

Date: May 2, 2024

From: Executive Director, Office of Construction and Facilities Management (003C)

Subj: CFM Policy Memorandum 003C-2024-08 Real Property Lease Protest Procedures
(VIEWS 11656196)

To: All VA Leasing Professionals

1. The Executive Director, Office of Construction and Facilities Management (ED, CFM) is the designated agency official to manage, render and issue decisions on agency-level real property lease protests, consistent with [38 U.S.C. § 312A\(c\)\(2\)\(C\)](#) authority.

2. **PURPOSE.** The purpose of this memorandum is to issue VA policy on real property lease protest procedures and approval authorities. VA Lease Contracting Officers (LCO) are required to follow the agency specific procedures outlined herein for real property lease protests to ensure oversight and approval authorities are aligned appropriately in accordance with [38 U.S.C. § 312A](#). This policy directs actions to the office with appropriate authority to address real property lease protests on behalf of the agency.

3. The authority to perform real property lease acquisition is delegated to VA by the General Services Administration (GSA). As a delegated agency, VA is required to comply with GSA's real property lease procurement policies, including use of the appropriate solicitation provisions and general clauses, supplemented as needed with agency specific requirements.

4. VA LCOs must follow the agency specific real property protest procedures outlined in Attachment 1.

5. This policy is effective immediately and remains in effect until incorporated into the VA Supplement to the GSA Leasing Desk Guide or otherwise rescinded.

6. In accordance with VA Directive and Handbook 0999, Enterprise Directives Management System, CFM policies and procedures are subject to renewal every 5 years. Policies and procedures should be updated whenever substantive changes are needed, even if this precedes the 5-year renewal requirement. CFM issued real property policies are located on the VA internet at [Lease Acquisition and Management Policies and Procedures - Office of Construction & Facilities Management \(va.gov\)](#) along with other real property policies and guidance. In the event policy or other guidance issued by any other VA organization pertaining to real property lease protests conflicts with policy or guidance issued by CFM, CFM policy/guidance shall control.

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7. Please direct questions regarding this policy to the Director, Office of Real Property, Policy and Programs, via email VACO003C7APolicyandProgramsTeam@va.gov.

A handwritten signature in blue ink, appearing to read "M. Brennan".

Michael D. Brennan, Ph.D., AIA
Executive Director

Attachment

ATTACHMENT 1 – AGENCY SPECIFIC PROCEDURES FOR REAL PROPERTY LEASE PROTESTS

1. The agency procedures described herein supplement and clarify, but do not replace, the requirements of Federal Acquisition Regulation (FAR) Part 33 for real property lease protests.

2. Regardless of protest venue as defined in FAR 33.101, VA Lease Contracting Officers (LCO) must notify Policy and Programs, Office of Real Property, Office of Construction and Facilities Management immediately of any real property lease protests by forwarding a copy of the protest and pertinent documents to CFMORP@va.gov.

3. FAR 33.103 Protests to the Agency

a. Pursuant to FAR 33.103(d)(4), interested parties may request an independent review of their protest at a level above the lease contracting officer. Solicitations should advise offerors this review is available and identify the designated reviewing official. Therefore, LCOs must include the Provision Addendum on page 3 of this attachment as an exhibit to VA Request for Lease Proposals of any value.

b. An interested party may also appeal a LCO's decision on a protest.

1) VA LCOs in receipt of a request for independent review or appeal must forward a copy of the request and pertinent documents to CFMORP@va.gov and include the protestor on the email communication.

c. Any justification or determination required by FAR 33.103(f)(1) or (f)(3) shall be approved by the Executive Director, Office of Construction and Facilities Management. VA LCOs shall submit documentation to CFMORP@va.gov for review, coordination, and approval.

d. Agency real property lease protest decisions required by FAR 33.103(h) shall include one of the following statements as the last paragraph:

1) VA LCO Protest Decision:

“Should you disagree with this decision, you may file an appeal with the Executive Director, Office of Construction and Facilities Management (003C), Department of Veterans Affairs, 425 I Street NW, Washington, DC 20420 or via email to: CFMORP@va.gov. Any such appeal must be received within 10 calendar days after receipt of this letter. Alternatively, you may file a protest with the Government Accountability Office (GAO). Protests filed with the GAO must be filed through GAO's Electronic Protest Docketing System (EPDS)

at <https://epds.gao.gov>. Any GAO protest must be filed within 10 calendar days of this formal notification of, or actual or constructive knowledge of, an initial adverse agency action (as determined in 4 CFR 21.0[e]). If you file an appeal with the Executive Director, Office of Construction and Facilities Management, you may waive your right to further protest to the Comptroller General at a later date.”

2) Independent Review of Protest Decision or Appeal of a VA LCO Protest Decision:

“Should you disagree with this decision, you may file a protest with GAO. Protests filed with the GAO must be filed through GAO’s Electronic Protest Docketing System (EPDS) at <https://epds.gao.gov>, within 10 calendar days after receipt of this letter, or actual or constructive knowledge of, an initial adverse agency action (as determined in 4 CFR 21.0[e]).”

4. FAR 33.104 Protests to GAO

- a. Authorizations to award a lease required by FAR 33.104(b)(1) or 33.104(c)(2) shall be approved by the Executive Director, Office of Construction and Facilities Management. VA LCO’s shall submit documentation to CFMORP@va.gov for review, coordination, and approval.

5. FAR 33.105 Protests at the U.S. Court of Federal Claims

- a. Upon receipt of notification of a protest filed in the U.S. Court of Federal Claims, VA LCO’s must notify the Executive Director, Office of Construction and Facilities Management via email to CFMORP@va.gov.

6. FAR 33.106 Solicitation Provision and Contract Clause

- a. VA LCO’s shall only use the applicable solicitation provisions and contract clause forms for acquisition of leasehold interest approved by and obtained through GSA (GSA 3516/A or GSA 3517/A) and the VA Provision Addendum included herein. VA Acquisition Regulation provisions or clauses are not to be used.

Exhibit ____
Department of Veterans Affairs
Provision Addendum
to
GSA Template 3516/3516A - SOLICITATION PROVISIONS

VA ALTERNATIVE PROTEST PROCEDURE – REAL PROPERTY LEASE
PROCUREMENTS (MARCH 2024)

(a) As an alternative to filing a protest with the Lease Contracting Officer, an interested party may file a protest by mail or electronically with: Executive Director, Office of Construction and Facilities Management (003C), Department of Veterans Affairs, 425 I Street, NW, Washington, DC 20420 or CFMORP@va.gov.

(b) The protest will not be considered if the interested party has a protest on the same or similar issue(s) pending with the Lease Contracting Officer.

(End of provision)