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Notable and Newsworthy

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stated:

“The General Services Administration owns 1,532 Federal buildings totaling 181 million square feet of space, which provides office space for 470,000 Federal workers. GSA leases 172 million square feet of space in 7,100 leased properties, which provides office space for an additional 590,000 Federal workers. GSA’s real property activities are funded primarily through the Federal Building Fund. The FBF is an intra-governmental fund in which agencies pay rent to GSA for the space that they occupy. Any excess funds generated by the rental system are used for building repairs and new construction. In 1975, the FBF replaced appropriations to GSA as the primary means of financing the operations and capital costs associated with the Federal space owned or managed by GSA.

Congress exercises control over the FBF through the annual appropriations process by setting limits on how much of the fund can be expended for various activities. Section 3307 of title 40,

United States Code, requires the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on the Environment and Public Works of the Senate to pass resolutions authorizing the construction, repair, alteration, or leasing of space prior to an appropriation of funds. Title 40 also requires the Administrator of General Services to submit to the Committees a prospectus requesting authority for any project in excess of \$2.59 million [as determined for FY 2008]. The prospectus must be approved by the Office of Management and Budget, and must detail the particular project, along with the cost, benefits, and plan for Federal occupancy.”

According to an article by senior writer Tim Kauffman published in the Federal Times on February 12, 2008, the Federal Emergency Management Agency is moving forward with plans to classify much of Washington, DC, a flood zone—a ruling that will swamp

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The NIH Bayview Research Center — A New Model for Lease-Construction

Patrick J. Keogh, President, AMV

The recently completed \$200 million National Institutes of Health Research Center is the largest building development in Baltimore. As the new home of the National Institute of Aging (NIA) and the National Institute of Drug Abuse (NIDA), it is one of the finest medical research facilities in the country. Located on Johns Hopkins’ Bayview campus in east Baltimore, it is also a lease-construction project, commonly referred to as a build-to-suit. But it is a lease-construction project that adapted the industry’s best practices. As such, it offers an insight into how such projects can be accomplished in the same way these kinds of projects are developed in

the private sector. Bayview is also the least expensive research facility ever developed for NIH.

To plan for the new Research Center, NIH engaged AMV, LLC to advise on all aspects of a potential new development. For almost 15 years AMV has worked with NIH on a number of other developments. AMV holds a GSA schedule contract for providing a full range of facilities, financial, legal and consulting services. A GSA schedule contract is like a catalogue of services with competitively negotiated rates already established and approved by GSA. AMV leads a team of firms that provide specialized services under the

AMV schedule contract. These firms include CTL Capital in New York City (financial advisory), Regan Associates of Herndon Virginia (development) and Pillsbury Winthrop Shaw Pittman in Tysons Corner, Virginia (legal). All have extensive experience in public development and, specifically, the more standard ways the federal government does its privately financed build-to-suit projects.

The first step in determining the facilities solution for NIH in Baltimore was to create a business plan that would detail all aspects of the proposed new facility. As part of the business planning

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process AMV worked with NIH to compete the procurement of A&E and construction management services. The business plan was a detailed analysis of NIA's and NIDA's operations in Baltimore and the facility required to satisfy those needs. To prepare such a comprehensive plan required concepts of how the facility would work on the existing Hopkins complex and what it would look like. To get reliable construction cost estimating from the outset, NIH believed it needed access to high quality construction expertise. To procure A&E and construction management services, AMV utilized a Request for Qualifications procurement vehicle. The A&E (CUH2A Architects) and construction manager (Skanska USA) were selected primarily on their experience and proposed fees for the work. Each was selected to participate in the planning process and perform their respective roles in any project that resulted from the planning effort. The RFQ procurement tool permitted NIH to select an A&E firm and construction manager within about two months from issuance of the solicitation.

The business plan included a design concept for the research center and a variety of financing structures designed by CTL, as well as ownership and management structures for the completed facility. The plan also outlined the terms of a proposed land lease with Hopkins and a draft prospectus to be used in authorizing the lease construction of the project. In effect, AMV, on behalf of NIH, assembled the full development team and structured the principal deal terms during the planning process. NIH did not finalize the deal terms and could have changed any of the parties but there was an agreement on the terms at least in principle.

The business plan was used as the justification for the new Bayview project in the course of NIH's usual bud-



The NIH Bayview Research Center, Baltimore, Maryland

etary process. In that process Congress chose to directly legislate a long-term lease for Bayview. As part of that process, the Office of Management and Budget also imposed an annual \$51 per square foot rental limitation on the new facility. So NIH effectively had to proceed under restraints similar to those had Bayview been a prospectus-level project. But, unlike the typical prospectus project, NIH already had its full development team engaged by the time the project was approved.

With authorization in place AMV, working with Pillsbury Winthrop Shaw Pittman, finalized documentation of the deal for NIH. That included the contracts for design and construction as well as the land lease and all financing documents. CTL and AMV continued to model the transaction throughout the process as better data became available to insure that the project would be completed within the \$51 rental rate limitation. Included in the model were a variety of ownership structures. Recognizing that the ownership of the facility at the end of the lease term is a valuable asset, CTL proposed to use that asset as

a tool to get the greatest possible facility for NIH within the OMB dollar limitation. To do this, CTL proposed a structure wherein the total project cost was about 60 percent amortized during the lease term. The \$51 limitation would only support that much. The remaining 40 percent balance would be paid as a balloon by Ambac, a bond insurance firm, if NIH chose not to renew the lease at the end of the initial term. In that event, Ambac would pay off the investors and take ownership of the property. If NIH did renew the lease, the deal could be refinanced and the balloon balance paid to the investors from the proceeds.

CTL structured the financing and conducted the competitive sale of the bonds supported by the cash flow from the NIH lease. CTL also arranged for the competitive investment of the bond proceeds to earn as much income as possible during the construction period. Once funds were arranged, construction proceeded and the AMV team oversaw the disbursement of funds during the construction process.

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NIH Bayview — A New Model for Lease-Construction (cont'd)

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The process we employed for NIH is very different than the standard Federal turnkey lease-construction or build-to-suit process. In that process, a developer is asked to bid an annual rent to design, build, finance and operate the facility—all based on just a performance specification or program requirements. That might work reasonably well for a small commodity-type development like a 5,000 square foot Dollar Store but makes no sense for a 500,000 square foot modern research center like Bayview. On larger projects the turnkey approach is rife with uncertainties and potential conflicts that can only cost the government more time and money. It also put the government into a poten-

tially adversarial position with the developer. The less the building costs the developer the more the developer makes.

The approach employed by NIH Bayview is about the same as would be used by a pharmaceutical firm to develop its research facilities. It's the same as a major software company would use for a new facility on one of its campuses. The Federal Acquisition Regulations do not have a section that tells procurement officials how to do a lease-construction or build-to-suit project. As federal lease-construction developments become larger and more complex the government needs a new set of tools for partnering with industry to get projects built faster and at lower

cost. The government needs to know that a project will work within its authorized limitation early in the process. It needs a way to plan and design to a budget defined by the authorized limitation rather than hope that the numbers will come out right when projects come to market. The system developed by the AMV team does that and, furthermore, the core skills necessary to implement the system can be available from an existing GSA schedule contract.

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