the government’s minimum needs, the requirement is deemed to be unduly restrictive and an agency’s decision to include the requirement in the solicitation will be found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Parcel 49C Ltd. P’ship v. United States*, 130 Fed. Cl. 109, 125 (2016).

Here, the delineated area is unduly restrictive of competition and unfairly, and prejudicially, excludes NBL from competing. The delineated area is unduly restrictive of competition for the following disjunctive reasons (each one, independently is sufficient for a sustained protest): The delineated area was: (a) based upon an irrational, unlawful, and unsupported determination that offerors within the NCR could not compete and/or that USDA’s requirement could not be satisfied within the NCR; (b) was based upon an unlawful and/or politically-tainted process; (c) relied upon USDA publications and commentary that, even

beyond location, created the false impression that NBL's building would be insufficient to house the relevant federal employees. Despite these fundamental errors in USDA identifying the delineated area, GSA apparently accepted this determination when drafting and publishing its RLP. Accordingly, although the root procurement errors here belong to the USDA, GSA has inherited those errors by incorporating them into its RLP.

For these reasons, the protest should be sustained and GAO should recommend the relief requested by NBL below.

D. USDA's Use Of Swing Space Violates CICA.

[REDACTED] Under the circumstances, it is clear that procurement and/or the preparation of the new space will not be complete at that time. As such, there is a logical inference that USDA (through GSA or otherwise) intends to lease "swing space" at a temporary site to bridge the gap between the exiting incumbent properties and moving to the new site in the Kansas City Metropolitan Area, somewhere else in DC, or elsewhere nationally. Here, any such arrangement for swing space, if through a lease, would violate CICA, as implemented in Federal Acquisition Regulation Part 6, because it is only made necessary by poor acquisition planning, which includes the unlawful delineated area determination addressed throughout this protest. Further, whether leased or not, such swing space would be unlawful on its own because swing space in an unlawfully determined delineated area or to facilitate an ultimate move to such an area is in-and-of-itself unlawful. It also is grossly wasteful as it requires USDA to incur significant move costs potentially for not valid reason.

[REDACTED]

USDA's use of swing space while this competition is pending violates procurement law and facilitates the arbitrary and capricious conduct identified herein. For this reason too the protest should be sustained.

IV. REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to 4 C.F.R. § 21.1(d), NBL requests that, in addition to the documents required by 4 C.F.R. § 21.3(d), the Agency produce the following relevant documents (to include without limitation determinations, analyses, communications, etc.) as soon as possible, but in no case later than the due date for the Agency Report:

1. A complete copy of the RLP and any solicitation amendments or related documents. This includes the USDA solicitation-type documents published prior to GSA's involvement in this procurement. Such documents are relevant as NBL has challenged the RLP.
2. All documents comprising or concerning the source selection plan followed by GSA and USDA. Such documents are relevant to this RLP challenge and the propriety of GSA's reliance on USDA's delineated area determination.
3. All documents comprising or reflecting USDA's determination that it should relocate from the current building. These documents are relevant as the propriety of that decision, which is central to this protest.
4. All documents comprising or reflecting USDA's or GSA's move versus stay estimate (or similar-type analyses) with respect to the incumbent property and the NCR more generally. These documents are relevant to the Government's decision to move from the current property and ultimately the NCR altogether, which is central to all protest grounds.
5. All documents comprising or reflecting USDA's determination to move the relevant agency components outside of the NCR. This includes documents covering the decision to exclude the NCR from consideration initially (*i.e.*, documents preceding the USDA competition documents published in the Federal Register) as well as documents covering the winnowing of the competitive field (after response to the Federal Register notice were received) and the ultimate decision to designate the Kansas City metropolitan area as the delineated area. These documents are relevant as the propriety of that decision, which is central to this protest.



6. All documents reflecting GSA's involvement, if any, with USDA's delineated area determination. These documents are relevant to all protest grounds, which challenge GSA's reliance on USDA's determination.
7. All documents comprising or reflecting GSA's disagreement with USDA's process and/or the results concerning the delineated area. These documents are relevant to all protest grounds, which challenge GSA's reliance on USDA's determination.
8. All documents comprising or reflecting when and how GSA decided to incorporate USDA's delineated area determination into the RLP. These documents are relevant to all protest grounds, which challenge GSA's reliance on USDA's determination.
9. All documents comprising or reflecting the substance of USDA's response to congressional and/or OIG inquiries on this matter, to the extent permitted by law. These documents are relevant as the propriety of the delineated area determination, which is central to this protest.
10. All documents reflecting how USDA will meet its space requirement for the affected employees between vacating the incumbent spaces and relocating to the new space in the Kansas City Metropolitan Area. These documents are relevant to the last protest grounds, which challenges the use of swing space as unlawful under the circumstances because it is designed to facilitate implementation of the unlawful delineated area designation challenged in earlier protest grounds.

NBL reserves the right to supplement this request to the extent the existence or relevance of additional documents becomes evident from the Agency Report or other documents produced by the Agency.



V. **CONCLUSION & RELIEF REQUESTED.**

For the reasons set forth herein, this protest should be sustained. NBL respectfully requests that GAO sustain this protest and grant the following relief, as appropriate:

1. Recommend that the Agency suspend the current RLP;
2. Recommend that the delineated area be determined through a lawful, rational, and reasonable process;
3. Recommend that the delineated area be re-defined to include the NCR;
4. Recommend that the RLP be amended and/or re-issued with an appropriately-determined delineated area;
5. Recommend that USDA maintain the status quo by suspending any swing space selection or move while a lawful delineated area determination is pending;
6. Recommend that NBL recover the reasonable costs of filing and pursuing this protest, including attorneys' fees, and, if applicable, bid and proposal costs; and
7. Recommend such other relief as GAO deems just and proper.

Respectfully submitted,

Stroock & Stroock & Lavan LLP



Seamus Curley
Chelsea L. Goulet
Counsel for NBL Associates, LP

Encl.: Protest Appendix

cc: Mr. Michael Elson, Contracting Officer (GSA)

